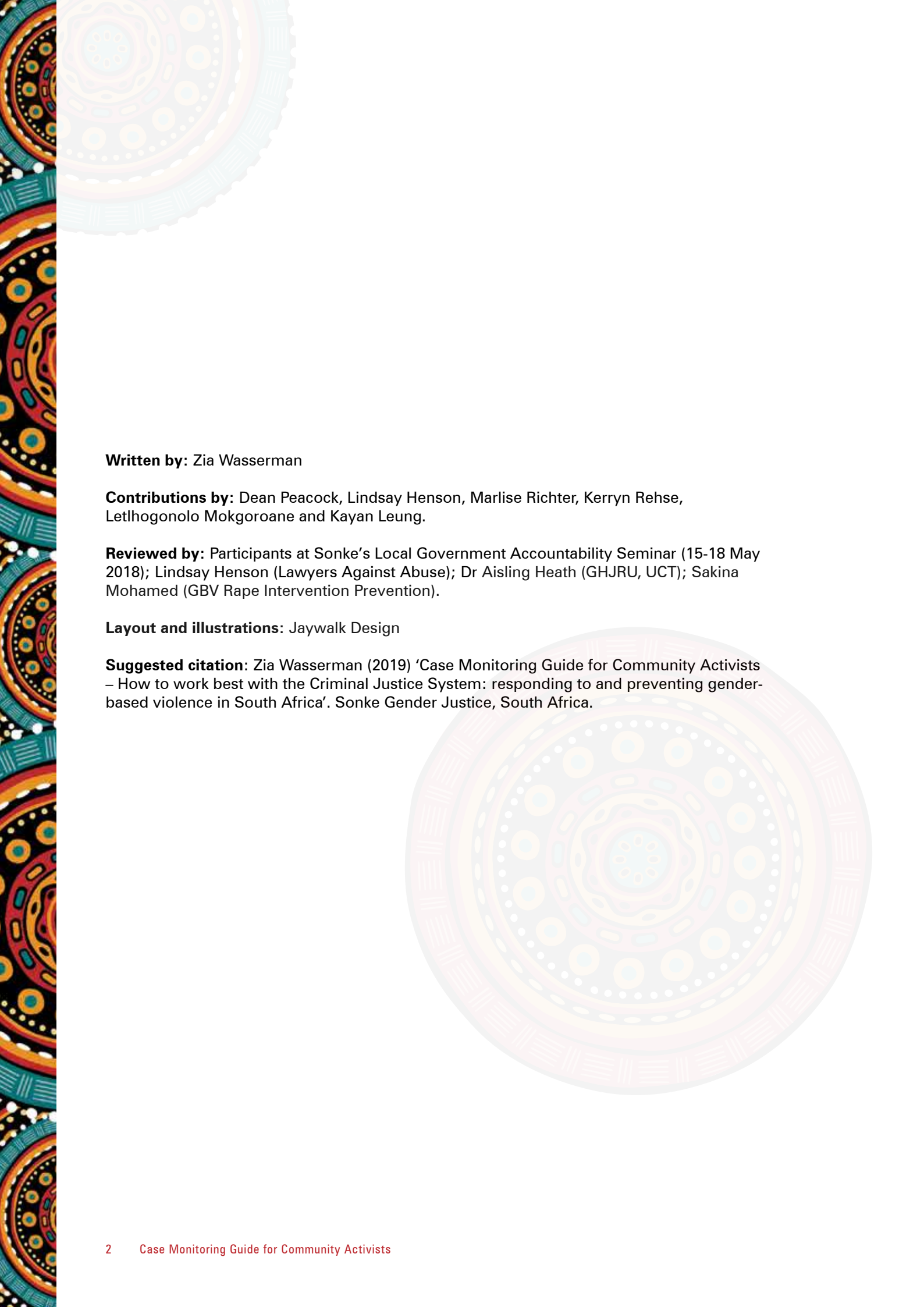


# CASE MONITORING GUIDE FOR COMMUNITY ACTIVISTS

*How to work best with the criminal justice system:  
responding to and preventing gender-based  
violence in South Africa*

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# ABBREVIATIONS

<b>AIDS</b>	Acquired Immune Deficiency Syndrome
<b>ARV</b>	Anti Retroviral
<b>CAS</b>	Crime Administration System
<b>CAT</b>	Community Action Team
<b>CEM</b>	Community Education and Mobilisation
<b>CPA</b>	Criminal Procedure Act 51 of 1977
<b>CPO</b>	Court Preparation Officer
<b>CSO</b>	Civil Society Organisation
<b>DCS</b>	Department of Correctional Services
<b>DVA</b>	Domestic Violence Act 116 of 1998
<b>FCS Unit</b>	Family Violence, Child Protection and Sexual Offences Unit of SAPS
<b>GBV</b>	Gender-Based Violence
<b>HIV</b>	Human Immunodeficiency Virus
<b>IPID</b>	Independent Police Investigative Directorate
<b>IPV</b>	Intimate Partner Violence
<b>LGBTI</b>	Lesbian, Gay, Bisexual, Transgender, Intersex
<b>NGO</b>	Non-Governmental Organisation
<b>NPA</b>	National Prosecuting Authority
<b>IO</b>	Investigating Officer
<b>PEP</b>	Post-Exposure Prophylaxis (medical treatment to minimise the risk of HIV infection)
<b>SADC</b>	Southern African Development Community
<b>SAPS</b>	South African Police Service
<b>SOA</b>	Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 Of 2007 (referred to as the "Sexual Offences Act")
<b>STI</b>	Sexually Transmitted Infection
<b>TCC</b>	Thuthuzela Care Centre
<b>VISPOL</b>	Visible Policing (Unit within SAPS)

# THE PURPOSE OF THE GUIDE

This guide is in response to a growing worry around the failure of the South African criminal justice system. Complaints include the police's lack of urgency or respect when charging people, the overlong delays in court cases and the victim's input throughout the legal process.

The guide focuses mostly on criminal gender-based violence (GBV) cases (for example, sexual offences, assault or murder by a current or former girlfriend/boyfriend/romantic partner). This is because such acts are cruelly common in South African society. So vast is the scale of GBV in South Africa that KPMG has found that it costs the country over R28 billion per year, or 1% of Gross Domestic Product (GDP), which is what the country earns in one year.<sup>1</sup> Here are some of the most recent facts:

- According to the 2016 Demographic and Health Survey,<sup>2</sup> one in five (21%) of partnered women has been physically assaulted by a partner, and 6% of ever-partnered women aged 18 years and older has been sexually assaulted or raped by a partner.
- The murder rate for women by partners in South Africa is six times the global average.<sup>3</sup> This is sometimes called femicide.
- 49 445 sexual offences were reported to the police during 2016/2017, including 39 633 cases of rape.<sup>4</sup> Research shows that under-reporting could make the true number of cases nine times higher.<sup>5</sup>
- A 2009 Medical Research Council (MRC) study showed that one in four (25%) men admitted to rape and 15% of those men had raped more than once.<sup>6</sup> Nearly half of the men surveyed in another MRC study said that they have assaulted a partner. Over 40% of those men said they had beaten a partner and 40-50% of the female participants said they were victims of violence.<sup>7</sup>
- In a study done in Diepsloot in 2016, it was found that 56% of the men surveyed had used violence against women in the past year (this included physical or sexual violence with a partner, as well as sexual violence towards a non-partner) - a majority (60%) used such violence many times.<sup>8</sup>
- In 2012, a study done by Gender Links found that 77% of women in Limpopo, 51% in Gauteng, 45% in the Western Cape and 36% in KwaZulu-Natal had experienced some form of GBV (emotional, economic, physical or sexual) at least once in their lifetime, both within and outside their intimate relationships.<sup>9</sup>

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<sup>1</sup> KPMG (2014). 'Too costly to ignore: the economic impact of gender-based violence in SA'. Available at: <https://assets.kpmg.com/content/dam/kpmg/za/pdf/2017/01/za-Too-costly-to-ignore.pdf>

<sup>2</sup> Available at: <http://www.statssa.gov.za/publications/Report%2003-00-09/Report%2003-00-092016.pdf>

<sup>3</sup> Seedat, M., et al. (2009). Violence and injuries in South Africa: prioritising an agenda for prevention. *The Lancet*, 374 (9694), pp. 1011-1022.

<sup>4</sup> Available at: <http://www.crimestatssa.com/national.php> [Accessed 14 March 2018].

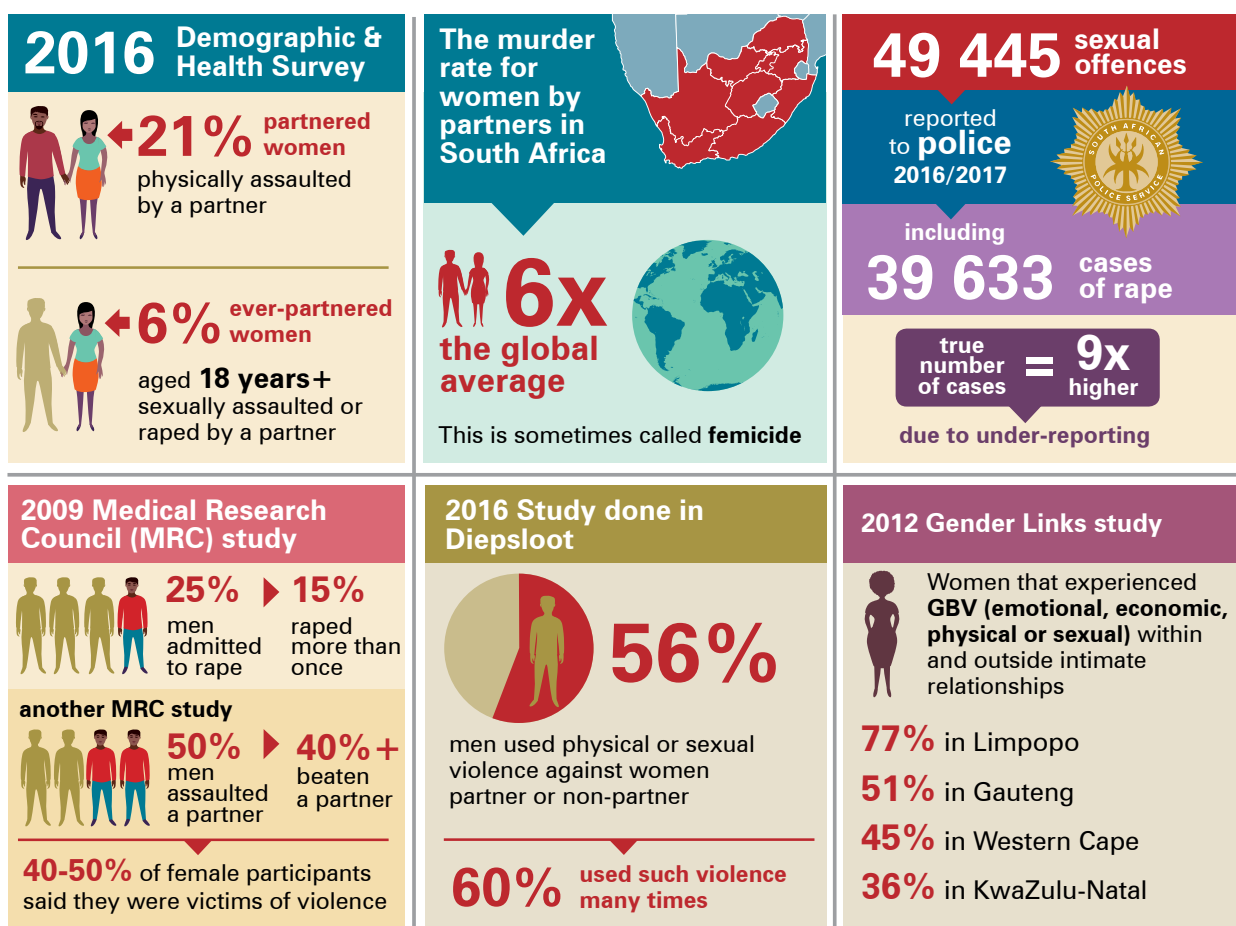
<sup>5</sup> Jewkes, R. & Abrahams, N. (2002). The epidemiology of rape and sexual coercion in South Africa: an overview. *Social Science and Medicine*, 55, pp. 1231-1244.

<sup>6</sup> Jewkes, R., et al. (2011). Gender inequitable masculinity and sexual entitlement in rape perpetration in South Africa: findings of a cross-sectional study. *PLoS ONE*, 6(12), pp. 1-11.

<sup>7</sup> Jewkes, R., et al. (2009). 'Preventing rape and violence in South Africa: call for leadership in a new agenda for action'. Medical Research Council Policy Brief.

<sup>8</sup> Sonke Gender Justice. (2016). 'Men's use of violence against women: urgent change is needed in Diepsloot'. Available at: <http://genderjustice.org.za/publication/mens-use-violence-women/>

<sup>9</sup> Gender Links. (2012). 'The war @ home: findings of the gender-based violence prevalence study in Gauteng, Western Cape, KwaZulu Natal and Limpopo Provinces of South Africa'. Available at: [http://genderlinks.org.za/wp-content/uploads/imported/articles/attachments/21537\\_the\\_war@home\\_4prov2014.pdf](http://genderlinks.org.za/wp-content/uploads/imported/articles/attachments/21537_the_war@home_4prov2014.pdf)



This guide is intended to teach community action team (CAT) members how to monitor GBV cases successfully and independently. The guide offers the following for this reason:

- Information on GBV**, including the different types of GBV and the relevant legislation.
- Knowledge** of the different organisations in the **criminal justice system**.
- Knowledge** of the basic steps in the **criminal justice process** for criminal GBV cases.
- Important **information** and tips on how to smooth the way through **each stage** of the criminal justice process.
- Communication and negotiation skills** for working with and **lobbying key roleplayers** within the criminal justice system (police officers, court officials, health professionals, local authority leaders, etc.) and for putting pressure on them to carry out their duties properly and responsibly.
- Knowledge of the procedures** to follow when organising courthouse pickets, public marches and demonstrations.
- Guidance** on how to provide **support and advice** to victims, their families and friends in a way that is caring and understanding of their experiences and feelings, as well as empowering.
- Steps to follow** once the monitoring of the case has been completed.

# GLOSSARY OF TERMS

<b>Accused</b>	Person charged with committing a crime.
<b>Age of consent</b>	A child can legally agree to sex from the age of 16 years.
<b>Application for discharge</b>	If, after the State has presented all it knows about the crime, the court believes that there is no proof the accused has broken the law, it may say the person is not guilty, without hearing the defence's case. <sup>10</sup>
<b>Acquittal</b>	This happens at the end of the trial after both the state and the defence have had a chance to present what they know and a judgement is made that a person is not guilty of the crime with which the person has been charged (i.e. that the state has failed to prove its case beyond a reasonable doubt). The case is then over and the accused person is free to go. Acquittals also happen when other reasons lead to the case being ended after trial has started.
<b>Bail</b>	Legal way of releasing an accused person from being held in prison before her/his case is heard before a court. There are some rules about bail. These rules are designed to make sure that the accused comes back to court and does not run away. It usually means paying some money and reporting to the police at regular times. It can also mean giving in travel documents like a passport. In other cases, the accused person may be released with a warning, which means that no money needs to be paid.
<b>Burden of proof</b>	The duty on a person to persuade the court of the truth of their version of the facts. The responsibility rests with the prosecution (state lawyers) to prove the accused person's guilt 'beyond a reasonable doubt'.
<b>CAS number</b>	A unique reference number allocated to the case by the SAPS Case Administration System (CAS). This is the number that the police will use to monitor the case file on its journey through the criminal justice system.
<b>Charge sheet</b>	A formal document prepared by the prosecutor (see below), which lists the crime the accused is charged with.

<sup>10</sup> Criminal Procedure Act 51 of 1977 (hereinafter the 'CPA'), section 174.



<b>Child</b>	Person under the age of 18 years.
<b>Circumstantial evidence</b>	Provides <i>indirect</i> proof of the facts of the case, from which the court must decide what is most likely to have happened (i.e. the witnesses have said nothing directly about what may seem to be the facts of the case). For example, fingerprints at the scene of a crime.
<b>Compelled rape</b>	Any person (“A”) who illegally forces a third person (“C”), without the agreement of C, to commit an act of sexual penetration with a victim (“B”), without the agreement of B, has committed the offence of compelled rape.
<b>Complainant</b>	Legal term referring to the person against whom a crime has been committed: more literally, the person who is complaining that someone has hurt them by breaking the law. Prosecutors often use the term ‘complainant’ when they are talking about the victim.
<b>Consent</b>	When someone clearly and freely agrees to do something, fully understanding the likely results of their decision, and they do so without being forced or bullied. Changing your mind or giving in are not the same as consent. In order for consent to be real, the person must not be drugged, drunk or deceived.
<b>Court roll</b>	The order of cases to be dealt with by the court on any one day.
<b>Culpable homicide</b>	Murder that was committed by a lack of care being taken, rather than being planned (i.e. the unplanned killing of another person). It is a lesser form of murder and has a lesser sentence.
<b>Defence attorney/ advocate</b>	The person(s) who act/s for the accused in court. Her/his job is to try to prove to the court that the accused is not guilty of the charges brought against them, by putting proof before the court or by trying to point out problems with the State’s evidence.
<b>Direct evidence</b>	Provides <i>direct</i> proof of a fact of the case. For example, the statement of an eyewitness.



<b>Docket</b>	A file, put together by the police, containing all the important documents and information on the case.
<b>Investigating Officer</b>	SAPS member chosen to look into the facts about a crime. If the victim of the crime is a child or if it is a crime of sexual violence, only a member of the FCS unit may be chosen as investigating officer.
<b>Jurisdiction</b>	The level of power and experience a certain court has that allows it to hear a case and be able to make a judgment (this depends on the type of case, the amount of the fine that can be given and where the crime took place).
<b>Legal representative</b>	Person who acts for the accused or the State in a court case. This term is the same as 'lawyer', 'advocate' or 'attorney'.
<b>Murder</b>	The planned killing of a person.
<b>Parole</b>	The release of a prisoner before s/he has been in prison for the full sentence. Parole is usually agreed to after the prisoner has been in prison for part of the time/sentence and has acted well in prison. The prisoner will be monitored during the parole period, which will be set for a certain amount of time.
<b>Plea</b>	This refers to whether the accused agrees they are 'guilty' or 'not guilty' of the charges. The criminal trial begins once the accused makes her/his plea.
<b>Plea and sentence agreements</b>	These are usually termed 'plea bargains'. These agreements are between the State and the accused. The accused may agree they are guilty to charges to get a shorter sentence.
<b>Presiding Officer</b>	Magistrate (Magistrate's court) or Judge (High Court, Supreme Court of Appeal and Constitutional Court) that hears a case in court and decides whether or not the accused is innocent or guilty.
<b>Prosecutor</b>	Legal representative of the NPA (acting for the State) who tries to convince the court of the guilt of the accused. They do this by presenting proof showing that the accused is guilty of the crime. This person is the one acting for the victim.

<b>Protection order</b>	An order of the court which stops the respondent (i.e. the person who is accused of acts of domestic violence) from doing anything which may result in further abuse of the applicant (i.e. the person suffering domestic violence).
<b>Real evidence</b>	An <i>object</i> which becomes, of itself, proof (e.g. a knife, a photo, a voice recording, a letter or even the appearance of a witness in the witness box).
<b>Recusal</b>	The act of a presiding officer being removed or choosing to step aside from judging a case, usually when there is a conflict of interest, which means the presiding officer cannot act fairly because of what or who he knows in the case.
<b>Secondary victimisation</b>	Planned or unplanned thoughts, feelings and actions (or lack of action) that may add to the suffering of a traumatic crime victim by (a) failure to treat the victim with respect and dignity; (b) disbelief of the victim's account; (c) uncaring treatment; (d) blaming the victim; and (e) lack of (or not enough) support services to assist the victim at a personal, organisational or community level. <sup>11</sup>
<b>Subpoenas</b>	These are documents given to anyone who is ordered to give evidence in court and gives the court dates.
<b>Testimony</b>	Information given directly in court by a witness speaking about what was seen or what is known about the case. Also known as "oral evidence".
<b>Trial</b>	Court process through which evidence is given to the court by both parties (through their legal representatives), to allow the court to finally decide whether or not the accused is guilty of the charge(s) they are accused of.
<b>Victim</b>	Person who directly suffered harm or loss as a result of another person's actions. This is the common term used, though it is better to use the term 'survivor'.
<b>Witness</b>	Person who either saw the crime themselves or can give information about the case. These persons are often called to share information or other evidence in court through the use of a subpoena document.

<sup>11</sup> South African Service Charter for Victims of Crime: Conceptual Framework. (2006). Department of Justice and Constitutional Development, South Africa.

# INTRODUCTION

## About Sonke

Sonke Gender Justice (Sonke) is a non-profit organisation that was founded in 2006. Sonke works to create the change we all need to see, so that women, men, young people and children can enjoy equal, healthy and happy relationships that support the development of just and democratic societies. Sonke works hard to achieve its goals by using human rights education, advocacy and policy development; assisting government, civil society organisations and citizens to promote gender equality, prevent gender-based violence (GBV) and reduce the spread of HIV and the impact of AIDS.

Sonke mostly does direct community education and mobilisation (CEM) work through a specialised CEM unit, and also draws a lot on media support from Sonke's communications team, legal support from Sonke's policy advocacy team and from the organisation's research team. These units work closely with men, women and children from different backgrounds and communities across South Africa and beyond, to deal with gender inequality, gender-based violence and the spread and effect of HIV and AIDS.

In promoting CEM, Sonke creates a number of campaigns designed to mobilise communities to promote gender equality and improve democracy. Each of these campaigns aims to inspire community activism and urges community members to form community action teams (CATs). Sonke staff then supports and empowers CAT members to use a range of tools and plans to raise awareness within communities and promote education and activism.

One of the key strategies that CAT members are urged to use is: **case monitoring**.



## What is 'case monitoring'?

Case monitoring is the practice of thoroughly watching, recording and measuring the value of the service given to the public by the criminal justice system.

Case monitoring is usually done by concerned members of the community involved in the case. This is vital as 'an educated, involved public can highlight potential problems and evaluate the effectiveness of the law. Community involvement can increase public awareness...ultimately enhancing victim safety and confidence in the justice system.'<sup>12</sup>

Sonke's case monitoring process has the following objectives:<sup>13</sup>

- a **Monitor** the criminal justice process (including court proceedings) to ensure that they are in line with proven legal systems and standards.
- b Create community **activism and awareness** around the problem at hand.
- c **Educate** the community and the officials delivering the service (i.e. courts, police officials and health institutions) of their responsibilities and duties as per policy documents, legislation and regulations (e.g. Victim Empowerment Programme, National Instructions and Standard Operating Procedures).
- d Use the visibility created by local GBV cases to keep violence against women in the **public eye** as needing urgent attention, including local and national plans to tackle GBV.

<sup>12</sup> The Montana Coalition Against Domestic And Sexual Violence (2007) 'Courtwatch Training Manual'. Available at: [http://www.ncdsv.org/images/MCADSV\\_CourtwatchTrainingManual\\_2007.pdf](http://www.ncdsv.org/images/MCADSV_CourtwatchTrainingManual_2007.pdf)

<sup>13</sup> Welsh, P. (2015). 'Systematization of Sonke CEM/CAT Experiences'. Sonke Gender Justice, at 45.





## Sonke's case monitoring process

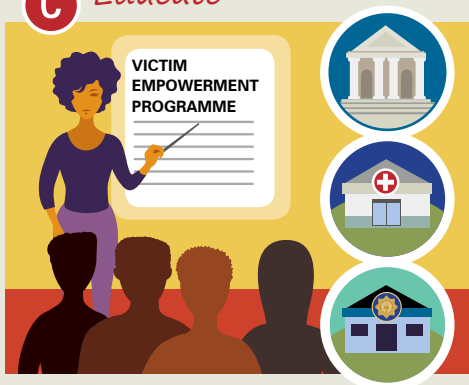
### a Monitor



### b Activism and awareness



### c Educate



### d Visibility



The main purpose is to make sure the justice system works for citizens and the community, as well as making sure it works well and creates lasting change. We also want to provide victims of crime with real-world, practical justice. In addition, there are several other very positive outcomes linked to case monitoring, including:

- The delivery of victim support;
- The creation of working relationships with government officials, service providers and other stakeholders;
- Community education and better access to information;
- The strengthening of service delivery within communities;
- Opportunities for policy activism and law reform; and
- The building of skills within communities and the creation of an active citizenry to address important issues that affect communities where they live.

Finally, case monitoring is also thought to help **prevent violence**. In practice and principle, Sonke is an organisation committed to primary prevention. Some may consider case monitoring to be something that happens after a crime has been committed and therefore cannot help prevent it. We believe it is an important tool in not only responding to but also preventing the high levels of crime happening within communities. Every example of case monitoring is an opportunity for education about violence prevention, e.g. by challenging how men believe they can behave, talking with traditional and religious leaders, as well as men and boys. Case monitoring also provides a key opportunity for discussion around a current case, which makes discussion more concrete. Furthermore, opening up the criminal justice system, making it responsible for its actions and helping victims find their way through it, is likely to reduce the chances of additional suffering in the future.

## How to choose which cases to monitor

This guide focuses mainly on monitoring criminal cases of **gender-based violence (GBV)**. However, note that you are likely to come across a GBV case with other issues (for example, sexual violence in prison; the high rate of HIV amongst sex workers; or a hate crime against a child). In that situation, it will be important to think about and report on *all* the relevant issues.

At any one time, there are likely to be several cases of serious importance that could be monitored. We do not see one person's victimisation and experience of crime as being more important than another's, but limits on finances and personnel mean we have to decide on certain cases over others.

### THE FOLLOWING MEASURES SHOULD BE USED WHEN DECIDING WHICH CASES SHOULD BE CHOSEN FOR CASE MONITORING:

- 1 The **public impact** of the case: if the case involves an issue of serious concern to the general public, this may result in increased media attention and public involvement, which may lead to our involvement having a ripple effect on future similar cases, and ultimately creating change in the judicial system.
- 2 The potential to influence **policy change and law reform**.
- 3 **Community interest** in the case: this is important for community activism and empowerment.
- 4 The **identity of the victim and/or accused**: if the persons involved in the case are well-known, this draws more attention to the case and may set an example for others in positions of power. It is important to note that the impact of the case in the community should be considered in light of the victim or accused. The person may not need to be a celebrity or person with the power to influence but rather someone that has power in the community in question.
- 5 The current **political context**: if the issue being raised by the case is of significance in terms of the current political climate, then it will receive more attention. This requires flexibility and political awareness.
- 6 Consideration of **CATs relationship to the particular community** concerned: it may be seen as strategic to take on cases in communities where CATs already work, or it may be seen as an opportunity to set up CATs in a new area.



There are two basic conditions that need to be met for case monitoring to be approved:

- ✓ the **consent of the victim and her/his family**; and
- ✓ the **availability of the resources to do the monitoring**.

Resources include finances and personnel, as well as the ongoing support by networks and partnerships to provide certain services (such as psycho-social support) to victims of GBV and affected family members. It is important to note that case monitoring can take a long time, with some cases taking many years to finish.

Sometimes a single organisation need not monitor a case in full. For example, Sonke could choose (or be asked) to provide special assistance in a case in the form of training and community education, while a partner organisation takes on the court monitoring.

## HOW TO USE THIS GUIDE

This guide aims to teach CAT members to monitor cases well. The guide will provide an in-depth understanding of each stage of the criminal justice system. This will allow CAT members to share this information with victims/complainants and help them find their way through the steps in the criminal justice process. It will also teach CAT members ways to make sure criminal justice workers do their jobs properly, responsibly and respectfully.

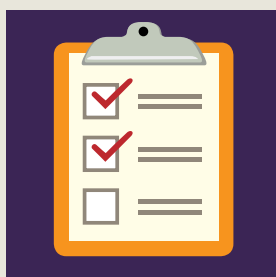
### THE GUIDE OFFERS:



**Knowledge** about the criminal justice system and the various processes involved



Possible **pitfalls (difficulties)** that complainants/victims may experience during each process, with practical **solutions**



**Checklists** and monitoring/inspection tools

It is important that this guide is coupled with at least one training session, which should cover the practical side of the guide plus an in-depth educational session on GBV itself.

# UNDERSTANDING GENDER-BASED VIOLENCE

## What is gender-based violence?<sup>14</sup>

GBV is violence against somebody based on their gender, gender identity, gender expression and/or sexual orientation. History and culture influence how women, in particular, are treated. This has created more power for men because of the belief that men are better than women. This, in turn, influences cultural, social, economic and political organisations. And it affects partners, families, communities and society as a whole.

However, this power difference is not only between these two genders, but is also true of individuals and groups who are different to what society expects of them. For example, a heterosexual man benefits from the historical, societal and cultural power of heterosexuality and masculinity, which is seen as 'normal'. He may also become violent towards a gay man who may not fit in to these societal norms of masculinity. These unequal power relations often play a role in GBV.

There are also different and cross-cutting issues which may increase a person's risk of violence. These include being a migrant refugee, prison inmate, sex worker, person with disabilities, member of the LGBTI community, a person living with HIV/AIDS, the elderly and children. This list is not the whole list.

It is important *not* to use the terms "gender-based violence" (GBV) and "violence against women" (VAW), as though they are the same. While the majority of criminals who act violently are men and the majority of victims are women, it is important to note that GBV is complex. It also includes violence against other minorities and people with less power than the criminal, as explained above.

*History influences how women are treated...*



<sup>14</sup> Sonke Gender Justice. (2015). 'How to support community members affected by gender-based violence: a guide for community activists and human rights defenders'.





...creating a belief that men are better than women...

...influencing cultural, social, economic and political organisations...

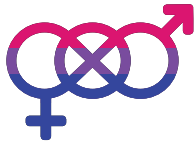


...affecting partners and families...

...as well as communities and society.

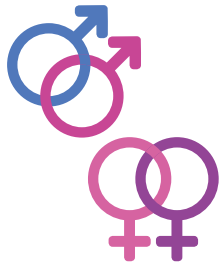


## SOME HELPFUL WORD DEFINITIONS



### **Bisexual:**

a person that is emotionally, romantically and/or sexually attracted to both men and women.



### **Gay or lesbian:**

a person who is (emotionally, romantically, and/or sexually) attracted to someone of the same gender and/or sex. Lesbians are women who are attracted to women. While 'gay' was once used to describe men who are attracted to men, it is now used more broadly, and often means the same as 'homosexual'.



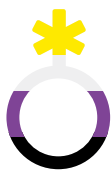
### **Gender:**

the behaviours that society sees as correct and expected for men and women in "male" and "female" roles. It includes how society expects men and women to relate to each other.



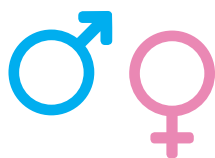
### **Gender identity:**

the gender that a person prefers or chooses to be. A person's gender identity is not always the same as their biological sex. (e.g. a person born as a male biologically can see herself as female, and vice versa).



### **Gender non-binary:**

a person whose gender identity is neither wholly masculine or feminine. They may express a combination of masculinity and femininity, or neither, in their gender expression.



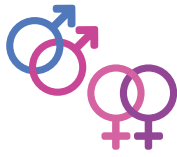
### **Heterosexual/straight:**

a person that is emotionally, romantically, and/or sexually attracted to persons of the opposite sex/gender.



### **Heteronormative:**

a world view that believes heterosexuality to be the normal or preferred sexual orientation.



### **Homosexual:**

an individual that is emotionally, romantically, and/or sexually attracted to persons of the same sex/gender.



### **Intersex:**

a term referring to a variety of conditions in which a person's sexual and/or reproductive organs are both "female" and "male". An intersex person who is not immediately seen to be either male or female from birth is often 'assigned' a gender. Intersex persons can see themselves as a man or woman.



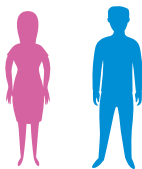
### **Lesbian:**

a person who sees herself as a woman, and who is emotionally and/or sexually attracted to women.



### **Patriarchy:**

a system that benefits men and masculinity, seeing them as better than and more respected than women and femininity.



### **Sex:**

refers to the biological sex that we are born with, usually decided by our external genitalia, i.e. males are born with penises and females are born with vaginas. However, it is possible to change your sex by having a sex change operation.



### **Transgender:**

a term that describes a person whose gender identity does not "match" the biological sex they are born with. Transgender people challenge society's view of gender as fixed and linked only to your biological sex. Transgender is not a sexual orientation – transgender people can be heterosexual, bisexual, homosexual or asexual. Some transgender people who choose treatment are called transsexual. Not all transgender people opt for treatment and some only choose partial treatment.

#### **Trans-man:**

a person who is biologically born with female genitalia, but sees himself as male. Also known as 'female-to-male' (FTM).

#### **Trans-woman:**

a person who is biologically born with male genitalia, but sees herself as female. Also known as 'male-to-female' (MTF).

## Types of gender-based violence

GBV can happen to people of all genders, ages and origins (though violence against women and girls is probably the most common form of GBV). Such acts of violence can involve physical, sexual, psychological, emotional and economic abuse and exploitation. As such, GBV can be experienced in a range of settings in both private and public spaces (i.e. at home, school, the workplace, other public places, as well as online).

GBV includes, but is not limited to, the following acts:

- **Domestic violence:** A pattern of behaviour that involves the following acts being perpetrated by one person against another in a domestic setting: physical abuse; sexual abuse; emotional, verbal and psychological abuse; economic abuse; intimidation; harassment; stalking; damage to property; entry into the complainant's residence without consent; or any other controlling or abusive behaviour towards a complainant. Domestic violence as defined can only be committed within a 'domestic relationship' (i.e. by a known perpetrator/attacker), including: spouses, intimate partners and ex-partners, persons cohabiting, family members and children.
- **Femicide:** the intentional killing of a female person, because they are female.
- **Intimate Partner Femicide:** The killing of a female person by an intimate partner (i.e. her current or ex-husband or boyfriend, same-sex partner or a rejected would-be lover).
- **Intimate Partner Violence:** Domestic violence against a spouse or partner.
- **Sexual Violence/Abuse:** A broad category incorporating various forms of sexual violence, including, but not limited to, rape, sexual assault, and sexual harassment.
- **Sexual assault:** The sexual violation of person 'A' by person 'B' without person A's consent. This includes the direct or indirect contact between the genital organs, anus or breasts and any body part of another person or another object; and direct/indirect contact between the mouth of one person and the genital organs, anus, breasts, mouth or any other body part of another person.
- **Sexual harassment:** Unwanted sexual advances or obscene remarks, including verbal and non-verbal conduct. Examples include touching, unwelcome jokes, whistling, rude gestures, unwanted questions about your sex life, requests for sex, staring at your body in an offensive way, or promising rewards in exchange for sexual favours, to name a few.
- **Rape:** Non-consensual sexual penetration, however slight, of the vagina, anus or mouth by a penis, any other body part, or object.
- **Compelled rape:** When a person 'A' unlawfully and intentionally compels, through the use of threats or the use of force, another person 'B' without their consent, to rape a third person 'C'. In this case, person 'A' has committed compelled rape.
- **Corrective rape:** a term generated by some media houses and quite widely condemned by the LGBTI community as being unhelpful. It refers to the sexual violence perpetrated by men against lesbians based on the incorrect and hateful notion that forced sex with a man will "correct" lesbians of their sexual orientation and show them that heterosexuality and sex with men should be their "correct" choice. We include the term here not to encourage its use but to explain its meaning.



- **Date rape:** rape committed by a person who has been in a social situation with the victim, such as on a date. Date rape is commonly associated with the perpetrator drugging her/his victim – for example, Rohypnol is commonly referred to as the “date rape drug”.
- **Marital rape:** the act of sexual intercourse with your spouse without the consent of the other spouse.
- **Sexual exploitation and trafficking:** Human trafficking is the acquisition of people by improper means such as force, fraud or deception, with the aim of exploiting them, usually through forced prostitution.
- **Homophobic attacks:** acts of violence (be it physical, emotional, financial, or sexual) committed against persons who either identify or are identified as being gay.
- **Harmful traditional practices:** including forced marriage, wife inheriting and female genital mutilation.

### A NOTE ON “CONSENT”<sup>15</sup>

Acts of GBV, particularly rape and sexual assault, are based on the *non*-consent or refusal of the victim. You agree to a sexual act when you willingly and without force or pressure engage in a sexual act with another person. You can show that you do not want to have sex verbally, through body language or in another way that tells the other person that you do not want to have sex.

A sexual act has NOT BEEN CONSENTED TO if:

- A person agrees to a sexual act because she is afraid of what will happen if she does not agree to the sexual act (bullying or abuse of authority). For example, A threatens to dismiss B from her job or to harm her children if she does not have sex with A.
- A person agrees to a sexual act but did not know that she was agreeing to a sexual act. For example, B agrees to a medical doctor touching her breasts, not knowing that it is not necessary for her to touch her breasts for a medical examination.
- A person agrees to a sexual act while they were under the influence of alcohol or drugs.
- A sexual act was committed with a person while she was asleep or unconscious.
- A sexual act was committed with a person who is mentally disabled.
- A sexual act is committed with a person under the age of 12 years (statutory rape).

<sup>15</sup> Sanger, C. (2010). ‘A simplified guide to your rights against sexual violence’. Women’s Legal Centre.



## Gender-based violence and the law

The **South African Constitution**<sup>16</sup> does not include a clear definition of GBV. Yet some of its most basic values are the promotion of human dignity, equality and non-sexism. In particular, section 9 says that no one may be unfairly discriminated against, directly or indirectly, for several reasons, including gender, sex, and sexual orientation. Furthermore, section 12 states that every person has the right to freedom and security, which includes the right to be free from all forms of violence. Taken together, these sections amount to a condemnation of and protection against GBV.

There are two key laws that expressly protect against GBV: the **Domestic Violence Act**<sup>17</sup> (DVA) and the **Sexual Offences Act**<sup>18</sup> (SOA). The first defines and condemns **domestic violence**, a form of GBV, in a very broad sense. It includes a number of actions and harms which may amount to domestic violence and does not limit its protections to a specific gender/sex. The DVA also provides for the obtaining of protection orders by victims of domestic violence. Applying for a protection order is a civil process. However, if an act of domestic violence is committed by the respondent (i.e. the person being violent) against the applicant (i.e. the person suffering violence) *after* an interim protection order or a final protection order has been issued and properly served on the respondent, the applicant may take the protection order, together with the warrant of arrest, and approach the nearest police station to open a criminal case of “contravention of a protection order” (i.e. ignoring the protection order). At this stage, the process is no longer civil and the respondent becomes the ‘suspect’ or the ‘accused’ and may be arrested for the offence.

The SOA very clearly defines acts of **sexual violence**, including: rape, sexual assault, sexual grooming, incest and child pornography. The definition of rape is very sound: *any person who commits an act of sexual penetration with another person without such person’s consent is guilty of the offence of rape*. In particular, the definition is not sex-specific, which means that both victim and perpetrator can be male or female. In addition, the prohibited act has been widened from strict sexual intercourse to include non-consensual sexual penetration (i.e. the insertion, however slight, of objects or body parts into or beyond the mouth, genital organs or anus of another person, without agreement) and sexual violation.

Even though sex workers are currently considered criminals under South African law, and prisoners have committed crimes, it is illegal and against our Constitution to commit acts of GBV against sex workers and prison inmates. Migrants and refugees also have the same rights as South African citizens to be free from violence; thus acts of GBV against them are also illegal and against our Constitution.

The South African Government has signed and approved many international and regional rules that commit the State to preventing and addressing GBV. For example:

- The Southern African Development Community (SADC) Declaration on Gender and Development, which commits states to take urgent measures to prevent and deal with the increasing levels of violence against women and children.
- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which prohibits discrimination against women in all its forms, including violence against women.
- The International Covenant on Civil and Political Rights, which prohibits sexual violence.

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<sup>16</sup> Constitution of the Republic of South Africa, 1996.

<sup>17</sup> Domestic Violence Act 116 of 1998.

<sup>18</sup> Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007.

# CRIMINAL JUSTICE SYSTEM: OVERVIEW OF PROCESS AND ROLE-PLAYERS

It is important to remember that the 'criminal justice system' does not only refer to court proceedings. In fact, it involves the following steps and processes:<sup>19</sup>

- 1. Reporting:** the victim or witness to the crime lays a charge with the South African Police Service (SAPS) and gives a statement, either at a police station or medical clinic/hospital.
- 2. Medical examination:** a doctor conducts a full examination of the victim and fills out a J88 form, which will be used as evidence during the trial.
- 3. Investigation by SAPS:** the investigating officer (IO) looks at the charges and gathers relevant evidence, which is gathered into a file (docket).
- 4. Arrest:** the police make an arrest based upon the evidence they have collected.
- 5. Bail hearing:** court hearing in which the magistrate will decide whether or not the accused should be released on bail.
- 6. Prosecution by the National Prosecuting Authority (NPA):** court proceedings in which the NPA makes a case against the accused, who is defended by his defence attorney.
- 7. Judgment by the court:** The magistrate / judge's decision regarding the guilt or innocence of the accused.
- 8. Sentencing by the court** (if the accused is found guilty): the magistrate/judge decides on the appropriate punishment for the offender.



<sup>19</sup> One in Nine Campaign (2012) 'Rape Survivors' Guide to the Criminal Justice System in South Africa'.



# Steps to follow if you are a victim of a sexual offence



## Step 1: Immediately go to the nearest police station or a Thuthuzela Care Centre (TCC) to report the matter.

Do not take a bath or change your clothes after a sexual crime. Your body and the clothes you wore during the crime may provide critical DNA evidence.

A TCC is a one-stop victim-support service centre located at the hospital/clinic to facilitate the speedy collection of evidence in a victim-friendly environment, particularly DNA evidence. You may ask someone you trust, such as a friend or family member, to go with you as your support person.



## Step 2: You will be required to make a statement.

- At the police station/ TCC, you will be taken to a private victim-friendly room, where the police officer will take down your sworn statement. You need to provide the investigator with the list of people who witnessed the crime or may have any relevant information concerning the case.
- Ensure that you read your statement and make the necessary changes before you sign it.
- The police will issue you with a case number. Please keep this safe.



## Step 3: Immediately obtain a medical examination.

- You will be assisted to get medical assistance from the nearest hospital/clinic. The findings of your medical examination will be included in the police docket as evidence.
- The doctor will collect the necessary evidence from your body and/or clothes.
- If the sex offender did not use a condom or any protection, you are entitled to receive Post-Exposure Prophylaxis (PEP) for HIV infection within 72 hours after the alleged sexual crime. The PEP services are available at the public health centres managed by the Department of Health.
- You may also be referred for counselling or trauma debriefing services to a local social worker for free.



## Step 4: The police will start with the investigation and may arrest the suspect.



## Step 5: Cooperate with the police and prosecutor assigned to your case.

**When the sex offender did not use a condom or protection while committing the sexual offence, you may apply to a magistrate for an order compelling the alleged sex offender to be tested for HIV. This application is free and must be done within 90 days, with assistance of a prosecutor.**



## Step 6: On the date of trial, go to the Sexual Offences Court.

The district court prosecutor may consult with you to determine if there is enough evidence to prosecute the accused. The prosecutor is your lawyer. Ensure that you tell the prosecutor every detail of the alleged sexual crime.

The law allows the accused to apply for bail. You will be informed by the investigator when this application will come to court. It is important that you tell the prosecutor the risk/danger that you will be exposed to should the accused be released on bail. The prosecutor may use this information to oppose the bail application.

### When the police investigation is finalised.

Once the police investigation is finalised, the matter will be handed to the Sexual Offences Court/regional court trial.



## Step 7: Appearing in court.

Arrive on time at the court. It is advisable that you come to court with support persons, who may be your family members or friends.

If the regional court prosecutor is satisfied that there is enough evidence to prosecute the accused, the date of trial will be set for the case. You will be informed of this date by the investigator or prosecutor.



## Step 8: The verdict is given by the magistrate.

Upon conviction, the magistrate will hand down an appropriate sentence, as indicated by the law. In the case where the accused was convicted of a sexual crime involving a child or a mentally disabled person, the court will order that the particulars of the accused be entered in the National Register for Sex Offenders. This register aims to prevent sex offenders from working or doing business in environments accessible to children and mentally disabled persons.



Thuthuzela Care Centres (TCCs) are one-stop facilities that have been introduced as a critical part of South Africa's anti-rape strategy to reduce secondary victimisation, improve conviction rates and reduce the cycle time for finalisation of cases. Currently, there are 51 TCCs providing dedicated services to victims of sexual violence, of which 50 are fully operational.

[www.justice.gov.za](http://www.justice.gov.za) 📞 DOJCD\_ZA 📧 DOJ&CD 📺 DOJCD



**the doj & cd**

Department:  
Justice and Constitutional Development  
REPUBLIC OF SOUTH AFRICA



## South African Police Service

SAPS is authorised by the South African Police Service Act (68 of 1995). In terms of this Act, the SAPS National Instruction 3/2008 on Sexual Offences and National Instruction 7/1999 on Domestic Violence have been established, the purpose of which is to ensure that SAPS members provide a professional and responsible service to victims during the investigation of offences of this type and to help victims when doing so.

Some of the most important responsibilities and duties placed on SAPS in terms of these Instructions include:

- The Station Commander must make sure that **copies of the SOA, DVA** and the relevant Instructions are available.
- The Station Commander must have a **list of local organisations which are willing and able to provide counselling and other support services** (including medical services) to victims. This list must be available at the police station and be updated every six months. Furthermore, station orders must be issued: (a) requiring SAPS members to inform a victim of the services provided by these organisations; (b) setting out the steps that must be taken by such members to assist the victim to access any service provided by these organisations; and (c) instructing members on any other matter relating to the treatment of victims.
- Any person who reports a claimed sexual offence or domestic violence to a member must be **treated in a professional manner** and must be reassured that the report is viewed in a serious light and will be thoroughly looked into.
- SAPS members must assist the complainant to find **somewhere suitable to stay** or make arrangements for the complainant to find somewhere suitable to stay, especially in the case of domestic violence. Similar responsibilities exist in terms of medical assistance.

Annexure B is a tool created by the Shukumisa Campaign, which is used to monitor whether police stations follow their SOA obligations.

A SAPS member will usually be the first person the victim meets in the criminal justice process. Therefore, it is vital for police officials to act in a sensitive manner, with a great degree of knowledge and understanding of the relevant laws and policies. The Investigating Officer later appointed to the case will also be a constant point-person for the victim, which requires **competence, consistency, reliability, sensitivity, and accountability**.

### WHAT TO DO IF A POLICE OFFICER FAILS TO ACT ON THEIR DUTIES:<sup>20</sup>

You can report the matter to the station commissioner at the relevant police station. The complaint will be noted in a complaints register, stating the name of the member concerned, the date on which the complaint is lodged and the details of the complaint. The station commissioner will take disciplinary steps against the member involved. The Police Service will also refer the complaint to the IPID for their recommendations. If you are not satisfied with the way in which a station commissioner is dealing with your complaint, you may personally report the matter to the IPID. SAPS will send monthly reports on your complaint(s) against police members to the SAPS Head Office.



<sup>20</sup> [https://www.saps.gov.za/resource\\_centre/women\\_children/domestic\\_violence.php](https://www.saps.gov.za/resource_centre/women_children/domestic_violence.php)

## Health care providers

Health care providers play an important role in the criminal justice process, especially with sexual offences and assault cases. They must conduct a **medical examination of the victim and provide (or refer the victim to) psycho-social and HIV counselling.**

The health care provider may even be the first point of entry into the criminal justice process for some victims. Many victims of rape and sexual abuse go to a health facility, clinic or hospital immediately after the assault because: (a) they do not wish to lay charges but need medical treatment; (b) they do want to lay charges but need immediate medical or psychological help; or (c) they do not know what processes to follow after being raped/abused.<sup>21</sup>

It is essential that the health care provider treats the victim with respect, dignity and understanding. According to the National Health Guidelines, 'when a person presents at a health care facility alleging that they have been raped or sexually assaulted, the allegation should be assumed to be true and the victim should be allowed to feel confident that they believed and will be treated with dignity.'<sup>22</sup>



## National Prosecuting Authority

The law that guides the prosecuting authority is the National Prosecuting Authority Act (32 of 1998). The Constitution, read with this Act, provides the prosecuting authority with the power to start criminal proceedings on behalf of the State and to carry out any necessary functions related to starting criminal proceedings. In court proceedings, the prosecutor will be a member of the NPA.

In terms of the criminal justice process, the NPA receives the charge file (docket) from the police and **makes the decision whether or not to prosecute**, depending on the strength of the evidence collected. The prosecutor can also instruct the investigating officer to collect specific evidence if he/she believes that something should be added to the charge file (docket). If the decision is taken to prosecute the case, a court date will be set and an NPA prosecutor will lead the court proceedings.

<sup>21</sup> National policy guidelines for victims of sexual offences: uniform national health guidelines for dealing with survivors of rape and other sexual offences. (1998). Department of Health, South Africa. Available at: [http://www.justice.gov.za/policy/guide\\_sexoff/sex-guide02.html](http://www.justice.gov.za/policy/guide_sexoff/sex-guide02.html)

<sup>22</sup> Ibid.

## Court system

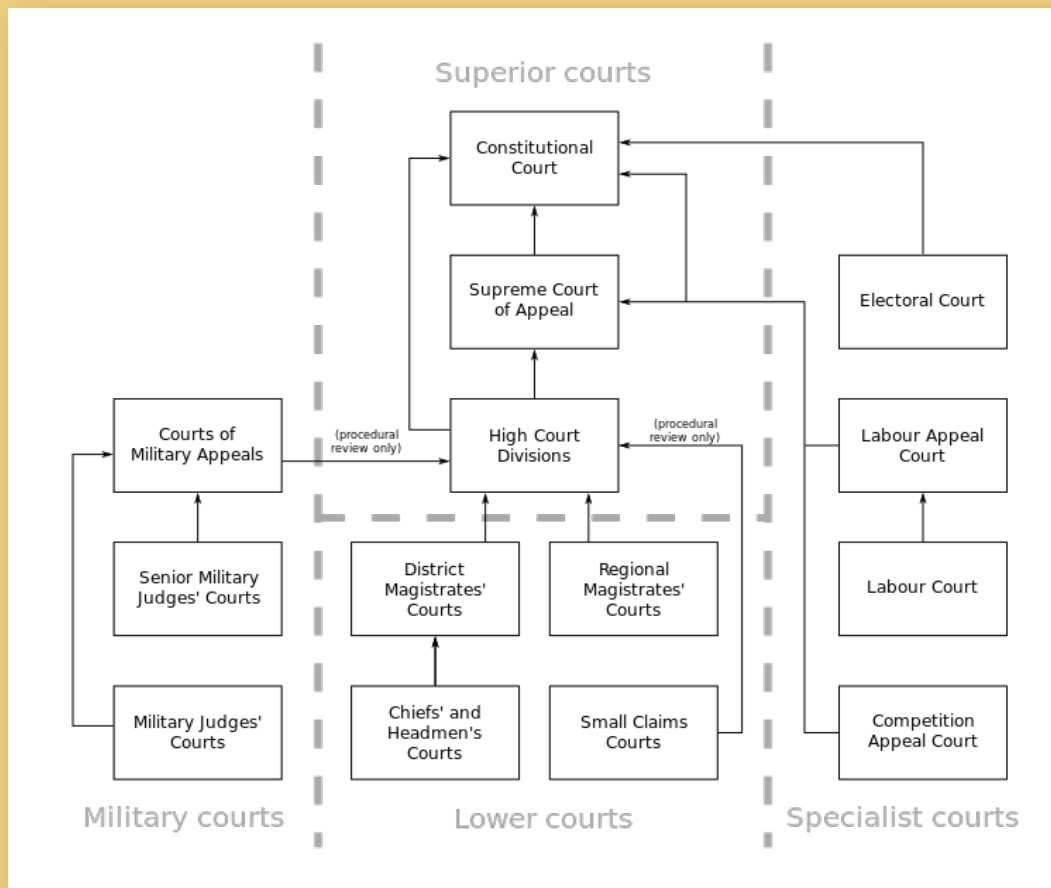
South Africa's judicial system is guided by Chapter 8 of the Constitution. The judiciary is an independent branch of government and judges must act without 'fear, favour or prejudice'.

There are several types of courts in South Africa, each having their own status and jurisdiction (authority):

- **Constitutional Court:** may only decide constitutional cases and may decide appeals in any case. It is the highest court in all cases (i.e. it is the last court a case can go to and its decisions cannot be appealed, i.e. they are final).
- **Supreme Court of Appeal:** may decide appeals in any case (i.e. only deals with cases sent to it from the High Court).
- **High Courts:** may decide any case which is too serious for the Magistrate's Court and any appeals or reviews from lower courts (magistrates' courts) which fall in their geographical jurisdiction. They usually only hear civil matters involving more than R400 000 and serious criminal cases.
- **Magistrates' Courts:** the lower courts which deal with the less serious criminal and civil cases. The Regional Magistrates' Courts only deal with criminal cases, whereas the District Magistrates' Courts deal with criminal and civil cases. Regional Magistrates' Courts deal with more serious criminal cases than the District Magistrates' Courts (e.g. murder, rape, armed robbery and serious assault).
  - **Regional courts** can sentence a person to life imprisonment or order a maximum fine of R400 000.
  - **District courts** can sentence a person to a maximum of three years in prison or demand a maximum fine of R200 000; and can hear civil cases when the claims are for less than R200 000.



## DIAGRAM OF THE SOUTH AFRICAN COURTS SYSTEM



By Htonl - Own work, CC BY-SA 3.0, <https://commons.wikimedia.org/w/index.php?curid=20915251>

There are also specialist Sexual Offence Courts in some areas, which only hear sexual offences cases. These are either magistrate's courts or high courts chosen for such purposes and will follow the same criminal justice process rules as above.

**Court clerks** also play an essential role in access to justice, especially with cases of domestic violence. In order for anyone to apply for a protection order under the DVA, they must go to their closest magistrate's court and speak to the domestic violence clerk. She/he will ask them to fill out a form, providing the following details: full personal details (e.g. name, ID number, address, phone number); details of alleged abuser (including her/his work and home address); a description of the abuse; and the particular kind of protection that you would like the court to order.<sup>23</sup> If the interim protection order is granted, the court clerk will usually explain the terms of the order to them, how to serve the order on to the respondent, and when they must return to court for the final hearing. The South African Police Service should also have application forms available at their police stations, although in reality this is not always the case. Remember, though, that applying for a protection order is a civil procedure and not a criminal procedure.

<sup>23</sup> Fredericks, J. & Sanger, C. (2014). 'A simplified guide to the Domestic Violence Act'. Women's Legal Center.



# LAYING THE CHARGE

Either the victim or a witness to the crime can lay a charge. This means **contacting the police** about an event that has occurred. This can be done either by:

- a going to the police station;
- b calling the police to come to the scene of the crime; or
- c calling the police to come to the hospital.

While a crime can be reported at any police station, it is best to go to the one in the area where the crime was committed, as that station will look into the case. It is important, however, to note that the location of the police station often affects the victim's ability to lay a charge: there is not always transport available to go to the police station and this is made worse by the lack of resources faced by SAPS – often there are no police vans available for the officers to respond to a call, so in reality the police are not always able to arrive quickly at the scene of a crime. It is important to be patient, as the SAPS officer will be the complainant's key entry point into the criminal justice system.

Once the complainant meets the police officer, she/he will report the crime that has been committed. It is crucial for police officials to be, amongst other things, responsive, understanding and sensitive. Victims who have been badly treated by police have reported secondary victimisation, especially when reporting cases of rape or domestic violence.<sup>24</sup>

If the police officer refuses to assist or to open a case, demand to speak to the shift commander, the VISPOL commander (responsible for the charge officers), or the station commander if he/she is on duty, to get immediate assistance. Additionally, you can speak to someone at the Victim Empowerment Station, who can help you get immediate assistance, if the police station has one.

Note that in cases of domestic violence, the police must inform the complainant of the following rights: (a) the right to lay a criminal charge against the alleged abuser; (b) the right to apply for a protection order; or (c) the right to lay a criminal charge, as well as apply for a protection order.



<sup>24</sup> Maier, S. (2008). "Secondary victimization by police and courts" In Renzetti, CM. & Edelson, J. (eds), Encyclopedia of Interpersonal Violence. Thousand Oaks, CA: Sage Publications.



## Possible pitfalls and solutions

PITFALLS	SOLUTIONS
The victim is dead or does not feel comfortable laying the charge themselves.	Another person, usually a witness, can lay a charge on the victim's behalf. Note that this should only be done with the express consent of the victim (if he/she is alive).
SAPS refuse to assist or to open the case.	Demand to speak to a more senior officer until you are properly helped. Also be sure to note the names of officers who refused to help you so that you can file a formal complaint, as discussed above.
In cases of assault, SAPS instructs you to return with a completed J88 form before opening a case.	SAPS must open a criminal assault case. It is not required for a victim to bring in a completed J88 before they do so. In fact, some doctors will refuse to complete a J88 without a CAS number, causing the victim to be sent back and forth.  If this occurs, demand to speak to a more senior officer until you are properly helped.



## Checklist: questions to ask the complainant

	yes / no
<b>MONITORING AND INSPECTION TOOL</b>	<input checked="" type="checkbox"/> <input type="checkbox"/>
• Was the SAPS station easy to locate and deal with?	<input type="checkbox"/> <input type="checkbox"/>
• Did the police arrive quickly at the scene of the crime or hospital?	<input type="checkbox"/> <input type="checkbox"/>
• Were you made to wait a long time to make the charge?	<input type="checkbox"/> <input type="checkbox"/>
• Did the police officer treat you respectfully?	<input type="checkbox"/> <input type="checkbox"/>
• At the station, did you see station orders regarding sexual offence charges and a list of organisations providing support to victims?	<input type="checkbox"/> <input type="checkbox"/>

# STATEMENT TAKING

The first step in opening any case is for a statement to be taken by a police officer. In cases of sexual violence, the complainant should be able to give a brief first statement registering the case (though sometimes, in reality, the first statement taken by the charge officer is quite detailed), after which she/he should be taken to a doctor to receive a full medical examination if necessary (see section below).

Once the victim has seen a doctor, she/he should be taken (back) to the police station to give a proper detailed statement to the **Investigating Officer**. The victim has a right to speak to a female or male Investigating Officer, as is preferred, and has the right to make the statement in a language of her/his choice (an interpreter should be provided where necessary). The statement taking should be done in a private “victim-friendly room”, out of sight and hearing of other persons at the station – although a person of the victim’s choice may be present. However, this person must *not*: (a) comment on the case; (b) prompt the victim; or (c) interfere with the investigating officer in any other manner in the process of obtaining the statement from the victim.

The victim should tell the Investigating Officer what happened in **as much detail as possible**. This should include: the exact nature and detailed description of what happened; the time and place it happened; events leading up to it; whether or not the alleged perpetrator is known to the complainant; and whether there were any witnesses.

When opening an assault case that happened within a relationship (i.e. criminal case of domestic violence), it will be important to note whether there is a protection order currently in place – as the police would then be able to add an additional charge for breaking the protection order.



## INFORMATION TO BE RECORDED IN THE STATEMENT IN THE CASE OF A SEXUAL OFFENCE<sup>25</sup>

- ✓ **Factual information** including: full name; age and date of birth; ID number; occupation and place of employment (if applicable); residential address; telephone number
- ✓ Description of victim's clothing and **victim's description**.
- ✓ Details of **events leading up to the assault** (including how the suspect approached the victim).
- ✓ **Day, date, and time** of the assault.
- ✓ **Description of the assault** in full, including:
  - How the suspect maintained control of the victim (including any weapons used, shown, mentioned)
  - Exact words spoken by the suspect, including any threats made (use direct speech)
  - Sexual act(s): digital penetration (fingers); fellatio (mouth to penis); cunnilingus (mouth to vagina); masturbation; full penetration (penis into vagina or anus)
  - Assault/injuries: beatings, burning, whipping, biting, bondage
  - Use of instruments (i.e. foreign objects used or placed in vagina, anus)
  - Was any lubricant used?
  - Was the suspect circumcised?
  - Did suspect ejaculate? Did the suspect use anything to wipe his penis after the offence? Was anything done by the suspect to remove or stop semen being left behind (e.g. forcing the victim to wash, combing victim's pubic hairs, using a condom)?
  - How did suspect leave the scene? (e.g. by foot, by car, or bicycle)
  - Details of anything left at the scene by the suspect (e.g. blood, clothing)
- ✓ A full **description of the suspect(s)** from head to toe (if there is more than one suspect, briefly identify each by some distinguishing feature such as a moustache, facial mark, colour of shirt, etc.)
  - Description of clothing
  - Did the suspect speak in a language known to the victim?
  - Did the suspect have an accent?
  - Did the victim know the suspect? Would the victim be able to recognise the suspect again?
- ✓ Description of any known or recognisable **witnesses**.

<sup>25</sup> SAPS National Instruction 3/2008, Annexure E. Available at: [https://www.saps.gov.za/resource\\_centre/acts/downloads/sexual\\_offences/ni/ni0308\\_annexure\\_e.pdf](https://www.saps.gov.za/resource_centre/acts/downloads/sexual_offences/ni/ni0308_annexure_e.pdf)



Note that 'as a direct result of the trauma, a victim may be incoherent and unable to remember specifics relating to the offence. The police have a critical role to play in keeping the victim contained, which impacts on the ability to put together a good statement.'<sup>26</sup> According to the SAPS National Instructions, 'If the victim is unable to make a coherent statement, a skeleton docket (charge file) must be opened, a statement must be obtained from any person that may be accompanying the victim and the victim must be allowed time before a statement is obtained from him or her.'<sup>27</sup>

Once a completed statement has been taken, the Investigating Officer must confirm that the truth has been told and accurately recorded. It is important for the complainant to **read the statement carefully** (or have it read aloud or translated, if necessary) so that they fully understand and accept what has been written down before signing the document. They will be asked to sign the statement; if something is not correct, it should be revised before signing. The complainant always has the right to ask that she/he read and amend the statement.



#### RECORD-KEEPING ALERT

- ✓ Name and rank of the police officer who takes the first statement
- ✓ Name of the Investigating Officer, plus contactable phone number
- ✓ Copy of the statement

Counselling is often a crucial step in helping the victim to process and manage the experience of violence, so the police must inform the complainant of local organisations that are able to provide counselling and other support services.<sup>28</sup> Some police stations will have a Victim Empowerment Centre at the police station with social workers or auxiliary social workers who are able to provide immediate support and also assist the police in referring the victim to NGOs for additional support services. In the case of a complaint of domestic violence, the police official has a particular duty to assist the complainant in finding suitable shelter.

<sup>26</sup> Watson, J. (2015). 'The role of the state in addressing sexual violence: Assessing policing service delivery challenges faced by victims of sexual offences'. APCOF Policy Paper.

<sup>27</sup> SAPS National Instruction 3/2008 on Sexual Offences.

<sup>28</sup> Watson (2015) supra note 26.



## Possible pitfalls and solutions

PITFALLS	SOLUTIONS
A random police officer offers to take the complainant's statement about a sexual assault and does not do it in a victim-friendly room.	The complainant has the right to give their statement <i>only</i> to the IO and only in a private setting.
The statement is not read aloud or the complainant is not given an opportunity to read the statement in full before signing.	The complainant must not sign anything unless they are satisfied with it; they have a right to refuse.
The complainant does not understand the statement or the statement contains incorrect information.	The complainant must not sign the statement. The complainant has a right to ask the IO to rewrite it if the information is not fully correct.
The victim is too traumatised to give a detailed and clear statement to the IO.	The person accompanying the victim (i.e. family or friend) should give a brief first statement to the IO and the victim must be given an opportunity to give an in-depth statement later when she/he is able to do so.
The IO doesn't give the complainant a copy of the statement upon request.	Write down the name and rank of the police officer. The complainant (or yourself, on the complainant's behalf) must call or visit the police station every day until they get a copy of their statement.
The statement gets "lost" or goes missing.	The complainant will have their own copy of the statement to rely on. In some police stations, the statements are saved on the computer.
The police officer acts insensitively while taking the victim's statement (e.g. makes rude or disbelieving comments).	Such misconduct must be reported to the station commander, who must take steps to look at and resolve the situation.
The police officer or IO refuses to take the complainant's statement because the offence took place a long time ago.	The law says that the offences of rape and sexual assault do not prescribe (i.e. no matter how long ago it happened, a victim can still lay a charge).



## Checklist: questions to ask the complainant

### MONITORING TOOL

yes / no

- Were you able to give your statement openly and honestly?
- Did the Investigating Officer ask any leading questions?
- Was the Investigating Officer caring and non-judgmental?
- Did the police official take you to a private 'victim-friendly room' to give your statement (in the case of reporting a sexual offence)?
- Were you allowed to read over the statement before signing it?
- Were you told of the implications of the statement (i.e. that it may be used as evidence)?
- Did you swear on the Bible/take an oath to confirm the truth and accuracy of the statement?
- Did the police officer offer guidance for next steps (e.g. obtaining counselling, shelter services, medical services, etc.)?

# MEDICAL CARE

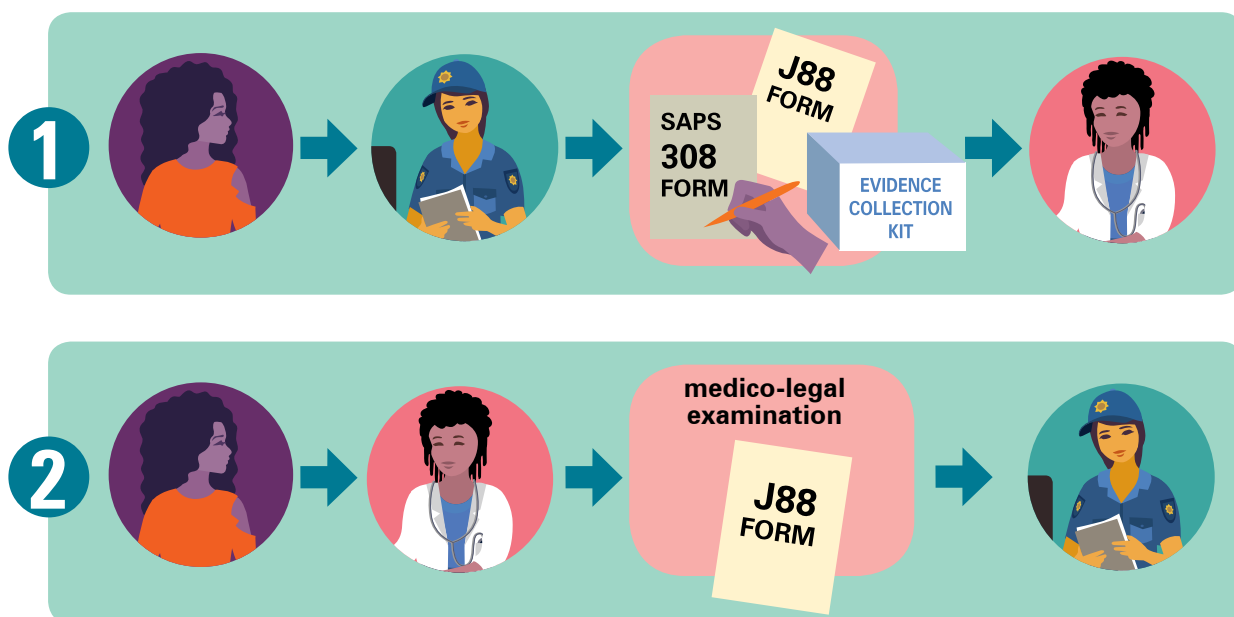
There are two main reasons for seeking medical care after an assault. Firstly, the victim is likely to be suffering from emotional trauma and physical injury, and the victim may have been given a sexually transmitted infection (STI), including HIV, or have become pregnant – all of which requires urgent medical attention. Secondly, a medical examination of the victim is necessary to gather additional evidence. In cases of sexual violence, there may be DNA on or in the victim’s body. This can be linked to the attacker. In cases of sexual assault, the doctor or nurse will complete the J88 form, which documents any injuries caused by the assault.

A victim of sexual violence can get medical attention in two ways:

- She/he lays a charge at the police station, and after giving a brief first statement, a SAPS officer takes him/her to the hospital for a medical examination. In this case, the IO will complete a SAPS 308 form (i.e. a consent form signed by the victim granting permission for medical examination) and stating all the relevant details of the sexual offence. The IO will also supply a J88 form, as well as the relevant evidence collection kit (also referred to as a “rape kit”) to the doctor.<sup>29</sup>
- The victim goes to the hospital before going to the police station to lay a charge. In this case, she/he can still get treatment from the hospital and can ask for a “medico-legal examination”. The evidence gathered during the medico-legal examination will be recorded on a J88 form.

**Note:** The police officer, doctor or nurse to whom the victim reports the sexual offence must inform the victim of:

- a The importance of obtaining Post-Exposure Prophylaxis (PEP: medical treatment to minimise the risk of HIV infection) within 72 hours of having been exposed to HIV;
- b The fact that she/he can obtain PEP free of charge from an appointed public health clinic or hospital; and
- c She/he needs to obtain medical advice and help about possibly having been given an STI.



<sup>29</sup> SAPS National Instruction 3/2008, section 10(6).





## RECORD-KEEPING ALERT

- ✓ Name and place of hospital
- ✓ Name, address and telephone number of doctor or nurse
- ✓ Date and time of treatment

The medical attention given to a sexual offence victim will include: (a) a full medical check of the body; (b) the collection of samples; (c) a detailed recording of all findings from the examination (written on the J88 form); and (d) HIV testing. Following this, the doctor may decide if any of the following is required: emergency medical treatment; provision of PEP; STI management advice and medication; provision of the morning-after pill; and referral to an appropriate counselling service.<sup>30</sup>

## UNDERSTANDING THE ALL-IMPORTANT J88 FORM

The J88 form is a legal document, which is almost always presented as evidence during sexual offence and assault cases. The medical doctor or registered nurse who does a full examination of the victim is required to fill out a J88 form. The J88 lists in detail all the victim's injuries, as well as the samples that needed to be taken during the medical examination.

Due to the central role played by a J88 form, it is crucial that it is filled out correctly and in full.

Checklist:<sup>31</sup>

- ✓ Doctor must sign every page of the form
- ✓ Doctor must write clearly
- ✓ Use of abbreviations and medico-legal terms should be avoided
- ✓ All (major and minor) injuries must be described in full detail
- ✓ Sketches of injuries should be drawn on the form
- ✓ No areas/sections of the form can be left blank
- ✓ The completed form must be given *only* to the SAPS official (the official will receive the original and the doctor must ensure that she/he has a copy which must be kept in the patient file), in order to preserve the chain of custody. In reality, J88 forms are often returned to the victim to give to the IO to be included in the docket.

<sup>30</sup> Uniform National Health guidelines for dealing with survivors of rape and other sexual offences, *supra* note 21. Available at: [http://www.justice.gov.za/policy/guide\\_sexoff/sex-guide02.html](http://www.justice.gov.za/policy/guide_sexoff/sex-guide02.html) [accessed 21 June 2017].

<sup>31</sup> Kotze, JM., Brits, H., and Botes, BA. (2014). Part 1: Medico-legal documentation South African Police Services forms, Department of Justice forms and patient information. *South African Family Practice*, 56(5), pp. 16-22.



## Possible pitfalls and solutions

PITFALLS	SOLUTIONS
The IO refuses to take the victim to the hospital, because the sexual offence was reported more than 72 hours after it was committed and/or the victim had already washed.	The IO is nevertheless required to take the victim to the hospital for a medical examination (as some evidence may still exist). Demand that the victim be taken to the hospital. Alternatively, go to the hospital without the assistance of the IO, and get a nurse or doctor to call him/her.
J88 form was not completed.	Other medical forms and records listing the injuries or supporting the victim's account could be submitted as evidence.
J88 form was not filled out by the doctor who did the examination.	This should never be done, as the form will not hold as much weight as evidence. However, if it happens, the doctor completing the form must write clearly on the form that she/he was not the examining doctor and then write exactly what is already in the notes.  If the report is requested at a later date, a photocopy of the relevant clinical notes in the patient file should be provided instead of the J88.  Note: keep a record of both the examining doctor and form-filling doctor's names and details.
IO has "lost" the J88 form.	Speak to the doctor who completed the J88 form, as s/he should have a copy in the patient record.

*The IO is nevertheless required to take the victim to the hospital for a medical examination as some evidence may still exist.*





## Checklist: questions to ask the victim

### CHECKLIST

yes / no



- Did the police bring you to the hospital after taking your first statement, and explain the reasons for doing so?
- Did the officer fill out a SAPS 308 form?
- Did the police officer, doctor or nurse inform you of your right to Post-Exposure Prophylaxis (PEP) free of charge?
- Were the doctors and nurses caring?
- Were you given medical attention immediately upon arrival at the hospital/clinic?
- Were you taken to a private room for the medical examination?
- Were you given PEP?
- Did the doctor fill out a J88 form?
- Was the J88 form filled out properly?
- Did the doctor sign every page of the J88 form?
- Were you allowed to read over and sign the J88 form?
- Was the Investigating Officer given the original J88 form?

## Thuthuzela Care Centres<sup>32</sup>

Thuthuzela Care Centres (TCCs) are one-stop facilities that have been introduced in an effort to build a rapid and complete care system for victims of GBV. Victims of GBV can receive attention and care from all the relevant service providers involved in the criminal justice process (i.e. police, medical and judicial) in a single place. The aims of TCCs are thus victim-centric, including: reducing secondary victimisation, improving conviction rates and reducing the time it takes to finalise cases.

TCCs usually operate in public hospitals close to communities where the incidence of GBV is particularly high and they can also be linked to sexual offences courts. This means that a can simply approach a TCC instead of first going to the police or clinic.

Services offered at TCCs include:

- Welcome and comfort from a site co-ordinator or nurse
- An explanation of how the medical examination will be conducted and what clothing might be taken for evidence
- A consent form to sign that allows the doctor to do the medical examination
- A nurse in the examination room
- After the medical examination, there are bath or shower facilities available for the victim to use at the centre
- An investigation officer, who will interview the survivor and take her/his statement
- A social worker or nurse, who will offer counselling
- A nurse, who will arrange for follow-up visits, treatment and medication for Sexually Transmitted Infections (STIs), HIV and AIDS
- A referral letter or appointment for long-term counselling
- Transport home for the victim by an ambulance or with the investigating officer
- Arrangements for the survivor to go to a place of safety, if necessary
- Consultations with a specialist prosecutor before the case goes to court
- Court preparation by a victim assistant officer
- An explanation of the outcome of the trial process by a case manager

At the time of writing, 54 TCCs have been established in South Africa. See Annexure 7 for the list of these TCCs.



<sup>32</sup> National Prosecuting Authority. (2009). 'Thuthuzela care centre: turning victims into survivors'. Available at: [https://www.npa.gov.za/sites/default/files/resources/public\\_awareness/TCC\\_brochure\\_august\\_2009.pdf](https://www.npa.gov.za/sites/default/files/resources/public_awareness/TCC_brochure_august_2009.pdf)



# THE INVESTIGATION

Once the complainant's full statement has been taken and recorded, it is the job of the police to look at the charges she/he has laid. During the investigation process, the Investigating Officer will keep all important documents and information relating to the case in a file called a **docket**.

The docket will be given a specific reference number called a '**CAS number**' (note that this is not to be confused with a 'case number', which is given to the case by the court when it starts in court). The complainant must record and keep their CAS number (which is usually sent to the complainant's cellphone by SMS shortly after opening the case), as it will be used by the police to keep track of the docket during the criminal justice process. It is also important for the complainant to keep the Investigating Officer's name and contact number, as this will be the complainant's contact person throughout the criminal justice process.



## RECORD-KEEPING ALERT

- ✓ CAS number
- ✓ Name of the Investigating Officer, plus contactable phone number
- ✓ Any relevant documents or information shared during the investigation process
- ✓ Any relevant court dates



## Duties of the Investigating Officer include:<sup>33</sup>

- ✓ Concluding the full investigation of a case as soon as possible.
- ✓ Explaining police investigation procedures that involve the victim.
- ✓ Providing their contact details to the victim, in case she/he wants to ask anything about the case.
- ✓ Considering the safety of victims and other witnesses a priority during the investigation.
- ✓ Keeping the victim informed of progress made with the investigation (medical examinations, identification parades, identification and arrest of the alleged suspect) and court procedures (decision of the prosecutor to prosecute/not prosecute, first appearance of the accused, bail hearing, bail conditions, trial dates, postponements (when a case is put off to a later date), date required to appear in court, pre-trial meeting with the prosecutor, outcome of the trial).
- ✓ Preparing the victim for the court process.
- ✓ Informing the victim that the accused will have access to the docket (charge file) and if the victim has any specific reason for not wanting the accused to have this information, submitting the request to the prosecutor to withhold the name and address of the victim.
- ✓ Informing the victim of available support/counselling services.
- ✓ Informing the prosecutor if there is reason to believe that a victim or other witness may be subjected to further threats, violence or bullying, as this will be a consideration in the bail hearing.
- ✓ Advising the victim on steps to be taken if the suspect/accused threatens or interferes with him/her. Inform the victim of the witness protection programme, and if necessary, accommodate the victim.
- ✓ Protecting the names and addresses of victims from the media and ensuring this information is not read aloud in open courts: details which would identify them, should be withheld if possible.
- ✓ Ensuring that all property held for evidence purposes are returned as soon as possible, if the victim may possess it legally.
- ✓ Informing the next of kin (close family) personally of the death of a victim and providing the necessary assistance during the identification procedures: this should be done in a caring and sensitive manner.

The NPA takes on a case when they receive a completed crime docket from SAPS (note that cases may be closed by the police before going to a prosecutor, when not enough evidence has been found – most often if there is no suspect). If the prosecutor is satisfied that there is enough evidence to prosecute, then the case is put down for trial and a **court date** is put on the court roll.

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<sup>33</sup> 'Victim empowerment in the South African Police Service' SAPS. Available at: [https://www.saps.gov.za/resource\\_centre/women\\_children/amended\\_victim\\_empo\\_service.pdf](https://www.saps.gov.za/resource_centre/women_children/amended_victim_empo_service.pdf)



## Possible pitfalls and solutions

PITFALLS	SOLUTIONS
<p>The IO does not keep the complainant updated on the investigation process.</p>	<p>The complainant (or yourself, on the complainant's behalf) has the right to contact the IO and demand information. Give the CAS number and ask for all relevant information and copies of documents.</p> <p>Mobilisers can also reach out to the prosecutor in the case for an update if it has gone to court.</p>
<p>The IO doesn't give the CAS number.</p>	<p>The complainant (or yourself, on the complainant's behalf) must call or visit the police station every day until you receive the CAS number.</p>
<p>The IO or other SAPS members fail to investigate, fail to assist, fail to give feedback, are rude, or display any other police misconduct.</p>	<p>These matters are dealt with by the police inspectorate in the offices of the relevant SAPS Provincial Commissioners. You can call the inspectorate and submit an official complaint.</p> <p>To get more immediate assistance, speak to the relevant senior officer for the SAPS member guilty of misconduct (i.e. the VISPOL Commander, the Detective Branch Commander or the Station Commander).</p>
<p>A SAPS member does something that would count as 'serious misconduct' or even criminality.</p>	<p>Submit a complaints form to the Independent Police Investigative Directorate (IPID).<sup>34</sup></p>
<p>The NPA decides not to prosecute the accused.</p>	<p>If the survivor is unhappy with this decision, she/he can approach the relevant prosecutor to discuss the matter. If the prosecutor does not assist, then he/she can approach one of the senior public prosecutors at the court.</p> <p>It is recommended that the survivor obtain legal advice on how to deal with the case or somebody to deal with the case on her/his behalf. Refer survivors to CSOs providing these services (e.g. Legal Resources Centre, Women's Legal Centre) and <i>pro bono</i> departments of private sector law firms.</p>

<sup>34</sup> Complaint form available at: <http://www.icd.gov.za/sites/default/files/documents/IPID%20form%202.pdf>



## Checklist: questions to ask the complainant

### CHECKLIST

yes / no

- Were you given/SMSed a CAS number?

- Did the Investigating Officer keep you updated throughout the investigation process?

- Were you told about any suspect(s) that been arrested?

- Were you told whether the NPA had decided to prosecute the case?

- Were you informed of all relevant court dates?

*SAPS will arrest the person(s) they believe, on the basis of their investigation and collected evidence, committed the crime in question.*





# ARREST AND BAIL HEARING

SAPS will arrest the person(s) they believe, on the basis of their investigation and collected evidence, committed the crime in question. Note that if an accused person has been arrested, he/she may only be imprisoned for a maximum of 48 hours before being brought before a court (either for trial or a bail hearing).

An accused person can apply for bail at any stage of the court proceedings – from the time they are arrested and held by the police, up until they are sentenced. In effect, if the court refuses bail, the accused will remain in prison until the case is completed. If bail is given, the accused will be released, upon the payment of the required amount of money or on warning. Bail can be granted with or without conditions, including: supervision meetings; control over communication by the accused with witnesses; and restrictions on places that the accused is allowed to go. Note that it is usually a bail condition that the accused must not engage with the complainant regarding the case. If this does occur (i.e. if the accused is threatening the complainant or bribing the complainant to drop the charges), be sure to inform the IO and/or the prosecutor so that the prosecutor may argue that bail be withdrawn.

## A NOTE ON “BAIL”

A person who is given bail is not ‘let off’, as they will still be expected to appear before the court on the date set for trial. Bail is simply a method of making sure an accused/person charged with a crime comes to court, while at the same time ensuring their right to freedom and the right to innocence (i.e. everyone has the right to be seen as innocent until proven guilty).

The accused’s guilt or innocence is not relevant to bail decisions (that is, if a person is released on bail, it does not mean that the judge thinks that she/he did not commit the crime or that the court is not taking the crime seriously). It is generally believed to be fair to give bail *unless* certain things (such as witness safety) make a prosecutor believe s/he will be able to persuade the judge that it would be fairer or safer *not* to grant bail.

Whether or not someone should be given bail is decided on a case-by-case basis, and while the crime of which they are accused is relevant, it is not the only thing considered. For example, the judge will think about: the accused’s character and likelihood to be violent; whether the accused has a passport which would allow him/her to leave the country; the relationship of the accused to the witnesses; any previous failure of the accused to follow bail conditions; whether the crime caused a sense of shock and outrage in the community; and whether the safety of the accused might be threatened by her/his release.

During the bail process, the court will hear reasons (including the presentation and challenging of evidence) for and against bail and decide whether it would be fair and safe to release the accused on bail. According to the Criminal Procedure Act<sup>35</sup> (CPA), the 'interests of justice' (fairness) do *not* allow the release of an accused if one (or more) of the following situations applies:

- Where there is the likelihood that the accused, if he or she were released on bail, will endanger the safety of the public or any particular person or will commit a Schedule 1 offence (e.g. murder, rape, sexual assault);
- Where there is the likelihood that the accused, if he or she were released on bail, will attempt to avoid his or her trial;
- Where there is the likelihood that the accused, if he or she were released on bail, will try to influence or bully witnesses or to hide or destroy evidence;
- Where there is the likelihood that the accused, if he or she were released on bail, will threaten or damage the objectives or the proper process of the criminal justice system, including the bail system; or
- Where there is the likelihood that the release of the accused will disturb the public order or threaten the public peace.

An accused who considers himself wronged by the refusal by a lower court to give bail or by a condition of bail (including the amount of bail money), may appeal to a superior court.<sup>36</sup> Similarly, the State may appeal the decision of a lower court to release an accused on bail or appeal against a condition of bail by that court.



<sup>35</sup> CPA, section 60(4).

<sup>36</sup> CPA, section 65.

# Court monitoring tool

COURT MONITORING TOOL: BAIL HEARING	
<b>Personal information</b>	
<b>Name and surname:</b>	
<b>Position:</b>	
<b>Date(s) of court attendance:</b>	
<b>General Case Information</b>	
<b>Court name:</b>	
<b>Case name:</b> (e.g. S v Ndlovu)	
<b>Case number:</b> (i.e. the case number allocated by the Court; e.g. 456/11)	
<b>Accused's name, age, sex, and gender</b>	
<b>Complainant's name, age, sex, and gender</b>	
<b>Magistrate/judge's name:</b>	
<b>Prosecutor's name and contact number:</b> (i.e. details of the lawyer working for the State in favour of the complainant)	
<b>Defence attorney's name and contact number:</b> (i.e. details of the lawyer defending the accused)	
<b>Investigating officer's name:</b>	
<b>Investigating officer's contact number:</b>	
<b>Date(s) of hearing:</b>	
<b>Important information</b>	
<b>What crime is the accused charged of committing?</b>	
<b>Were any of these factors mentioned when considering bail? (tick all that apply)</b>	
<input type="checkbox"/> Accused may not come to her/his trial <input type="checkbox"/> Accused may try to bully witnesses or hide or destroy evidence <input type="checkbox"/> Accused may stop the criminal justice system working properly <input type="checkbox"/> Releasing the accused may upset public peace and order <input type="checkbox"/> Accused may put the public or any particular person in danger	
<b>Did the prosecutor, magistrate or defence attorney say anything that was sexist, racist or anything that you felt was not right? Give as much detail as you can on this assault ie. What did they say exactly?</b>	

**Outcome**

**What was the outcome of the day at court:** (E.g. bail given/not given; postponed, hearing to carry on tomorrow, etc.)


**If the case was postponed:**

<b>Why was it postponed?</b>	<b>What date and time has the next court date been set down for?</b>

**If bail was given:**

<b>What were the reasons for giving bail?</b>	<b>What, if any, are the conditions of bail?</b>

**If bail was not given:**

<b>What were the reasons for not giving bail?</b>	<b>Where will the accused be held?</b>

**Other**

<b>Is the complainant supported by a civil society organisation(s)? If so, which one(s):</b>	<b>What kind of support is being offered?</b>

**Record any other important information here:**

(E.g. This is the 10<sup>th</sup> time that the case is being postponed, CSOs were protesting outside of the court, etc.)




# THE TRIAL

Once a court date has been set, the accused is required to appear in court at the required time on that day. Criminal cases must take place in open court,<sup>37</sup> which means that observers must be allowed entry to the court room and the freedom to watch the case being heard silently from the gallery.

Note that there are, however, certain circumstances under which criminal cases are heard in closed court, namely:<sup>38</sup>

- If it will affect State security or the administration of justice if a case is held in open court, the court may direct that the public should not be present.
- If there is a likelihood that harm might result to any person, other than an accused, if s/he appears in court, the court may direct: (i) that the person will only appear before the court behind closed doors and that no person shall be present when such evidence is given; or (ii) that the identity of the person will not be made public.
- If the criminal proceedings relate to a charge of any sexual offence, the prosecutor may request the hearing to be closed to all persons whose presence is not necessary (i.e. the prosecutor may ask for an exception to be made for someone who is providing emotional support to the victim or who is monitoring the case to remain in the court room). It is the judge's decision to grant such a request or not.

## Stages of criminal case proceedings

- 1 Opening the case:** the trial will begin by the prosecutor reading out the charges to the accused, who will be asked to plead to them (i.e. say whether s/he is guilty or not guilty of the charges presented).
- 2 Presenting evidence (the prosecution):** the prosecutor will argue their case by presenting evidence, by calling witnesses to give evidence (and sometimes by presenting real evidence). This involves:
  - a Examination in chief:** the prosecutor will question the witness called by himself/herself. The purpose is to get the witness to give evidence about facts that support the State's case.
  - b Cross-examination:** Every witness called by the prosecution is entitled to be questioned by the defence, in order to test the truth of that person's evidence to develop the evidence further, or to accomplish any other objective.
  - c Re-examination:** the prosecution, who offered the witness, has a chance to explain any damaging evidence brought out by the defence during cross-examination.

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<sup>37</sup> CPA, section 152.

<sup>38</sup> CPA, section 153.

## USEFULNESS AND RISKS OF CROSS-EXAMINATION

Cross-examination is an essential part of any criminal trial. The purpose of cross-examination is to: (a) confirm the truth of the evidence provided by the witness before the court; (b) measure how believable and reliable the witness is; and (c) measure how important the spoken evidence is. However, cross-examination is often aggressive and can cause secondary victimisation for witnesses.

Secondary victimisation consists of planned or unplanned thoughts, feelings and actions (or lack of action) that may add to the suffering of a traumatic crime survivor by (a) failure to treat the victim with respect and dignity; (b) disbelief of the victim's account; (c) uncaring treatment; (d) blaming the victim; and (e) lack of (or not enough) support services to assist the victim at a personal, organisational or community level.<sup>39</sup>

It is important to pay attention during the process of cross-examination, particularly in cases of sexual offences, and especially when the victim is being questioned. It is likely to be very painful for the victim to have to go through her/his experience in detail, in public. The defence may also go too far, by asking unrelated and unnecessary questions that may cause secondary victimisation. When this happens, the prosecutor should object to such questions being asked.

- 3 Presenting evidence (the defence):** once the prosecutor has closed their case, it will be the defence's turn to argue their case. This too involves the presenting of evidence, by calling other witnesses to speak (and similarly, any witness called by the defence is also open to be cross-examined by the prosecution and re-examined by the defence). The accused can decide to give evidence him/herself or remain silent – a fact that must be explained to the accused by the judge before the defence presents its case. The accused can also represent him/herself, in which case they will present evidence and examine witnesses instead of a legal representative.
- 4 Closing arguments:** once the defence has closed its case, both the prosecutor and defence are entitled to present arguments as to why the accused should, or should not, be convicted.
- 5 Judgment date:** at the end of the trial, once all the evidence has been presented before the court and both parties finish their cases, the judge/magistrate will decide on a date on which he/she will deliver judgment.



### RECORD-KEEPING ALERT



**The IO must inform the complainant/victim of any relevant court dates, and any changes to them**

- 6 Judgment:** once all the facts, evidence and supporting evidence have been placed before the court, it is the judge/magistrate's job to come to a decision, called a "ruling" or "judgment". Ultimately, the magistrate/judge will announce that the accused has been found either guilty or not guilty. If found guilty, the accused is said to be 'convicted'; if found not guilty, the accused is said to be 'acquitted'. Even if the accused is found 'not guilty', this may not mean that they did not, in fact, commit the crime they are accused of. It simply means that the evidence presented was not enough to convict in a criminal case, which requires proof 'beyond a reasonable doubt.' It is important that this be explained to the victim in the case.
- 7 Sentencing date:** if the accused is convicted, the judge/magistrate will set down a date for the sentencing proceedings to take place.

<sup>39</sup> South African service charter for victims of crime: conceptual framework. (2006). Department of Justice and Constitutional Development, South Africa.



## RECORD-KEEPING ALERT



The IO must inform the complainant of any relevant court dates, and any changes to them

- 8 **Sentencing:** again both parties are allowed to present their case or give evidence to increase or decrease the sentence. Although there are certain crimes that have a fixed minimum sentence (see Annexure 8), the court can generally decide on the type and seriousness of a sentence on a case-by-case basis. There are three key things that judges will consider: *the seriousness of the offence, the background of the offender, and public interest*. Types of sentences include: imprisonment, a fine, a suspended sentence, correctional supervision, community service or a combination of sentences.

## VICTIM IMPACT STATEMENT

During the sentencing part of the trial, persons (i.e. the victim, their family or friends) may make a **Victim Impact Statement** (VIS). This is a written or spoken statement given to the court, which allows the judge to hear the personal impact of the crime that forms the basis of the case. No one has to give a VIS, and if there is no victim impact statement in a case, this should not impact negatively (i.e. show that the crime did not cause any harm, loss, emotional suffering, etc., to the victim).

Here are guiding questions to help write a VIS:

- ✓ How did the crime affect you and your family?
- ✓ What was the emotional impact of the crime on you and your family?
- ✓ What was the financial impact on you and your family?
- ✓ Do you have any recommendations to the court about sentencing in this case?
- ✓ Is there anything else you would like to tell the court?

A VIS can affect the accused's sentence, as the information provided may serve as a positive or negative influence, otherwise known as mitigating or aggravating factors.

## 'MITIGATION' AND 'AGGRAVATION' EXPLAINED

**Aggravating factors:** factors linked to the offence, victim or defendant, which may call for a more severe punishment, such as:

- Age/youthfulness of victim
- Previous convictions
- Nature of offence: serious crime; violent; planned; repeat offence; use of a weapon; cruelty
- Offender's attitude: not remorseful
- Serious negative impact on victim.

**Mitigating factors:** factors connected to the offence, victim, or defendant which may call for a lesser penalty, such as:

- Age/youthfulness of offender
- First-time offender
- Nature of offence: little to no violence used by offender
- Offender's attitude: remorseful, apologetic, sorry
- Victim sustained no injuries
- Offender's personal circumstances: married; employed; sole breadwinner .

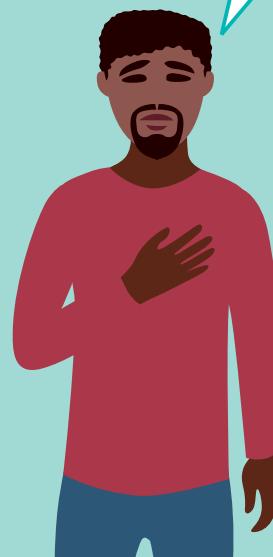
### AGGRAVATING FACTOR

*Using a weapon may call for a more severe punishment*



### MITIGATING FACTOR

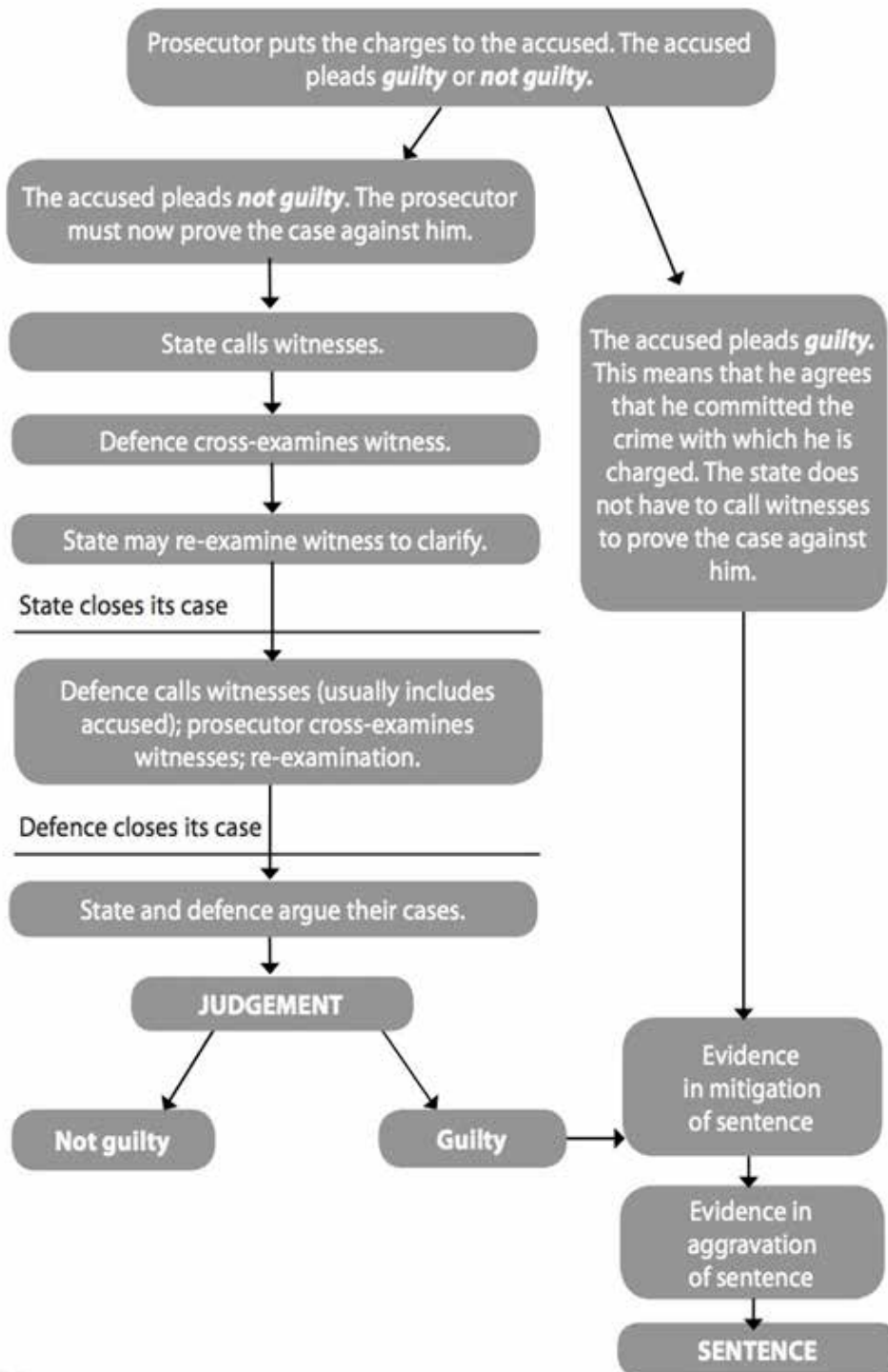
*Being remorseful and sorry may call for a lesser sentence*



- 9 Appeal:** decisions in lower courts are not final and both the accused and the State prosecutor may appeal the judgment. This means that a higher court is asked to check the correctness of the lower court's decision. This is available to all accused persons who may be dissatisfied with either their verdict, or their sentence, or both. As the appeal hearing may only be heard some time in the future, the accused is entitled to re-apply for bail, pending her/his appeal hearing. The complainant does not have any direct right to appeal. However, she/he may discuss her/his concerns with the prosecutor so that the prosecutor can explain what grounds may or may not exist for an appeal and the likelihood of success. The guidelines allowing the State to appeal are much stricter than those for accused persons and State appeals are not as common.



## Criminal Trial Process



36

Source: 'The Road to Justice: the rape trial' Rape Crisis Cape Town Trust.

## A NOTE ON DELAYS AND COURT POSTPONEMENTS

Court dates and trial dates are often delayed and put off to a later date. This happens for several reasons, including: too many cases on the court roll; absence of the accused in court; absence of a legal representative in court; absence of a translator for the accused and/or the witness; the need for more time to think about the evidence; and the need for more time to find witnesses.

Delays in completing the case cannot be *unreasonable*. When deciding if a delay is unreasonable, the court will think about the following factors:<sup>40</sup>

- The length of the delay;
- The reasons given for the delay;
- If any person can be blamed for the delay;
- The effect of the delay on the personal situation of the accused and witnesses;
- The seriousness or complexity of the charge or charges;
- Actual or potential damage done to the State or the defence's case by the delay, including a weakening of the quality of evidence, the possible death or disappearance or non-availability of witnesses, the loss of evidence, problems regarding the gathering of evidence and the effect on costs;
- The effect of the delay justice being done;
- The negative effect on the public or the victims if the prosecution is stopped or delayed;
- Any other factor which in the opinion of the court ought to be taken into account.

Essentially, when a case is postponed/adjourned, the delay should be kept to a minimum and the period should relate to the reason for the postponement.

### **Strategies to ensure court delays and postponements are kept to a minimum:**

- Engage local, regional and national media, to ensure that the case will be dealt with quickly and to keep GBV in the news;
- Meet with the Investigating Officer, to make sure they are investigating actively and know that we are monitoring them;
- Contact the prosecutor ahead of each hearing;
- Meet with legal aid defence attorneys; you can even lay a formal complaint with the Legal Aid Board if there is evidence of failure to carry out their responsibilities and unnecessary postponement caused to the case;
- According to section 342A of the CPA, "a court before which criminal proceedings are pending shall investigate any delay in the completion of proceedings which appears to the court to be unreasonable and which could cause substantial prejudice to the prosecution, the accused or his or her legal adviser, the State or a witness." If the court finds the delay to be unreasonable, it may issue an order to stop the delay and any effect it may have.

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<sup>40</sup> CPA, section 342A.

## Key persons in the court process

### ● Accused person

#### RIGHTS OF THE ACCUSED/PERSON CHARGED WITH A CRIME

The accused has several rights, as enshrined in section 35 of the Constitution. In particular, an accused has the right to a fair trial, which includes the following rights:

- ✓ To be informed of the charge with enough detail to answer it;
- ✓ To have enough time and access to a lawyer to prepare a defence;
- ✓ To have a public trial before an ordinary court;
- ✓ To have their trial begin and finish without unreasonable delay;
- ✓ To be present when being tried;
- ✓ To choose, and be represented by, a lawyer, and to be informed of this right as soon as possible in the process;
- ✓ To have a lawyer appointed to help the accused person by the state and at state expense, if serious injustice would otherwise result, and to be informed of this right promptly;
- ✓ To be presumed innocent until proven guilty;
- ✓ To remain silent and to choose not to give evidence during the case;
- ✓ To give and challenge evidence;
- ✓ Not to be forced to give evidence that will make him/her appear guilty;
- ✓ To be tried in a language that the accused person understands or, if that is not possible, to have the court process interpreted in that language;
- ✓ Not to be convicted for an act or omission that was not an offence under either national or international law at the time it was committed or omitted;
- ✓ Not to be tried for an offence linked to an act or omission for which that person has previously been either acquitted or convicted;
- ✓ To the benefit of the least severe of the possible sentences if the sentence for the offence has been changed between the time that the offence was committed and the time of sentencing; and
- ✓ Of appeal to, or review by, a higher court.

It is important to ensure that the accused's rights are respected and upheld throughout the trial, otherwise there may be the possibility that the trial is dismissed as a 'mistrial'.

The accused is the person against whom criminal charges have been brought. She/he will usually be in the courtroom throughout the trial. In some courts, and for some hearings in matters of first appearance, the accused may not be physically in the courtroom. Rather, the accused will be present through the use of closed-circuit television (CCTV) technology. It is only in exceptional circumstances that the accused will not be present at the trial, including:<sup>41</sup>

- a If the accused conducts him/herself in a manner which makes the continuance of the court process in his/her presence impossible; or
- b If an order is made that the case should not be heard in open court, the court may order that the accused give evidence by means of CCTV or similar electronic media.

It is important to remember that the accused is innocent, until proven guilty. This means that when referring to him/her in the media, say that they *allegedly* committed the crime (i.e. it is claimed that they committed a crime).

### ● Judge or magistrate

South Africa has adopted an adversarial court procedure, as opposed to an inquisitorial one. This means that the presiding judge or magistrate plays a more passive role, a bit like a sports umpire. Therefore, our court processes differ from the type seen on American TV shows, where the judge often asks questions and is part of the process. Instead, in South African courts, the lawyers will be mainly responsible for presenting evidence and questioning witnesses, while the presiding officer is allowed to ask questions of clarification.

This adversarial system does not, however, reduce the great responsibility and capacity of the presiding officer to make an informed, impartial judgment in the case. All evidence will be presented to the presiding officer, who will in the end decide whether or not the accused is guilty. In South Africa, we do not have a jury system – the judge is the only decision maker.

<sup>41</sup> CPA, sections 158 and 159.





If either the prosecution or defence feels that the presiding officer is acting wrongly, or if there are reasons why he/she might not be fair during the court process, they can apply to have the presiding officer recused (i.e. she/he will be removed from the case, and another presiding officer will be appointed to the case). A presiding officer can also recuse him/herself.

The presiding officer commands respect. Everyone in the courtroom will be seated by the time the presiding officer enters and they will stand when she/he enters and leaves the courtroom. Note that presiding officers are addressed by the following titles:

- Magistrates: “your worship”
- Judges: “my lord” or “my lady”.

## ● Prosecutor

Unlike civil cases (e.g. divorce or contract cases), during criminal cases the victim does not appear in court with her/his own lawyer. Instead, the victim is represented by the State, who is legally represented by a public prosecutor.

The prosecutor is responsible for proving that the accused committed the offence. She/he will start presenting evidence and question witnesses. The prosecutor is the person who will care most about the victim’s case.

## ● Defence attorney

A defence attorney is the lawyer for the accused during the court case. In some cases, the accused will hire a private defence lawyer. If the accused cannot afford to pay the high legal costs, a legal aid lawyer will be appointed. An accused can also decide not to be represented by a lawyer (which is not advised, due to the technical processes and difficult language used in court proceedings).

The defence lawyer’s task is to cast doubt on the claim that her/his client – the accused – committed the crime in question. He/she will support the accused’s version of events and try to disprove the evidence provided by the prosecution’s witnesses through questioning.



## ● Witnesses

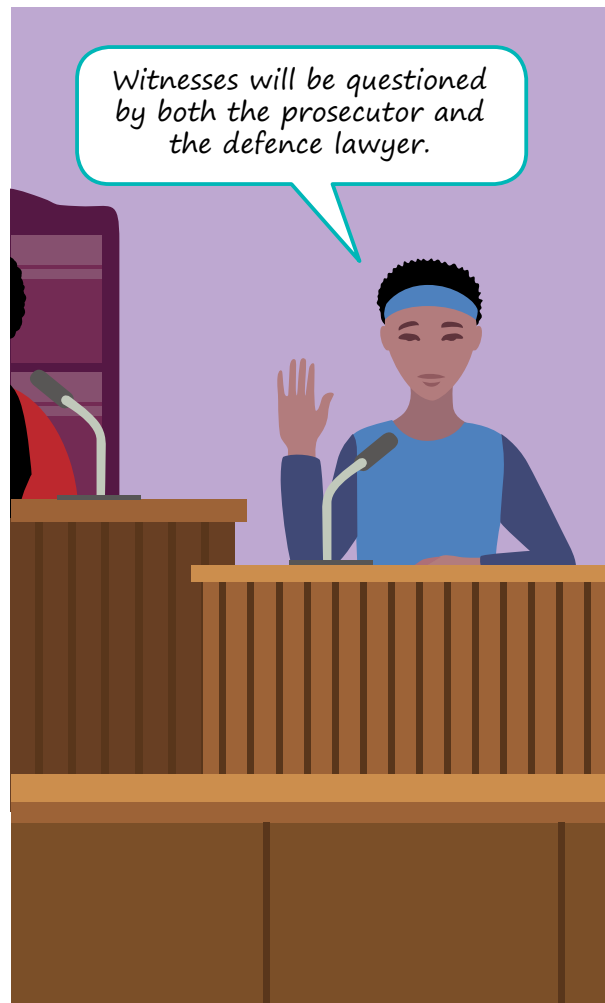
The spoken evidence given by witnesses is the basis of criminal trials. The evidence they provide is central to the presiding officer's decision about the guilt or innocence of the accused.

As mentioned above, witnesses will be questioned by both the prosecutor and the defence lawyer. Being a witness is therefore very stressful and often one witness can be on the stand for many days.

Various persons may be subpoenaed to give evidence as a witness, including:

- The victim
- Eyewitnesses to the crime
- The doctor and/or registered nurse who performed the medical examination of the victim and filled out the J88 form
- Expert witnesses (e.g. psychologist, criminologist, DNA specialist)
- The investigating officer of the case
- People who were close to or knew the victim and/or accused.

Note that the accused may also be called as a witness, though she/he cannot be forced to give evidence (due to her/his right to remain silent).



## ● Victim

In the case of the court process, the victim of the crime often plays a major role as they may be the key witness to a case. They may be called as a key witness through a subpoena. Aside from this process of being a witness, the victim and victim's family merely watch the process and should not get in the way of the role of the prosecutor. They will usually attend the trial (but do not have to) and will sit in the public gallery.

You should approach the victim and her/his family respectfully and offer guidance about support services. This can involve referring them to a relevant NGO, counselling services and even shelter services, if needed. The victim and family members will need as much support as possible (if this is something that they want) – take on a caring, informative, and understanding/caring role.



## ● Court preparation officer

Court Preparation Officers (CPOs) prepare witnesses – mainly victims and children under the age of 18 years – for court. This includes introducing witnesses to the court process and the court’s role players, as well as offering support services.

The impact of the introduction of CPOs has been very positive. It has been shown that the witnesses are less stressed and more confident because of their improved understanding of both how the legal system works and what part they are expected to play in it.<sup>42</sup> Furthermore, court preparation helps to minimise court-related secondary victimisation.



## ● Court orderly<sup>43</sup>

It is a requirement that a court can only hear cases if a court orderly is present. The court orderly will be a member of SAPS. It is the duty of the court orderly to provide security to the court.



## ● Stenographer<sup>44</sup>

It is important that everything that is said in court be recorded. This is so that if there are any questions about the fairness of the case at a later stage, the court recording can be checked. The person who is responsible for this is called the ‘stenographer’. There will be a microphone at the witness box. This microphone is not there to make the witness’s voice louder but to make sure everything that is said in court is recorded clearly.

Note that when monitoring a court case, you should ensure that the recorder is turned on (shown by a red light) when a witness is speaking. If anyone asks to turn the equipment off so as not to record part of the proceedings, that is clearly breaking the law/misconduct.



<sup>42</sup> Review, research and evaluation of the ‘Ke Bona Lesedi’ draft court preparation programme of the National Prosecution Authority (2008). Available at: [https://docuri.com/download/court-preparation-services-report\\_59c1dc5ff581710b28689f8a\\_pdf](https://docuri.com/download/court-preparation-services-report_59c1dc5ff581710b28689f8a_pdf)

<sup>43</sup> Rape Crisis Cape Town Trust. (no date). ‘The road to justice: the rape trial’, at 31.

<sup>44</sup> Ibid, at 31-32.



## ● Interpreter

The accused, as well as witnesses, are allowed to ask for the help of an interpreter during the trial. This should be discussed with the prosecutor before the trial. If the witness realises that the interpreter is not translating correctly, they must tell the judge/magistrate at once. The interpreter will generally need to produce a certificate showing that she/he interpreted truthfully.<sup>45</sup>



## ● Intermediary<sup>46</sup>

If the victim is under the age of 18, the prosecutor may apply to use the intermediary system when the victim gives her/his evidence. This means that the victim will be in a separate room and the CCTV system will be used. A person (usually a social worker) will act as an intermediary or go-between. The intermediary will wear headphones and listen to what is being said in court. The survivor does not directly hear the questions put by the prosecutor, defence attorney or presiding officer. The intermediary will then pass the question on to the victim, using age-appropriate language, and their answer will be viewed and heard by the court via the CCTV system.



## CHILDREN IN THE SYSTEM<sup>47</sup>

In South Africa, any person under the age of 18 years is legally considered to be a “child” or “minor”. Children are treated differently to adults throughout the criminal justice process. They are given more protections and treated with greater care. In fact, an entire Act (the Child Justice Act) has been passed, specifically with this in mind.

**Child offenders:** As offenders, children receive extra and different protection from adult offenders. Their trials are held privately out of the public eye and the child can ask for the help of their parent or guardian. Keeping a child behind bars or sentencing one to imprisonment should be used only as a last resort. At the time of arrest, the police have 48 hours to contact a probation officer who must conduct an assessment. Children who are kept in custody have to appear in a Child Justice Court with this assessment within the same 48 hours.

**Child witness/victim:** Cases in which children are involved are generally seen as more important and more urgent than other cases. A child witness is treated with greater care and intermediaries may be used when the child witness has to give evidence. The child witness may also give evidence without being in the presence of the accused (*in camera*). No information may be published (except with express permission from the presiding officer) which reveals the identity of the child.

<sup>45</sup> CPA, sections 105A(2)(d), 217(1)(b)(i), 219A(1)(a),

<sup>46</sup> Rape Crisis Cape Town Trust, supra note 43 at 60.

<sup>47</sup> Independent Projects Trust. (no date). ‘The Criminal Justice System and You: A Guide to The South African Criminal Justice System for Refugees and Migrants’. Available at: [http://www.ipt.co.za/pdf/Criminal\\_justice\\_book.pdf](http://www.ipt.co.za/pdf/Criminal_justice_book.pdf) [Accessed 12 September 2017].



## Court rules

Though you have the right to be in court, there are certain rules that you should follow:

- Stand when the presiding officer (i.e. judge or magistrate) enters and exits the courtroom.
- Unless you have official permission, no photographs or videos may be taken in court.
- Avoid leaving the courtroom while the court is in process, wait until there is a break.
- There should be no talking in the public while the court is in process.



## Pitfalls and solutions

PITFALLS	SOLUTIONS
As an observer, you are refused access to the public gallery.	Interested observers have a right to be present at a criminal trial (unless the case is being heard in a closed court). If you are refused, demand access. If you are still refused, inform the state lawyer. You can also tell the media that you have been refused access.
The prosecutor did not handle the case in a proper manner.	First try to speak to the Senior Public Prosecutor at the Court, as they are the supervisors. Otherwise you can lay a complaint against the prosecutor, in writing. Complaints about the case or decisions made by the prosecutor should be made to the relevant regional director of public prosecution.
The presiding officer is acting strange (e.g. he/she seems drunk or high), or he/she is being biased towards one of the parties.	Approach one of the lawyers and ask whether recusal should be asked for.
The victim feels unsafe inside or outside the courtroom	Inform the court orderly of any suspicious behaviour.
The victim, witness or a member of the victim's family is being threatened or bullied by the accused or the accused's friends or family.	These concerns must be reported to the IO or the Senior Public Prosecutor at the court and they must apply for witness protection. Furthermore, the accused's bail may be cancelled.
The trial has been unreasonably delayed.	Inform the prosecutor of your concerns, providing evidence. You can also tell the media.

# Court monitoring tool

COURT MONITORING TOOL: CRIMINAL TRIAL	
<b>Personal information</b>	
<b>Name and Surname:</b>	
<b>Position:</b>	
<b>Date(s) of court attendance:</b>	
<b>General Case Information</b>	
<b>Court Name:</b>	
<b>Case Name:</b> (e.g. S v Ndlovu)	
<b>Case Number:</b> (i.e. the case number allocated by the Court; e.g. 456/11)	
<b>Accused's name, age, sex, and gender</b>	
<b>Victim's name, age, sex and gender</b>	
<b>Magistrate/Judge's name:</b>	
<b>Prosecutor's name and contact number:</b> (i.e. details of the lawyer working for the State in favour of the complainant)	
<b>Defence attorney's name and contact number:</b> (i.e. details of the lawyer defending the accused)	
<b>Investigating officer's name:</b>	
<b>Investigating officer's contact number:</b>	
<b>Date(s) of hearing:</b>	
<b>Substantive information</b>	
<b>What crime is the accused charged of committing?</b>	
<b>Name(s) of witness(s) and brief summary of evidence</b>	

**Did the prosecutor, judge or defence attorney say anything that was sexist, racist or anything that you felt was not right?**


**Outcome**

**What was the outcome of the day at court:** (E.g. state's case closed; verdict given; sentence given; delay in case/postponement; hearing to carry on tomorrow; etc.)


**Describe one memorable moment and/or argument that was made during the day:**


**If the case was postponed:**

<b>Why was it postponed? Was the decision reasonable?</b>	<b>What date and time have been set for the next court date?</b>

**Other**

<b>Is the victim supported by a civil society organisation(s)? If so, which one(s):</b>	<b>What kind of support is being offered?</b>

**Record any other important information here:**  
(E.g. This is the 10<sup>th</sup> time that the case is being postponed, CSOs were protesting outside the court, etc.)






## Victim support

Case monitoring helps victims who (understandably) feel unsure about the criminal justice system. This help comes in the following forms:

- ✓ Providing relevant information: this includes court preparation and information about the criminal justice system in general (as detailed in this guide), as well as information about counselling and other support services.
- ✓ Ensuring that records are kept of all important conversations and documents.
- ✓ Holding officials responsible for their actions on the victim's behalf.
- ✓ Showing support outside and inside the court, which can be done via protests or even just being silently present in the courtroom.
- ✓ Offering emotional support to victims and their families during the criminal justice process.
- ✓ Following up and offering emotional support, such as counselling and debriefing sessions, after the trial is complete by referring victims and their families to a trained professional.

One crucial form of support to victims and their families is to deal with their **hopes and expectations**. This discussion should happen at the beginning of the criminal justice process and continue throughout. Questions to ask can include:

- What does *justice* mean to you?
- What do you expect to get from a trial?
- What will be an acceptable court outcome?

It will also be important to remind the victim that guilty judgements/verdicts are rare (largely because a person can only be found guilty if there is evidence "beyond a reasonable doubt", which is hard to prove). This means that they should not necessarily expect the accused to be found guilty or go to prison. If victims' hopes and concerns around the criminal justice process are discussed early on, it will likely be easier for them to work with the system and avoid disappointment.

You should be aware that case monitoring is a process that needs to be able to adapt to the needs of the individual victim. No one case is the same and different victims may need different forms of help and support. Some victims may reject such support altogether. **In each case, the wishes of the victim and her/his family are what matters most and must be respected.** Always make sure you first speak to the victims and their families and learn what it is that they want/need, before starting with victim support activities.

Be aware that victims and their families are likely to be under stress. It is therefore crucial that you and any other persons who are providing them with support receive emotional training and feedback sessions.



# COMMUNITY MOBILISATION

A crucial aspect of case monitoring is **community mobilisation**. This pairing serves the many-faceted purpose of case monitoring itself, namely: GBV prevention and awareness raising; governmental and institutional responsibility and accountability; improved access to justice and community empowerment.

This section provides details on the key strategies and activities involved in the community mobilisation process.

## Creating alliances

One of the first steps in monitoring a case well is to set up good working relationships with other organisations. These alliances need to be at two levels:

- 1 In order to gain mass attention and mobilisation around the issues, it is essential to **work with other NGOs and CSOs** – especially those based within the communities – and form partnerships. This is important from a resources point of view (i.e. funding and people power) and also ensures that the case has a wide reach among different communities.
- 2 In order to get hold of important documents and relevant information, it is critical to form **good relationships with stakeholders and the most important gatekeepers** (especially within **SAPS** and the **NPA**). If the government/institution believes that you are working *with* them, and not against them, they are more likely to provide help with the case.

### TIPS FOR CREATING PARTNERSHIPS WITH ORGANISATIONS

- ✓ Make a list of all the local CSOs/NGOs that you believe may have an interest in the case. Record the following information: (a) the name of the organisation; (b) contact details; and (c) name of a contact person.
- ✓ Contact the organisation by calling or sending an email, providing the following details: (a) your name, your organisation and your position; (b) information about the case; and (c) reasons why you would like to work with them.
- ✓ Follow up with the organisation and try to set up a face-to-face meeting. At the meeting, discuss the case and how you could work together. Check if the organisation has any other partner organisations that would like to get involved.
- ✓ Come up with a name for the partnership, together with a slogan and a relevant hashtag for Twitter (e.g. #endGBV, #victimjustice).
- ✓ Make sure you stay in contact with your partner organisations and keep them up to date on all case developments and important dates.
- ✓ Good communication is very important: the different roles and responsibilities of each partner organisation should be agreed upon at the beginning of the partnership formation. Then they should be monitored and changed as needed. In broad terms, it should be discussed which organisations will be taking more of a leadership role and which will be focusing on support and assistance activities. Once the roles have been set up, responsibilities should be divided accordingly, in order to prevent disorder and waste of resources (for example, it should be decided which organisation will be responsible for printing t-shirts and which will be sitting in court).

## TIPS FOR CREATING PARTNERSHIPS WITH INSTITUTIONS (eg. STATE, SAPS, NPA)

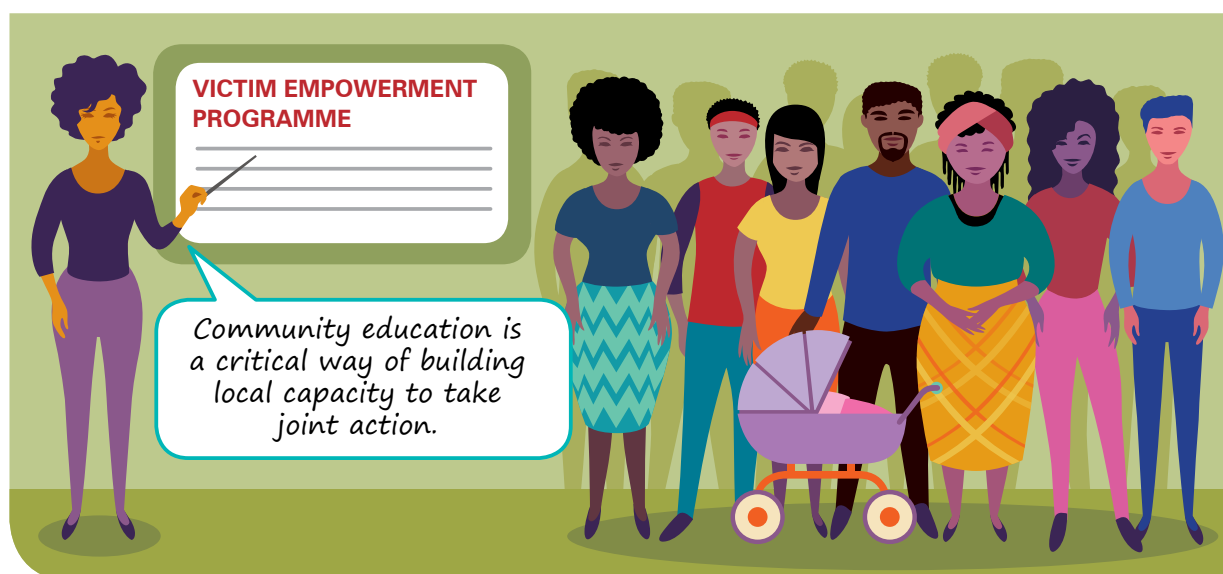
- ✓ It is crucial to have a contact person (i.e. gatekeeper) within the institution, who you trust and are in regular contact with about the case.
- ✓ It is important to plan carefully when partnering with state institutions: always think through the pros and cons of working with them (e.g. are they likely to get back at you or keep back information if they are unhappy with certain actions you might take, like make protests). You need to decide if they can be trusted and if they will work with you to help the case move forward.
- ✓ Think about the value of long-term, sustained monitoring and the establishment in a community of ongoing partnership with local state institutions to improve working relationships.

## Community education

In order for case monitoring to be a successful tool for violence prevention, it has to be coupled with community education efforts. Community education is a critical way of building and improving local capacity to take joint action.

Key activities include:<sup>48</sup>

- **Community dialogues:** the purpose is to have direct and meaningful discussion with community leaders and interested community members, to create awareness and build solidarity.
- **Workshops:** members of the community should attend these educational sessions to learn about the issues relating to GBV (e.g. gender, violence, patriarchy, LGBTI rights).
- **“Door-to-door” visits:** these visits to homes in communities seek to engage household members on selected issues and increase their awareness and knowledge of them, so as to encourage their involvement in community activism.
- **“Fact finding”:** community members actively talk to and try to influence local authorities, interview community members, gather information and call directly for justice.



<sup>48</sup> Welsh (2015), supra note 13.

## Advocacy

Court monitoring may present various advocacy and activism opportunities, which are likely to be increased by the involvement of partner organisations.

A very important part of advocacy is **media attention**, as this guarantees a wide reach of the key messages. Media coverage ensures that easily understood information is easily available to large numbers of people. This is crucial in terms of awareness-raising efforts.

There are several media strategies that can be used in order to achieve maximum coverage of the case:

- **Protests:** Arrange peaceful protests/demonstrations outside the courthouse at each hearing. Make sure that the protests are well-attended, loud and attention-grabbing; they should be 'newsworthy'. Here are some tips –
  - ✓ Notify the municipality about the protest.
  - ✓ Have a protest organiser, who is responsible for organising the gathering and notifying the authorities, as well as marshals for during the protest.
  - ✓ Inform all partnership members about the protest, and urge them to forward the information to all of their partner organisations.
  - ✓ Print t-shirts, with messages relating to the case, that can be worn by all civil society activists attending the trial.
  - ✓ Print posters, which are both informative and eye-catching. They can include: information about the case, information about the issues (including statistics), photos, the coalition's slogan and hashtag, bold and attention-grabbing messages.
  - ✓ Print out information sheets for all the attending activists/protesters.
  - ✓ Inform the media about the protest and ask them to send reporters and camera crews to the court.
  - ✓ Decide on a media spokesperson, i.e. a person who will be able to speak convincingly about the case to the media at the scene.
- **Issue statements to the media:** During the course of the trial, make sure you issue press releases, write op-eds for newspapers and issue statements directly to the media.
- **Send updates on case developments to the media:** During the process of court monitoring, be sure to send any important case developments and dates to the media.



## PERMISSION FOR PROTESTS<sup>49</sup>

Everyone has a right to protest. However, there are certain processes and permissions that regulate this right, which are found in the **Regulation of Gatherings Act (205 of 1993)**.

### WHAT IS A “GATHERING”?

- A march, picket or parade of 16 people or more in any public space, that expresses any form of protest or is critical towards any person, company or government body.

### WHEN IS PERMISSION/NOTICE REQUIRED?

- If you are organising a gathering that will be **16 people or more**, you must first inform the ‘responsible officer’ from the municipality.
- If the march, picket or protest will be attended by 15 people or less, it is called a “demonstration” and you *don’t* need to give notice to the local authorities.

### WHEN TO NOTIFY THE MUNICIPALITY?

- You must ideally notify the authorities **at least 7 calendar days** before the protest.
- When seven days is not possible, you can give less than seven days’ notice but you must also give reasons why it is late. **BUT** you must give at least 48 hours’ notice. If you give less than 48 hours’ notice, your protest can be banned without reasons.

### HOW TO GIVE NOTICE?

- The organiser of the protest must fill out a form called “Notice under Regulation of Gatherings Act”<sup>50</sup> and give it to the local authority.
- NB: special permission (in addition to notification) needs to be granted by the magistrate of the district or Judge President in order to protest outside a court building.

### SECTION 4 MEETING

- In most cases the organiser will be invited to a meeting by the responsible officer after giving notice. The purpose of the meeting is to discuss any possible changes to the gathering as it is planned and described in the notice.
- Note: If the organiser is not called to a meeting *within 24 hours* of sending the notice, the gathering is automatically legal and approved.

### ENDING A GATHERING

- When a gathering has taken place lawfully, it must break up at the time that the organisers said it would. At the protest, if you have not left the place on time and the police give an order to break up the gathering, it is an offence to disobey them and you may be arrested.

## TIPS FOR A SMOOTH PROTEST:

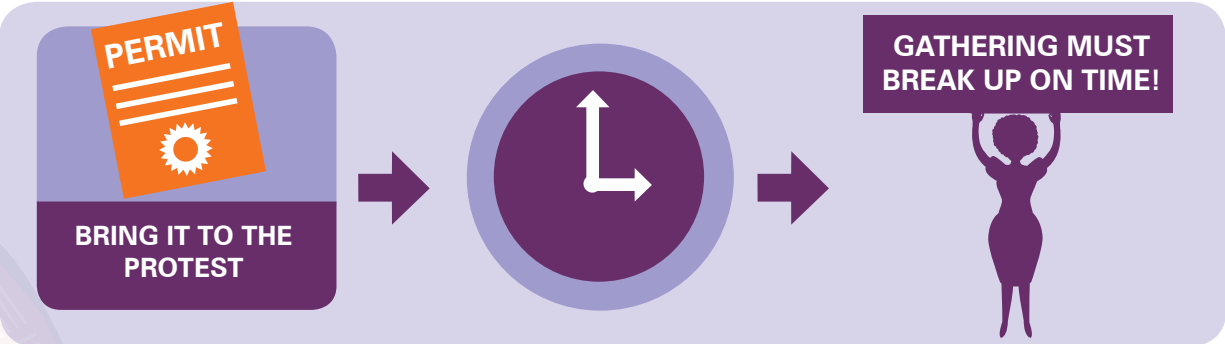
- ✓ Notify the authorities about the protest as soon as possible, do not leave it to the last minute.
- ✓ Keep a copy of the notice form and your proof of delivery, bring it to the protest.
- ✓ Make sure nobody at your protest is causing trouble or being violent.
- ✓ Make sure everyone leaves the protest at the agreed time.

<sup>49</sup> Right2Know Campaign (2015) ‘Your Right to Protest: Understanding the Regulation of Gatherings Act, arrests and court processes’. Available at: <https://www.ru.ac.za/media/rhodesuniversity/content/studentzone/documents/R2K%20Guide%20to%20Protesting%20Lawfully.pdf> [accessed 30 June 2017].

<sup>50</sup> Notification form available at: <http://localgovernmentaction.org.dedi6.cpt3.host-h.net/sites/default/files/Protest%20March%20Notice%20Web.pdf>



It is important to remember that the media is a powerful tool. You must use it to your benefit (in terms of awareness-raising), but at the same time be aware that the victim and her/his family must be protected from unwanted attention. Always check in with them privately before any action, to make sure they are comfortable being filmed, recorded or interviewed. If they are not, keep them away from media people. Also be careful about cases involving minors, as their names are not allowed to be released to the media or made known to the general public.



# GOING FORWARD: WHAT HAPPENS AFTER THE CASE?

It is clear that case monitoring plays a vital role in victim support, as well as holding the criminal justice system responsible for its actions. Yet we should not forget its impact on violence prevention – which means that the **outcomes and progress achieved during a case should not end when the case is closed**. In other words, there should be systems put in place to ensure there is some form of follow-up, once the case monitoring is complete.

## RECOMMENDATIONS FOR FOLLOW-UP ACTIONS:

- ✓ In cases where gaps/problems were found in the criminal justice system, there should be a monitoring of whether improvements have been made after the case (i.e. there should be a follow-up on system change). A follow-up on system change may involve writing to the DPP or chief magistrate of the court, offering skills training on skills gaps, and/or monitoring new cases in the same courts to measure impact;
- ✓ A document setting out “lessons learned” from the specific case should be compiled and distributed, so as to allow for improved case monitoring in the future;
- ✓ Feedback sessions should be organised for CAT members, trainers and community mobilisers that were involved in monitoring the case; and
- ✓ The community that was involved in the case should be taught to deal independently with similar cases and issues in the future, as well as referrals made to relevant organisations where necessary.

# TRADITIONAL COURTS

Customary law and traditional leadership are systems that are entrenched in South Africa. A traditional court is defined as a court established as part of the traditional justice system, which functions in terms of customary law and custom. Traditional courts are presided over by a king, queen, senior traditional leader, headman, headwoman or a member of a royal family who has been appointed as a presiding officer of a traditional court by the Minister.<sup>51</sup>

As the current Traditional Courts Bill will completely overhaul how the current structure and functions of the traditional courts will operate, we will provide a separate training guide on the new functions and structure, once the Traditional Courts Bill is finalised.

The infographic is divided into two main sections. The left section, titled 'THE TRADITIONAL COURTS BILL 2017', discusses the bill's aim, who is affected, and a warning that the bill threatens to force rural South Africans into a separate justice system. The right section, titled 'HOW DID PROVINCES VOTE ON THE BILL IN 2014?', lists provincial stances: AGAINST (Eastern Cape, Gauteng, Limpopo, Western Cape), ABSTAIN (KwaZulu-Natal), and SUPPORT IF SPECIFIC CHANGES ARE MADE (Free State, Mpumalanga, Northern Cape, North West). It notes that provincial changes contradicted each other and that many positive changes from the 2017 bill have since been undone by Parliament. The background features a woman in traditional headwear and a rural landscape with people sitting under a tree.

## THE TRADITIONAL COURTS BILL 2017

### AIM?

Government says the Bill will regulate traditional forums for resolving disputes and ensure that they function in line with the Constitution. The Bill will replace parts of the Black Administration Act of 1927.

### WHO IS AFFECTED?

If passed, the Bill will directly affect the lives of the approximately **17 million** South Africans living in rural areas of the former homelands. It could also affect people living in cities.

**The Bill threatens to force rural South Africans into a separate justice system!**

## HOW DID PROVINCES VOTE ON THE BILL IN 2014?

- AGAINST:** Eastern Cape, Gauteng, Limpopo, Western Cape
- ABSTAIN:** KwaZulu-Natal
- SUPPORT IF SPECIFIC CHANGES ARE MADE:** Free State, Mpumalanga, Northern Cape, North West.

The provinces all proposed changes that **contradicted** each other.

### WHAT POSITIVE CHANGES WERE IN THE 2017 BILL WHEN IT WAS INTRODUCED TO PARLIAMENT?

Initially the 2017 Bill recognised the consensual, voluntary and living nature of customary law. It allowed people to opt out of traditional court processes. Important protections for women and vulnerable groups were included, and the different levels of traditional justice systems were acknowledged.

**BUT many of these improvements have now been undone by Parliament.**

<sup>51</sup> Traditional Courts Bill B1-2017



# USEFUL RESOURCES

## GUIDES AND REPORTS

- “How to Support Community Members Affected by Gender-Based Violence: A guide for community activists and human rights defenders”. (2015). Sonke Gender Justice.
- “A report on the monitoring activities conducted by the Shukumisa Campaign during the ‘16 Days of No Violence Against Women’”. (2008). Shukumisa Campaign.
- Welsh, P. (2015). “Systemisation of Sonke CEM/CAT experiences”. Sonke Gender Justice.
- “The Criminal Justice System and You: A Guide to the South African Criminal Justice System for Refugees and Migrants”. Independent Projects Trust.
- “Rape Survivors’ Guide to the Criminal Justice System in South Africa”. (2012). One in Nine Campaign.
- “The Road to Justice: the rape trial”. Rape Crisis Cape Town Trust.
- Sanger, C. (2010). “A Simplified Guide to your Rights against Sexual Violence”. Women’s Legal Centre.
- Machisa, M., et al. (2017). “Rape Justice in South Africa: retrospective study of the investigation, prosecution and adjudication of reported cases from 2012”. South African Medical Research Council.
- Fredericks, J. and Sanger, C. (2014). “A Simplified Guide to the Domestic Violence Act”. Women’s Legal Centre.

## LEGISLATION AND POLICY

### General

- Constitution of South Africa, 1996
- South African Victims Charter
- Minimum Standards on Services for Victims of Crime.

### Main issues

- Domestic Violence Act 116 of 1998
- Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007
- SAPS National Instruction 3/2008 on Sexual Offences
- SAPS National Instruction 7/1999 on Domestic Violence
- Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000
- Children’s Act 38 of 2005
- National Policy Guidelines for Victims of Sexual Offences: Uniform National Health Guidelines For Dealing With Survivors Of Rape And Other Sexual Offences. Department of Health, South Africa.

### Court procedure

- Magistrates’ Court Act 32 of 1944
- Supreme Court Act 59 of 1959
- Criminal Procedure Act 52 of 1977
- Uniform Rules of Court, General Notice R315 in *Government Gazette* 19834 of 12 March 1999
- Child Justice Act 75 of 2008
- National Prosecuting Authority Act 32 of 1998
- Criminal Law Amendment Act 105 of 1997, Schedule 2 (minimum sentencing).



# ANNEXURE 1: Checklist to ensure swift and efficient court processes and court monitoring

✓	TO DO
<b>1 month before the first trial date</b>	
	Meet with coalition partners and delegate roles and responsibilities
	Designate a person/persons to be responsible for providing the victim and family with support and information throughout the court case
	Begin mobilising community members
<b>2 weeks before the first trial date</b>	
	Notify the municipality if you are planning to picket/protest outside of court
	Notify the media of the court case
	Meet with the prosecutors to confirm dates and double-check court preparedness (i.e. CCTV is working, defense attorney has been appointed and confirmed)
	Designate a media person to engage with the media before and during the court case
	Write op-eds to the newspapers and speak on the radio about the case, in order to raise awareness on the particular issues involved
	Print t-shirts
	Organise transport for CAT members and partner organisations, where necessary
<b>Day before court case</b>	
	Confirm the date and time of the court case with the prosecutor and assess their expectations of the case and the following day in court
	Issue a press release on the court case
	Remind the media of the time and place of the court case
	Confirm transport for the following day
	Remind coalition partners of the time and place to meet the following day before the case begins
<b>Day of court case</b>	
	All coalition partners meet an hour before the case is due to begin: distribute t-shirts; create placards and signs; discuss strategy
	Have a copy of the permission to protest, where necessary
	The person responsible for victim support must meet the victim and family at the courthouse and escort them inside
	Live-tweet important aspects of the court case
	Speak to the prosecutor once the case has been adjourned for the day



## 2.2. OFFICER THAT YOU DEALT WITH

Go over to one of the officers on duty and **introduce yourself**:

*“Hello/good morning/good afternoon. My name is ..... and I work for the organisation..... We are part of a national project collecting information about services for rape survivors. As part of this project our organisations are visiting police stations, courts and hospitals in different parts of the country to see what facilities they have in place for victims of rape. As part of this project I would like to ask you a few questions about your support facilities for rape survivors. This will take about 10 – 15 minutes of your time. Is now a good time for you to answer these questions?”*

If they agree to help you, write down their details in the space below.

2.2.1. Name: \_\_\_\_\_

2.2.2. Rank: \_\_\_\_\_

2.2.3. If nobody agrees to help you or they refuse to allow you to monitor give details (why weren't you able to monitor? Why did they ask you to leave?): \_\_\_\_\_

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## 3. POLICY AND LEGISLATION

Ask the person helping you to please show you copies of the following. Please tick the appropriate box. Carefully go through what the officer shows you to check that the documentation is complete.

	Complete	Incomplete	Not able to show you at all
3.1. Copy of the Sexual Offences Act (SOA)			
3.2. Copy of the regulations and forms related to the SOA including:			
3.2.1. Application by victim or interested person for HIV testing of the alleged offender			
3.2.2. Notice to alleged offender in respect of order for HIV testing			
3.2.3. Notice of services available to victim			
3.2.4. Notice containing information on confidentiality of and how to deal with HIV test results			
3.3. Copy of the National Instructions 3/2008			
3.4. Copy of the station orders around sexual offences.			

3.5. List of organisations providing services to rape survivors			
3.6. Information about hospitals providing PEP to rape survivors			

3.7. Please write down in the space below what the **officer's reaction** was to your request. Did s/he know what you were talking about or did they have to call someone else to help you? Were they helpful?

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3.8. Was this information easily available to the officer?	Yes	No
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3.8.1. If no, did s/he have to go and look for it and where was it located?

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### 3.9. FAMILY VIOLENCE, CHILD PROTECTION AND SEXUAL OFFENCES UNIT (FCS UNITS)

3.9.1. Does the station have access to specialised FCS detectives that deal only with child protection and sexual offences cases?	Yes	No
3.9.2. If yes, how many FCS detectives are <b>based at the station</b> ? (give number)		
3.9.3. If the FCS detectives are not based at this station, what is the name of the station where they are based?		
3.9.4. How many FCS detectives are based at the other station? (give number)		
3.9.4. How many stations are in this FCS cluster?		
3.9.5. Where does the station store its crime kits?		

## 4. VULNERABLE SURVIVORS

4.1. If a **deaf** rape survivor reports to your station, who do you call to provide sign language services when you take their statement? (Make sure they give you the **name of an organisation or person**)

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4.2. If a survivor comes to your station to report that they were raped because they are **lesbian or gay**, where would your station refer them to for counselling? (Make sure they give you the **name of an organisation or person**)

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4.3. If a **mentally disabled** rape survivor reports to your station, who would you contact to provide you with assistance in taking their statement? *(Make sure they give you the **name of an organisation or person**)*

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**5. STATEMENTS**

5.1. Ask the officer if they ever take statements in the following places:

5.1.1. Do you take statements in the CSC?		Yes	No
5.1.2. Do you take statements in a separate office away from the CSC?		Yes	No
5.1.3. Do you have a special separate trauma room inside the police station where they take statements?		Yes	No
5.1.4. Do you have a separate building that operates as a victim support centre where they take statements?		Yes	No
5.1.5. Where do you take statements when these facilities are full or in use?			
5.1.6. Which place is used most often for statement-taking:	Special trauma room	Separate office	Separate building CSC

If they answered yes to 5.1.2, 5.1.3. or 5.1.4. please ask to be shown the room where statements are taken. Write down what this facility looks like (please specify which facility you are describing):

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**6. NGOS/CBOS AND VOLUNTEERS**

6.1. Does the station have any volunteers providing services at the station?	Yes	No
6.1.1. If yes, are the volunteers		
a) Always available on a 24 hour basis? (if yes, move to 6.1.2.)	Yes	No
b) Based at the station only on weekdays during office hours?	Yes	No
b1) If yes to b), what happens after hours and on the weekend?		
c) Based outside the station and called out to attend to victims?	Yes	No
c1) If yes to c) what happens after hours and on weekends		
d) Other: (give details)		

<b>6.1.2. If volunteers provide a service, who monitors the volunteers? (please tick one option)</b>	
a) SAPS	
b) Community Policing Forum	
c) NGO/CBO	
d) Other (give details):	

<b>6.2. Does the station have any NGOs or CBOs providing services at the station?</b>	Yes	No
<b>6.2.1. If yes, is the NGO/CBO (please tick one option):</b>		
a) Always available on a 24 hour basis?		
b) Based at the station only on weekdays (during office hours)?		
c) Based outside the station and called out to attend to victims?		
d) Other: (give details)		
<b>6.2.2. What is the name of the NGO/CBO?</b>		
<b>6.2.3. What is their telephone number?</b>		

**Thank the officer for her/his time and help.  
Would they like a copy of the completed report? \_\_\_\_\_**

**7. POSTERS AND PAMPHLETS IN THE CLIENT SERVICE CENTRE**

<b>7.1. Are there any posters on the walls of the CSC?</b>	Yes	No
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7.1.1. If you answered 'yes' please write down what each poster says in the blocks below.

Content of the poster	Who produced or developed the poster	Language of the poster
1		
2		
3		
4		
5		
6		







## ANNEXURE 3: Sandiswa Mhlawuli case study

### FACTS

On December 10, 2013, Sandiswa Mhlawuli, a 27-year-old single parent, was brutally murdered in Dutywa, a small rural town in the Eastern Cape. Several eyewitnesses saw her ex-boyfriend Nkosinam Xabadiya (then 29 years old) haul her out of a stationary commuter van and stab her multiple times. Just over nine months later, on the 12th September 2014, and after only five court appearances, Magistrate Doreen De Waal of Butterworth Regional Court in the Eastern Cape, found Xabadiya guilty of the premeditated murder of Sandiswa.

### CASE MONITORING AND ADVOCACY

In late January 2014, the Willovale District Court released Xabadiya **without bail** and the case was adjourned. In response, CAT members in Chafutweni (Sandiswa's home village), called on Sonke to support them in their efforts to demand justice for Sandiswa. Sonke, in turn, decided to support and monitor the case.

#### *Actions and Activities:*

- Sonke filed a complaint with the **Commission for Gender Equality (CGE)**.
- Sonke staff met with community members (including Sandiswa's mother) prior to first court hearing, and the next day a large **protest** (over 60 CAT members and supporters) took place outside courthouse.
- The hearing was **rescheduled** for the 26th of February. In response, a commission was formed immediately to **speak with the public prosecutor**, in order to find out why Xabadiya had been released without bail, and why Sandiswa's mother had never even received notification of the court date. After a lengthy discussion, the public prosecutor expressed that he had no power to overturn the court's decisions and that the best course of action was to seek answers from the police. When consulted, the police, in turn, redirected questions about the case to the office of the National Prosecuting Authority (NPA), where, finally, some answers started to emerge. It transpired that the investigating officer, present in the meeting, had not followed routine procedures and that the accused had been released without bail because of an "unfinished charge sheet".
- Sonke staff and some CAT members **engaged local, regional and national media** to increase pressure for ensuring that the case was dealt with thoroughly and expeditiously and to keep GBV in the national spotlight. This entailed participation in radio shows, as well as the dissemination of press releases and publication of opinion articles in different print media.
- After a long wait, the court finally convened, only to **postpone the hearing** until the 14th of July 2014. The prosecutor had requested legal representation from the Legal Aid Board for the accused. Viewed as a stalling tactic taken by the justice system, Sonke staff quickly **conferred with the lead detective** of the case who confirmed that the Legal Aid Board had deliberately delayed registering the accused as their client. Consequently, it was decided to proceed immediately to the offices of the Legal Aid Board in Butterworth to **complain formally** about their failure to carry out their responsibilities and the unnecessary postponement caused to the case.

### COMMUNITY EDUCATION AND MOBILISATION

The case allowed for the following:

- The strengthening of already existing **CATs** in the Dutywa area, as well as the formation and training of new CATs in an additional ten villages;
- The engagement of **religious and traditional leaders** to challenge harmful gender norms and other social norms that inhibit community action on GBV;
- The organisation of a **football tournament**, with a twist. In the context of young people's vulnerability to "gangsterism", substance abuse and violence, Sonke CATs in the Eastern

Cape organised an inter-village football tournament as a way of enabling communities to break down rivalries and hostilities that were causing frictions and generating violence; and

- **Door-to-door** activity, which entailed visiting homes to provide information about GBV and HIV, and to nurture support for the work of the CATs.

## CRIMINAL JUSTICE SYSTEM ISSUES

### 1. Efficacy of protection orders

Sandiswa's death occurred on the same day that the courts had issued a **protection order** against Xabadiya. Attaining the protection order in itself had been an arduous and stressful process for Sandiswa – which mirrors the obstacles that many women face when experiencing and reporting intimate partner violence. One police officer had even told Sandiswa it was not his place to interfere in domestic affairs.

Studies have shown significantly lower levels of intimate partner violence after applying for a protection order.<sup>52,53</sup> However, Sandiswa's case is a prime example of the reality of many South African women who either struggle to obtain a protection order in the first place, or who are not afforded the necessary protection from the police once they are in possession of an order. Reasons for such non-compliance with protection orders include: reluctance of police officers to monitor protection orders or make arrests; discriminatory attitudes of police officers serving as a deterrent in reporting cases of domestic violence; lack of resources at police stations and the courts.<sup>54</sup>

### 2. Bail

Xabadiya pulled Sandiswa out of a crowded taxi and stabbed her to death in front of witnesses, but was **granted bail** and allowed to walk free despite the fact that the prosecutor is required by law to oppose bail in cases of murder.

### 3. Police investigation

- a. The police in Dutywa **collected no forensic evidence** at all, in part because the police did not have the equipment with which to do so, but also because the forensic unit closes at 4pm and Sandiswa's murder occurred later.
- b. Furthermore, instead of **serving subpoenas** directly to each witnesses individually, as the law requires, the police asked one of the witnesses to hand them out to the remaining witnesses.

### 4. Court delays

- a. On 24 April 2014, the case was postponed to 14 July 2014. For two and a half months the police, the prosecution and Legal Aid were aware of the trial date yet they did **nothing to prepare the case**. The prosecutor only requested the court docket from the police on 10 July 2014, and was going to send it to Legal Aid on 11 July 2014 making it difficult for Legal Aid to prepare their defence of the accused.
- b. The prosecutor **did not prepare the witnesses**, as the law requires.
- c. During the 9 months that the trial lasted, there were a total of **9 postponements**.

<sup>52</sup> McFarlane, J., et al. (2004). Protection Orders and Intimate Partner Violence: An 18 Month Study of 150 Black, Hispanic, and White Women. *Am J Public Health*, 94, pp. 613–618.

<sup>53</sup> Karl Peltzer, et al. (2006). Evaluation of the Effectiveness of Protection Orders for Female Victims of Intimate Partner Violence in Vhembe District of South Africa. *Journal of Psychology in Africa*, 23(3), pp. 489-493.

<sup>54</sup> Rutendo Furusa & Christlyne Limberg. (2015). 'Domestic Violence Act: does it protect?' UCT Knowledge Co-Op. Available at: [http://www.knowledgeco-op.uct.ac.za/sites/default/files/image\\_tool/images/155/207%20Report\\_Does%20the%20DVA%20protect.pdf](http://www.knowledgeco-op.uct.ac.za/sites/default/files/image_tool/images/155/207%20Report_Does%20the%20DVA%20protect.pdf)

## ANNEXURE 4: Patrick Wisani case study

### FACTS

On the morning of 5 September 2015, a 24-year old woman – Nosipho Mandleleni – died as a result of a brutal beating with a sjambok and broomstick at the hands of her boyfriend, Patrick Wisani (who was a medium profile political leader in the ANC, which resulted in the case attracting a lot of attention).

On 9 September 2015, Wisani appeared in the Johannesburg Magistrates Court for the first time. He was granted R3 000 bail on 21 September. On 22 May 2016, Wisani assaulted Siphokazi Mandleleni (Nosipho's sister) to intimidate her into not giving evidence against him. She and a friend, Zimbini Mathibe, who was also assaulted by Wisani, opened an assault case against him. Wisani was summoned to court on the following Tuesday to answer to the assault charges. He and his lawyer failed to arrive, so a warrant of arrest was issued against him. Police visits to the place in which he was supposed to be living in terms of his bail conditions revealed that he had not been staying there. Three weeks later, he gave himself up and was immediately arrested and had his bail withdrawn. On 21 November 2016, Wisani was convicted for the murder for Nosipho Mandleleni and for assaulting and intimidating Siphokazi Mandleleni and Zimbini Mathibe. Justice Ismail sentenced Wisani to 20 years on the murder charge and two years each for assault and intimidation, all sentences to run concurrently.

### CASE MONITORING AND ADVOCACY

#### *Actions and Activities:*

- In the weeks following the murder of Nosipho, the **Yeoville Bellevue NO to GBV Coalition** was formed. The Coalition comprised 17 organisations which pledged to work together to monitor and publicise the Wisani case and to look at implementing ongoing awareness and empowerment programmes to counter gender-based violence, especially in the Yeoville Bellevue environment.
- During the course of the court case, the coalition became increasingly concerned about the **conduct of the judge**. There was speculation that he was either drunk, on very strong medication or exhibiting signs of a condition such as Alzheimer's Disease. Ultimately, there was a concern with how this would affect the fairness of the trial. Consequently, the coalition engaged with the prosecutors and on 10 August, the judge indicated that he had been asked by the prosecutor, backed up by his NPA bosses, to **recuse himself**.
- The Coalition worked hard to get **media coverage** of the case. This included the issuing of statements, sending updates of developments to the media, and encouraging them to send reporters and camera crews to the court. It was also agreed that civil society should make the appearances 'newsworthy' and 'camera-friendly' by arranging for protests at each hearing and by printing t-shirts which would be worn by civil society activists attending the trial.

#### *Difficulties:*

- The Coalition's initial contact with the High Court prosecutor was not a positive one. Despite the fact that civil society is constantly enjoined to work with the state, to work with the justice system, they were given the clear impression that they were **'interfering'** and that they should leave the prosecution to do their job and wait for the trial to commence. This is the impression they were given by the **Investigating Officer** as well.
- There was an issue of a **lack of resources**. Getting people to attend trials is difficult, especially if they have to travel some distance to get there, which was the case throughout most of the Wisani trial. This was exacerbated by the fact that the finalisation of the case took almost two years.

## CRIMINAL JUSTICE SYSTEM ISSUES

### 1. Bail

It is arguable that Wisani should *not* have initially been released on bail, considering the severity of the charges against him.

### 2. Recusal

This case provides a useful example of how civil society court monitoring can guarantee the fairness of a trial. It was the court monitors who first noticed the unusual conduct of the judge in this case and raised their concerns with the prosecutors. The judge recusing himself indicated an admittal that he was displaying some level of bias or incompetence. The recusal and subsequent replacement of the judge arguably had a significant impact on the proceedings and outcome of the trial.

According to the Code of Judicial Conduct,<sup>55</sup> a judge is required to recuse him/herself from a case if there is – (a) a real or reasonably perceived **conflict of interest**; or (b) a real suspicion of **bias** based upon objective facts. Recusal is a serious procedure, and the decision is not taken lightly. Thus, for example, sensitivity or distaste for the case are insubstantial grounds for recusal.

Whether a judge ought to recuse him/herself is a matter to be decided by the judge concerned (if parties disagree with the decision, it may be taken up on appeal). A judge’s ruling on an application for recusal and reasons for the ruling must be stated in open court.

Note that before an application for recusal is made, the judicial officer should be informed of the fact and the grounds of the application, to avoid embarrassment and to give him/her the time and opportunity to give her/his side of the story and for facts to be verified before the formal application is made.

<sup>55</sup> Available at: <http://www.justice.gov.za/legislation/notices/2012/20121018-gg35802-nor865-judicial-conduct.pdf>



## ANNEXURE 5: David Olyn case study

### FACTS

23-year-old David Olyn was an openly gay man living in the Belle Vista neighbourhood of Ceres in the Western Cape. On 22 March 2014, Olyn was beaten and tied with wire, after which the accused, 29-year-old Christo Oncker, allegedly passed a group of 7 minors (aged 14-18) and invited them to watch him “kill a moffie”. Olyn sustained 23 fatal blows to his head and body, before the accused allegedly laid branches on him and set him on fire while still tied up. The teenagers who witnessed this horrific scene stood by doing nothing to stop the attack, and are alleged to have partaken in the attack.

On 21 January 2016, nearly 20 months after the brutal hate murder of Olyn, and following no less than 35 court appearances, Oncker was convicted of murder.

### Why does this particular case involve a “hate crime” as opposed to just murder?

A hate crime is essentially the commission of a substantive crime (for example, murder or rape) motivated in part or whole on the basis of the perpetrator prejudice, bias or intolerance towards the victim based on one or more of the following characteristics: race, colour, religion, national origin, ethnicity, gender, disability, or sexual orientation. In the present case, Olyn was targeted by Oncker specifically *because* he was known to be gay. Thus Olyn’s murder becomes elevated to a hate crime.

At the time of writing, the Prevention and Combating of Hate Crimes and Hate Speech Bill is before Parliament. When it is passed, its Act-equivalent will govern hate crime in South Africa.

### CASE MONITORING AND ADVOCACY

After Olyn’s murder, Sonke was approached by Free Gender to assist them with the hate crime case. Sonke decided to support Free Gender and assist with the mobilisation around the court case, which included mobilising some of Sonke’s CAT members as well as Triangle Project.

#### *Activities and actions:*

- **Fact-finding:** spoke to community members informally around the court to hear what the community was saying about the case; met with the local municipality and other stakeholders including two police officers to discuss the case; visited the local police station and spoke to the Captain and Investigating Officer about the case’s progress.
- Sonke compiled a **contact list** of people who were willing to speak to them and share information.
- Sonke filed a **complaint with the CGE**, and remained in constant communication with the CGE contact person.
- There were several **protests and pickets** outside the courthouse on trial days. WRDC together with the community would decide on the program for the picket and the messaging that they would like to have on the day to highlight relevant issues, including: violence, rape, criminal justice, LGBTI violence, and the impact of violence on the communities.
- The **media** was invited to the protests/pickets, notably Vallei FM, a local radio station in Worcester.
- On 2 October 2014, a **complaint letter** was sent on behalf of Sonke and WRDF to the Department of Community Safety, SAPS provincial commissioner, the NPA, and Ceres SAPS police station. The requests made in the complaint letter included: a follow-up on the status of the evidence in the case; the securing of any outstanding witness statements; the protection of LGBTI individuals in the community; a commitment to a speedy trial without further delays.

*Difficulties:*

Sonke tried to speak to the prosecutor, however he was not very engaging. The problem was most likely that Sonke is technically an 'outside' NGO, and the prosecutor had no responsibility to discuss the case's details with anyone other than the family of the deceased and the police and investigating officer. This challenge resulted in the reliance on other persons who were working on the case, such as the CGE, who were perhaps in a better position to be able to gain access to the prosecutor and investigating officer.

## COMMUNITY EDUCATION AND MOBILISATION

Since neither Sonke nor Free Gender had worked in Ceres before, they had to find a **point of connection** in Ceres. A local community organisation, the Witzenberg Rural Development Forum (WRDF), served as a strong entry point for Sonke into the Ceres community. In particular, they provided significant support in terms of arranging community dialogues as well as connecting Sonke to the community of Bella Vista and to key people in Ceres.

- Sonke **engaged the community where David lived**, in order to discuss his murder and what the next steps would be in order to address the issue of homophobia and gender based violence (GBV) in Bella Vista and the broader community.
- A one-day **One Man Can (OMC) workshop** was held on 12 June 2014, which focused on: gender norms, gender values clarification, sexual orientation and gender identity, and violence in our communities. That evening, Sonke held a **community dialogue** at Bella Vista Library Hall, which focused on the theme of GBV and hate crime. A second community dialogue was held on 13 August 2014, with the aim of discussing the role of stakeholders in violence prevention in Ceres.
- A **door to door campaign** was conducted in Bella Vista on 20 August and in Hamlet on 21 August 2014.

## ANNEXURE 6: List of useful organisations

Below are the names and details of various organisations, who may assist in providing support to victims, such as: counselling, shelter services, court support and legal assistance. Furthermore, several organisations are listed as engaging primarily in research, advocacy and community mobilisation – these will be useful for case monitors to contact for the purposes of advice and forming coalitions.

Name of Organisation	Key Support Services	Telephone Number	Location
<b>Coping Centre for People with HIV/Aids</b>	HIV/AIDS counselling, human rights issues, domestic violence support.	040 654 0187	Eastern Cape
<b>Ikhwezi Women’s Centre (IKWSC)</b>	Ongoing counselling, advocacy and awareness raising, shelter services.	045 843 2110	Eastern Cape
<b>Institute on Justice for Child Witnesses</b>	Judicial reform in respect of child witnesses, sexual offences, and gender-based violence.	041 373 6968	Eastern Cape
<b>Khanyisa Victim Empowerment Centre</b>	Shelter for abused women and children, community education, counselling and referral.	043 642 1646	Eastern Cape
<b>Masimanyane Women’s Support Centre (MWSC)</b>	Counselling: focus on gender-based violence and discrimination against women in various forms. Support and advocacy (HIV/AIDS).	043 743 9169	Eastern Cape
<b>Metro Community Services</b>	Counselling for domestic violence, HIV/AIDS and advocacy surrounding human rights.	071 817 9313	Eastern Cape
<b>Rape Crisis Port Elizabeth</b>	Counselling and psychological support and para-legal support to rape survivors, preventative measures within communities and lobbying research.	041 484 3804	Eastern Cape
<b>Voice Movement Therapy Eastern Cape (VMTEC)</b>	Therapeutic counselling for survivors of rape and creating community awareness.	063 137 0640	Eastern Cape
<b>LifeLine Free State</b>	Emotional wellness and support through counselling and training.	057 357 2746	Free State
<b>Thusanang Service Centre (TSC)</b>	Shelter for women and children, court support services and counselling. Also active in community mobilisation and awareness building.	058 713 6075	Free State
<b>African Empowerment Agency</b>	Advice for survivors in deciding on treatment best suited to them.	073 704 4493	Gauteng
<b>Agisanang Domestic Abuse Prevention and Training (ADAPT)</b>	Domestic violence counselling for women and children.	011 440 4047	Gauteng
<b>Centre for Applied Legal Studies (CALS) at Wits University</b>	Litigation, research and activism on gender-based violence.	011 717 8609	Gauteng
<b>Ekupholeni Mental Health and Trauma</b>	Individual and group counselling.	011 648 9820	Gauteng
<b>Kwanele-Enuf Foundation</b>	Advocacy campaigns and mobilisation against sexual violence.	011 881 5661 010 595 0150	Gauteng
<b>Lawyers against Abuse (LvA)</b>	Provides integrated legal and psychosocial support services to victims of GBV. Engaging state actors and communities towards systemic and structural change.	087 150 7235	Gauteng

<b>Legal Resource Centre (LRC)</b>	Public interest and human rights law clinic.	011 836 9831	Gauteng; Eastern Cape; KwaZulu Natal; Western Cape
<b>LifeLine National</b>	Emotional wellness and support through counselling and training.	011 715 2000	Gauteng
<b>LifeLine Vaal</b>	Emotional wellness, gender- based violence counselling.	016 428 1740	Gauteng
<b>McKay Child and Youth Care Centre</b>	Care services for children and youth.	084 608 7005	Gauteng
<b>NISAA Institute for Women's Development</b>	Counselling and shelter for abused women and children.	011 854 5804	Gauteng
<b>People Against Women Abuse (POWA)</b>	Counselling, training, shelter, and legal assistance for survivors of rape.	011 642 4335	Gauteng
<b>Sexual Assault Clinic (SAC)</b>	Provides forensic examinations for rape survivors under the age of 12.	011 420 0523	Gauteng
<b>Soul City Institute for Social Justice (SCI)</b>	Promotion of a just society with a focus on girls and women, work primarily done through advocacy campaigns, peer education and community outreach.	011 341 0360	Gauteng
<b>South African Male Survivors of Sexual Abuse (SAMSOSA)</b>	Resource and referral centre, providing information, support and training for male victims of sexual abuse; advocacy	071 280 9918	Gauteng
<b>Tears</b>	Access to crisis intervention, advocacy, counselling and prevention education services for those impacted by domestic violence, sexual assault and child sexual abuse.	010 590 5920	Gauteng
<b>The Teddy Bear Clinic (TTBC)</b>	Services to victims of child abuse, outreach programmes and diversion.	011 484 4554	Gauteng
<b>Trauma Support SA (TSSA)</b>	Raise awareness and provide access to Trauma Support Services and trauma counselling	063 047 1073	Gauteng
<b>Tshwaranang Legal Advocacy Centre (TLAC)</b>	Advocacy against violence against women, justice for victims of gender-based violence.	011 403 4267	Gauteng
<b>Women &amp; Men Against Child Abuse (WMACA)</b>	Rape clinics for children where free therapy is provided, and outreach programmes are conducted at schools.	011 789 8815	Gauteng
<b>Childline South Africa</b>	Age-appropriate therapeutic intervention for abused children.	031 201 2059 031 201 0669 031 201 0314	KwaZulu-Natal; National
<b>Children in Distress Network (CINDI)</b>	Programmes for children and care-givers within communities.	033 345 7994	KwaZulu-Natal
<b>Families South Africa (FAMSA) Pietermaritzburg</b>	Training services, counselling services, educational programmes for family-related issues.	033 342 4945	KwaZulu-Natal
<b>Justice and Women (JAW)</b>	Awareness raising within communities, paralegal services	033 394 9949	KwaZulu-Natal
<b>KwaZulu-Natal Regional Christian Council (KRCC)</b>	Advocacy around violence against women; community programmes to monitor service delivery in poor communities; focus on social justice, poverty, diseases.	035 474 1058	KwaZulu-Natal
<b>LifeLine Durban</b>	General counselling, training, HIV testing and support.	031 303 1344	KwaZulu-Natal



<b>LifeLine Pietermaritzburg</b>	Emotional wellness through generic counselling, GBV counselling & support, awareness raising, training, HIV testing & support.	033 342 4447	KwaZulu-Natal
<b>LifeLine Zululand</b>	Emotional wellness programmes, HTS, Training and EAP.	035 789 2472	KwaZulu-Natal
<b>Pietermaritzburg Women's Legal Association</b>	Networking and mentorship of women in the legal community, training, advocacy, monitoring of legislation.	082 843 7892	KwaZulu-Natal
<b>Project Empower</b>	Advocacy for human rights and social justice, response to HIV/AIDS.	031 3103 565/42	KwaZulu-Natal
<b>Limpopo Legal Advice Centre (LLAC)</b>	Human rights advocacy through paralegal consultation.	082 548 6126	Limpopo
<b>Litshani Vhana-Vha-De Foundation</b>	Advocate for the rights of children, youth and women; research on children, youth and women rights; community outreach programmes in Thulamela Municipality	015 964 5054	Limpopo
<b>Mutale Victim Empowerment Programme</b>	Debriefing, lay counselling, accommodation (protection), referral, court preparation, awareness campaigns, home visits, door to door.	082 727 4271	Limpopo
<b>Tipfuxeni Community Counselling Centre (TCCC)</b>	Lay counselling, mediation and victim support, advocacy on gender-based violence, poverty and sexual reproductive rights.	015 556 1041	Limpopo
<b>Thohoyandou Victim Empowerment Project (TVEP)</b>	Advocacy against child abuse, sexual violence, HIV/AIDS awareness, court support and case management.	015 963 1222	Limpopo
<b>Greater Nelspruit Rape Intervention Project (GRIP)</b>	Advocacy for diseases contracted during rape, support for survivors of rape, education around HIV/AIDS prevention.	013 752 4404	Mpumalanga
<b>LifeLine Northern Cape</b>	Special programmes and services on SGBV and SRH for key and vulnerable populations with special focus on sex workers	053 832 8533	Northern Cape
<b>Optimystic Bikers Against Abuse</b>	Advocacy and education around abuse and domestic violence, crisis intervention and assistance for domestic violence, child abuse and sexual assault.	071 427 0187	Northern Cape
<b>Lethabong</b>	Support for survivors of sexual violence and domestic violence.	021 270 2011	North West
<b>LifeLine Mafikeng</b>	HTS, CBHTS, HBHTS, GBV, counselling, referral, basic counselling skills training, HIV/Aids training.	018 381 0976	North West
<b>LifeLine Rustenburg</b>	HST services, GBV services, generic counselling, trauma intervention and psychosocial support, counsellor training and capacity building for NGOs and CBOs.	014 592 3158 014 594 1455	North West
<b>Lawyers for Human Rights (LHR)</b>	Public interest litigation, advocacy for human rights through legal reform.	021 424 8561	Western Cape; Gauteng
<b>MOSAIC</b>	Counselling for survivors of domestic violence and for violent men, court support.	021 761 7585	Western Cape
<b>MSF (Doctors without Borders)</b>	Health care in areas severely impacted by gender-based and sexual violence	021 446 1058	Western Cape Gauteng
<b>New World Foundation</b>	Addressing conflict and gender justice and stereotypes throughout all programmes, e.g. home-based care, after care, educate.	021 701 1150	Western Cape

<b>Partners in Sexual Health (PSH)</b>	Sexual and reproductive health and rights (SRHR) incl. HIV services -prevention, treatment, care and support, advocacy and research, especially targeting adolescents and youth.	021 932 6377	Western Cape
<b>Philisa Abafazi Bethu</b>	Women's development, capacity building, skills development in impoverished communities, after-school programme, shelter for survivors of domestic violence.	021 802 4030	Western Cape
<b>Rape Crisis Cape Town Trust (RCCTT)</b>	Counselling for survivors of sexual violence and supporters, legal support for survivors going to court, advocacy programmes around sexual violence legislation, peer education.	021 447 1467	Western Cape
<b>Sonke Gender Justice</b>	Advocacy and gender education, community mobilisation around gender roles and norms, sexual violence, HIV/AIDS; court monitoring	021 423 7088	Western Cape; Gauteng; Mpumalanga
<b>Sex Worker Education &amp; Advocacy Task force (SWEAT)</b>	Sex worker rights, health care, protection, advocacy for the decriminalisation of sex work.	021 448 7875	Western Cape; Gauteng; Eastern Cape
<b>Triangle Project</b>	LGBTIAQ+ safe space, advocacy centre, health and support services, peer education and community development around eradicating homophobia and homophobic sexual violence.	081 257 6693	Western Cape
<b>Gender Health and Justice Research Unit (GHJRU) at UCT</b>	Research and advocacy against violence directed towards women and children.	021 406 6023	Western Cape
<b>Women on Farms Project (WFP)</b>	Rights based education to women who live on farms in the Western and Northern Cape.	021 887 2960/1/2	Western Cape; Northern Cape
<b>Women's Legal Centre (WLC)</b>	Advocacy and training, legal advice and assistance	021 424 5660	Western Cape; Gauteng
<b>Women's Net</b>	Empowers women through skills development in various sectors.	021 782 8816	Western Cape
<b>Pride Shelter Trust</b>	Provides shelter/accommodation to LGBTI persons experiencing abuse.	021 423 2871	Western Cape
<b>St Anne's Homes</b>	Shelter, care, and empowerment of destitute, abused and disadvantaged mothers and their children.	021 448 6792 021 488 8513	Western Cape
<b>ProBono.Org</b>	Provides free legal services to those who cannot otherwise afford it.	087 806 6070	Western Cape; Gauteng; Kwa-Zulu Natal
<b>Legal Aid South Africa</b>	Provides professional legal advice and representation to those who can't afford it.	0800 110 110 (Toll-free legal aid advice line)	All 9 provinces

## ANNEXURE 7: List of Thuthuzela Care Centres

TCC SITE/HOSPITAL ADDRESS		CONTACT DETAILS
<b>EASTERN CAPE</b>		
1	Bizana TCC St Patrick's Hospital Bizana	Tel: 039 251 0236 (ext. 3066) Fax: 039 251 0286
2	Butterworth TCC Butterworth Hospital Butterworth	Tel: 047 491 2506 Fax: 047 491 0338
3	Dora Nginza TCC Dora Nginza Hospital Port Elizabeth	Tel: 041 406 4112
4	Libode TCC (Mthatha) St Barnabas Hospital Nyandeni Region, R61 on way to Port St. Johns (10k Past Libode)	Tel: 047 568 6274
5	Lusikisiki TCC St Elizabeth Hospital Lusikisiki	Tel: 039 253 5000 Fax: 039 253 1116
6	Mdantsane TCC Cecilia Makiwane Hospital Mdantsane, East London	Tel: 043 761 2023 Fax: 043 761 6277
7	Mthatha TCC Mthatha General Hospital Mthatha	Tel: 047 502 4000 Fax: 047 502 4126
8	Taylor Bequest TCC Taylor Bequest Hospital (1 Main Street) Matatiele	Tel: 039 737 3186 Fax: 039 737 4134
9	Grey Hospital TCC King's Road King William's Town	Tel: 043 643 3300
<b>FREE STATE</b>		
10	Bongani TCC Health Complex (Old Provincial Hospital), Long Road Str Welkom	Tel: 057 355 4106 Fax: 057 355 4109
11	Metsimaholo TCC Metsimaholo District Hospital (8 Langenhoven Street) Sasolburg	Tel: 016 973 3997 Fax: 016 970 9401
12	Phekolong TCC Phekolong Hospital 2117 Riemland Road Bohlokong Bethlehem	Tel: 058 304 3023 Fax: 058 304 2672
13	Tshepong TCC National District Hospital, Roth Avenue, Willows Bloemfontein	Tel: 051 448 6023 Fax: 051 403 2232

## GAUTENG

14	Baragwaneth/Nthabiseng TCC Chris Hani Bara Hospital Chris Hani Road, Diepkloof	Tel: 011 933 1140
15	Kopanong TCC Kopanong Hospital No. 2 Casino Road, Duncanville, Vereeniging	Tel: 016 428 5959 Fax: 016 428 5625
16	Laudium TCC Laudium Hospital & Community Health Centre Corner Bengal & 25th Avenue, Laudium	Tel: 012 374 3710 Fax: 012 374 2621
17	Lenasia TCC Lenasia Hospital, Cosmos Street Lenasia South, Johannesburg	Tel: 011 211 0632 Fax: 011 909 3015
18	Mamelodi TCC Mamelodi Day Hospital Tsamaya Road, Mamelodi East	Tel: 012 841 8413
19	Masakhane TCC Tembisa Hospital Industrial & Clint Mazibuko Road, Tembisa	Tel: 011 923 2180 Fax: 011 920 1195
20	Thelle Mogoerane TCC Thelle Mogoerane Regional Hospital 12390 Nguza Str, Ext 14 Vosloorus	Tel: 010 232 2078

## KZN

21	Edendale TCC Edendale Hospital, Moses Mabhida Rd, Plessislaer, Edendale, Pietermaritzburg	Tel: 033 395 4325 Fax: 033 395 4060
22	Madadeni TCC Madadeni Hospital, Section 5 Madadeni Newcastle	Tel: 034 328 8508 (ext. 8514)
23	Empangeni TCC Ngwelezana Hospital, Cnr Thanduyise & Ngwelezana Road, Empangeni	Tel: 035 794 1471 Fax: 035 794 1684
24	Port Shepstone TCC Port Shepstone Regional Hospital, Bazley Street Port Shepstone	Tel: 039 688 6021 Fax: 039 688 6034
25	Umlazi TCC Prince Mshiyeni Memorial Hospital Umlazi	Tel: 031 907 8496 Fax: 031 906 1836
26	Phoenix TCC Mahatma Ghandi Memorial Hospital 100 Phoenix Highway, Phoenix	Tel: 031 502 2338 Fax: 031 502 7345
27	RK Khan TCC RK Khan Hospital RK Khan Circle, Westcliffe	Tel/Fax: 031 401 0394
28	Stanger TCC Stanger Provincial Hospital, Corner King Shaka St & Patterson Rd, Stanger	Tel: 032 551 6632



## LIMPOPO

29	Mankweng TCC Mankweng Hospital (cnr Hospital & Dorp Street) Mankweng, Polokwane	Tel: 015 286 1000 Fax: 015 267 0369
30	Mokopane TCC Mokopane Hospital Dudu Madisha Drive, Mokopane	Tel: 015 483 4000 Fax: 015 483 2405
31	Musina TCC Musina Hospital White Road, Musina	Tel: 015 534 0446 Fax: 015 534 0819
32	Nkhensani TCC Nkhensani Hospital Giyani Parliament & Giyani Factory Unit (next to Giyani Testing Ground), Giyani	Tel: 015 812 0227 Fax: 015 812 2461
33	Seshego TCC Seshego Hospital (cnr Bookelo & Mandela Street) Seshego	Tel: 015 223 0483 Fax: 015 223 6169
34	Tshilidzini TCC Tshilidzini Hospital R 524 Punda Maria Road, Tshisaulu Limpopo	Tel: 015 964 3257/2310 Fax: 015 964 1072
35	Groblersdal TCC 18 Voortrekker Street, Groblersdal Limpopo	Tel: 013 262 3024 Fax: 013 262 2764

## MPUMPALANGA

36	Ermelo TCC Ermelo Hospital 1 Joubert St, Ermelo	Tel: 017 811 2031 Fax: 017 811 5104
37	Evander TCC Evander Hospital (cnr Bologna and Lausanne Rd) Evander	Tel: 017 632 2211 Fax: 017 811 5104
38	Themba TCC Themba Hospital Main Road, Kabokweni	Tel: 013 796 9412/2072 Fax: 013 796 2072
39	Tonga TCC Tonga Hospital Tonga View, Kwalugedlane Nkomazi	Tel: 013 780 9231 Fax: 013 780 0733
40	Emalahleni TCC Witbank Hospital Mandela Street, Witbank	Tel: 013 653 2000 Fax: 013 656 1316

## NORTHERN CAPE

41	De Aar TCC Central Karoo Hospital Visser Street, De Aar	Tel: 053 631 7093 Fax: 053 631 7093
42	Galeshewe TCC Galeshewe Day Hospital Tyson Road, Kimberley	Tel: 053 830 8900
43	Kuruman TCC Kuruman Hospital Main Street, Kuruman	Tel: 053 712 8133 Fax: 053 712 8118
44	Springbok TCC Van Niekerk Hospital (Springbok Hospital) Hospital Street, Springbok	Tel: 027 712 1551 Fax: 027 712 1560

## NORTH WEST

45	Job Shimankane Tabane TCC Job Shimankana Tabane Hospital, Corner Heystek & Bosch Street, Rustenburg	Tel: 014 045 0001/2/3
46	Klerksdorp TCC Klerksdorp Hospital Benji Olipha Road Jouberton, Klerksdorp	Tel: 018 464 9222/00 Tel:018 465 2828
47	Mafikeng TCC Mafikeng Provincial Hospital Lichtenburg Road, Mafikeng	Tel: 018 387 6900 Tel:018 383 7000 Tel:018 387 7000
48	Potchefstroom TCC Potchefstroom Hospital (Cnr Botha & Chris Hani Street) Potchefstroom	Tel: 018 293 4658/61
49	Taung TCC Taung District Hospital, Office 005 Trauma Counseling Unit Magistrate Street, Taung	Tel/Fax: 053 994 1206

## WESTERN CAPE

50	George TCC George Provincial Hospital Davidson Road, Glen Barrie George	Tel: 044 873 4858  Fax: 044 873 6748
51	Karl Bremer TCC Karl Bremer Hospital, Corner Mike Pienaar Boulevard & Frans Conradie Avenue, Belville	Tel: 021 948 0861 Fax: 021 918 1341
52	Khayelitsha TCC Khayelitsha Hospital Khayelitsha Community Health Centre Lwandle Road, Site B Khayelitsha	Tel: 021 360 4570
53	Manenberg TCC GF Jooste Hospital Duinefontein Road, Mannenburg	Tel: 021 699 0474
54	Worcester TCC Worcester Hospital Murray Street, Worcester	Tel: 023 348 1294
55	Atlantis TCC Wesfleur Hospital Wesfleur Circle, Atlantis	Tel: 021 571 8043 Tel: 021 010 0421 Fax: 021 572 4420

## ANNEXURE 8: Minimum sentences


The Criminal Law Amendment Act (105 of 1997) sets out the minimum sentences for certain types of offences. Magistrates and Judges are required to impose these sentences, unless “substantial and compelling circumstances exist which justify the imposition of a lesser sentence than the sentence prescribed”.

The following offences attract a minimum sentence of **life imprisonment**:

- **Murder**, when –
  - a. it was planned or premeditated;
  - b. the victim was – (i) a law enforcement officer performing his or her functions, whether on duty or not; or (ii) a person who has given or was likely to give material evidence at criminal proceedings in any court;
  - c. the death of the victim was caused by the accused in committing or attempting to commit or after having committed or attempted to commit one of the following offences:
    - rape or compelled rape; or
    - robbery with aggravating circumstances;
  - d. the offence was committed by a person, group of persons or syndicate acting in the execution or furtherance of a common purpose or conspiracy;
  - e. the victim was killed in order to unlawfully remove any body part of the victim, or as a result of such unlawful removal of a body part of the victim; or
  - f. the death of the victim resulted from, or is directly related to, an offence of the Witchcraft Suppression Act.

(Note that for murder committed in any other instances to those mentioned above, the minimum sentence will range from 15-25 years, depending on whether it is a first, second or multiple time offence).

- **Rape** –
  - a. when committed - (i) in circumstances where the victim was raped more than once whether by the accused or by any co-perpetrator or accomplice; (ii) by more than one person, where such persons acted in the execution or furtherance of a common purpose or conspiracy; (iii) by a person who has been convicted of two or more offences of rape or compelled rape, but has not yet been sentenced in respect of such convictions; or (iv) by a person, knowing that he has the acquired immune deficiency syndrome or the human immunodeficiency virus;
  - b. where the victim (i) is a person under the age of 16 years; (ii) is a physically disabled person who, due to his or her physical disability, is rendered particularly vulnerable; or (iii) is a person who is mentally disabled
  - c. involving the infliction of grievous bodily harm.
- **Compelled rape** –
  - a. when committed- (i) in circumstances where the victim was raped more than once by one or more than one person; (ii) by a person who has been convicted of two or more offences of rape or compelled rape, but has not yet been sentenced in respect of such convictions; or (iii) under circumstances where the accused knows that the person committing the rape has the acquired immune deficiency syndrome or the human immunodeficiency virus;

- 
- b. where the victim (i) is a person under the age of 16 years; (ii) is a physically disabled person who, due to his or her physical disability, is rendered particularly vulnerable; or (iii) is a person who is mentally disabled; or
  - c. involving the infliction of grievous bodily harm.

(Note that for rape or compelled rape committed in any other instances to those mentioned above, the minimum sentence will range from 10-20 years, depending on whether it is a first, second or multiple time offence

Offences relating to the sexual exploitation of a child, or assault with intent to do grievous bodily harm on a child under the age of 16 years, will attract a minimum sentence ranging from **10-20 years**, depending on whether it is a first, second or multiple time offence.



# ANNEXURE 9: Report - Presidential Summit on GBV



## PRESIDENTIAL SUMMIT AGAINST GENDER-BASED VIOLENCE & FEMICIDE

2 NOVEMBER 2018

# *Declaration*



## PREAMBLE

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**WE**, the one thousand two hundred delegates of the South African Presidential Summit against Gender-based Violence and Femicide (GBV), held on 1 and 2 November 2018 in Pretoria, representing –

- (a) survivors of gender-based violence;
- (b) the government of South Africa; and
- (c) South African society at large,

and coming from all walks of life, without any distinction in terms of race, colour, age, sex, gender identity, sexual orientation, disability, marital status, HIV status, language, ethnic or social origin, geographical location, political or other opinion, religion, conscience, belief, culture, birth, and nationality;

**ACKNOWLEDGING** that the epidemic of gender-based violence and femicide in South Africa is a national crisis;

**AND RECOGNISING** those who have survived gender-based violence as well as those who sadly paid the final sacrifice as a result of gender-based violence and have become a statistic of femicide;

**AND ACKNOWLEDGING** that the Presidential Summit against Gender-based Violence and Femicide is *primarily* an outcome of the mobilization efforts by women living in South Africa who, on 1 August 2018, marched in all nine provinces to express the indignation against the increasing levels of gender-based violence and femicide in the country, and the ineffective justice system over the past years;

**AND FURTHER RECOGNISING** that on the same day, under the umbrella of #TheTotalShutdown Movement, some women also marched to the Union Buildings in Pretoria where they handed a Memorandum of Demands to the President of the Republic of South Africa requiring *inter alia* that a *national gender summit* be hosted in the country;

**AND THAT THEREFORE** this Presidential Summit against Gender-based Violence and Femicide is the President's response to this demand, and is henceforth considered as a historical turning point since it has provided an opportunity for government, civil society and social movements to work together constructively with a common goal of eradicating gender-based violence and femicide in South Africa.

**WE ARE-**

**DEEPLY CONCERNED** that-

- (1) The extent of gender-based violence and femicide in South Africa has reached crisis proportions;
- (2) The rate of femicide in South Africa is reported to be amongst the highest globally;
- (3) Gender-based violence, without excluding other related crimes like hate crimes and femicide, is an affront to our shared humanity as South Africans, a violation of the Constitution of the Republic of South Africa and an obstruction to sustainable human development;
- (4) The realisation of a prosperous and vibrant democracy is deeply compromised by violence directed at women and gender non-conforming persons who constitute more than half the country's population;
- (5) Gender-based violence impacts profoundly on the lives and well-being of survivors, families, communities and the broader society, and it potentially reproduces itself across generations;
- (6) Women and gender non-conforming persons are not homogenous groups and are subject to intersectional vulnerabilities exacerbating the inequalities, discrimination and oppression.




*AND WHILE RECOGNISING* that:

- (1) The Constitution of the Republic of South Africa sets the overarching framework for effectively protecting human rights of all persons, including women and gender non-conforming persons;
- (2) A range of laws, policies, programmes and interventions are in place across all sectors to address gender-based violence and femicide, and the needs of all who are affected.
- (3) Notwithstanding all interventions, prevention remains the key element in turning the tide against gender-based violence and femicide, which in South Africa has not received the necessary investment in order to make a positive and meaningful impact;
- (4) The implementation of the existing legal framework and its accompanying actions is not fully effective since survivors continue to experience high levels of secondary victimization and inadequate responses from the criminal justice system;
- (5) The psycho-social and related needs of survivors are not adequately addressed, with civil society organizations often bearing the brunt of providing care and response services in order to close service gaps in the justice system;
- (6) The existing inequitable and inconsistent resourcing approach to Thuthuzela Care Centres, sexual offences courts, shelters, Khuseleka One Stop Centres and other related facilities across South Africa, render these facilities inadequate in order to meet the needs of all sectors, particularly persons with disabilities and Lesbian, Gay, Bisexual, Transgender, Queer, Intersex and Asexual (LGBTQIA+) persons;
- (7) Harmful gender-based stereotypes in media reporting of women's objectification, men's entitlement and normative gender roles contribute to fuelling the levels of gender-based violence and femicide;







- 
- (1) There is poor accountability across all sectors providing services to survivors of gender-based violence, particularly in the allocation and use of resources in order to address the breadth and depth of the crisis.

**THEREFORE, WE-**

**REAFFIRM** our commitment to a united, comprehensive and effective prevention and response to gender-based violence and femicide in South Africa;

**AND SUPPORT** the call by the President of the Republic of South Africa:

- (1) To all South Africans to prevent and respond to gender -based violence and femicide,
- (2) For the establishment of a multi-sectoral coordinating body in order to lead and give oversight in all country interventions against gender-based violence and femicide;
- (3) For the allocation of necessary and adequate resources in order to eradicate gender-based violence and femicide, and also to resource the development and the implementation of a national strategy against gender-based violence and femicide;

**AND COMMEND** the pledge made by the President of the Republic of South Africa for committing to –

- (a) making financial resources available necessary to address gender-based violence and femicide;
- (b) listening to the women of South Africa; and
- (c) responding with the urgency required.

**THEREFORE, WE**

**RESOLVE** to work collaboratively in the total eradication of gender-based violence and femicide;

## DECLARATION

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### WE DECLARE THAT-

#### ARTICLE 1

Political, government, business and community leadership take responsibility and support the cause of eradicating gender-based violence and femicide.

#### ARTICLE 2

Political, government, business and community leadership, and families be held accountable for actions and omissions that are contrary to the achievement of a South Africa that is free from gender-based violence and femicide, as determined in a national Code of Conduct or similar measure which will be developed by the multi-sectoral coordinating body, without excluding the existing related measures.

#### ARTICLE 3

An *Interim Gender-based Violence and Femicide Committee* be established immediately with resources allocated in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999) with the aim to -

- (a) establish a permanent national multi-sectoral coordinating body, and
- (b) implement actions listed in this Declaration, as agreed on by the said *Interim Committee*.

#### ARTICLE 4

The national multi-sectoral coordinating body -

- (a) be championed by the President of the Republic of South Africa;
- (b) be established within *six months* of the date on which this Summit Declaration is signed by the signatories below;
- (c) be allocated adequate resources for its optimal functioning in accordance with the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- (d) be governed by a statutory framework to ensure its effective functioning;

- (a) be inclusive in its representation, with at least 51% of its members coming from civil society;
- (b) comply with the principles of fairness and justice when exercising voting powers;
- (c) is transparent in the appointment of any person to its membership;
- (d) develops a National Strategy with Action Plan for gender-based violence and femicide not later than six months after its establishment, which must -
  - (i) be adequately costed and resourced in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999);
  - (ii) set out indicators to be complied with by all stakeholders, including civil society stakeholders; and
  - (iii) be monitored and evaluated on a regular basis by the national multi-sectoral coordinating body.

#### **ARTICLE 5**

The existing laws and policies applicable to gender-based violence and femicide are to be reviewed to ensure that they are more victim-centred and responsive, and that the identified legislative gaps are addressed without delay.

#### **ARTICLE 6**

The development of a regulatory framework for the functioning of religious, cultural and spiritual institutions be considered in order to curb gender-based violence and femicide perpetrated under the guise of religion and culture.

#### **ARTICLE 7**

The finalisation of outstanding legislative measures and policies that relate to gender-based violence and femicide, as well as the protection of the rights of women and gender non-conforming persons, be fast-tracked, in particular the Prevention and Combating of Hate Crimes and Hate Speech Bill, the Victim-Support Services Bill, and the policy relating to the decriminalisation of sex work.

#### **ARTICLE 8**

All laws and policies, programmes and interventions contemplated above, be adequately planned, costed and resourced, in line within the gender-responsive planning, budgeting and monitoring evaluation framework across government.



#### **ARTICLE 9**

A comprehensive costing and resourcing, in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999), for the effective functioning and management of the facilities that render support services to survivors of gender-based violence be conducted, which include the Thuthuzela Care Centres, designated public health establishments, sexual offences courts, family courts, shelters and Khuseleka Centres, so that they are able to address the needs of all survivors of gender-based violence, including persons with disabilities and the LGBTQIA+ persons.

#### **ARTICLE 10**

Existing national gender machinery and similar mechanisms are maintained, resourced, strengthened and re-invigorated.

#### **ARTICLE 11**

Existing information and research databases are strengthened in order to develop effective and coordinated evidence-based policies and programming that are inclusive of persons with disabilities and the LGBTQIA+ persons.

#### **ARTICLE 12**

Support services to survivors of gender-based violence are improved with the view to ensuring-

- (a) ongoing capacity-building,
- (b) regular provision of compulsory trauma debriefing programmes,
- (c) specialization, and
- (d) strengthened coordination

informed by legislation, policies, protocols, norms and standards on gender-based violence and femicide.

#### **ARTICLE 13**

All services offered to survivors of gender-based violence are free from secondary victimisation.

#### **ARTICLE 14**

In view of the link that exists between gender-based violence, substance abuse and HIV infections, the interventions that address these social ills be evaluated, resourced and strengthened in order to meet the competing demands of this crisis.

#### **ARTICLE 15**

The integration of systems for the optimal management of data throughout the justice system be finalised without further delay, which must include the collection of disaggregated data relating to survivors and offenders, from the point of entry into the justice system to the exit, with unique identifier functionality.

#### **ARTICLE 16**

All communicators and institutions of communication develop, adopt and execute ethical guidelines or frameworks for reporting gender-based violence and femicide incidents in order to promote fairness, respect for dignity and privacy and also introduce compulsory social context training for the media and communication sectors.

#### **ARTICLE 17**

The existing education and training system be evaluated with a view to strengthening prevention initiatives in respect of, and responses to, gender-based violence and femicide at all levels of the said system.

#### **ARTICLE 18**

New social behaviour change programmes are introduced in communities or that such existing programmes are strengthened in order-

- (a) to address patriarchal values and norms and structural drivers of gender-based violence and femicide,
- (b) to target all people living in South Africa, including all persons strategically placed to influence attitudes, behaviours and practices, and
- (c) to be supported by an effective and resourced communication strategy in accordance with the Public Finance Management Act, 1999 (Act No. 1 of 1999).

#### **ARTICLE 19**

Economic development for women that takes into account gender non-conforming and other marginalized groups is promoted.

*AND HAVING REGARD* to the adoption of the Summit Declaration by the delegates on 2 November 2018;

*AND HAVING AGREED THAT* this Declaration is the embodiment of priority actions setting a roadmap to a South Africa free from gender-based violence and femicide, as envisioned by the National Development Plan, 2030;

*AND HAVING ACKNOWLEDGED THAT* this Declaration is an affirmation of firm intent;

*AND HAVING FURTHER ACKNOWLEDGED THAT* the interpretation of this Declaration shall be in accordance with the ordinary grammatical meaning and within the context of the Constitution and the laws of South Africa;

*NOW IT IS THEREFORE PROCLAIMED THAT* this PRESIDENTIAL SUMMIT DECLARATION AGAINST GENDER-BASED VIOLENCE AND FEMICIDE is hereby assented to and signed by the following signatories:




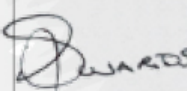




**On behalf of the government of South Africa:**

\_\_\_\_\_  
**His Excellency President Matamela Cyril Ramaphosa**  
President of the Republic of South Africa

Date: \_\_\_\_\_



**On behalf of civil society:**

No	Organisation	Representative	Position	Signature
1.	#TheTotalShutDown	Sibongile Antonette Mthembu	Steering Committee member	
2.	Call to Action	Nonhlanhla Sibanda-Moyo	Representative	
3.	Genderlinks	Lindi Zelda Khoza	Representative	
4.	KwaZulu-Natal Network on Violence against Women	Nizaam Edwards	Coordinator	
5.	National Shelter Movement of South Africa	Dr. Zubeda Dangor	Head of the Executive	
6.	Shukumisa Campaign	Shaheda Omar	Steering Committee Member	
7.	Stop Gender-based Violence Campaign	Ragadi Mohlahlane	Coordinator	
8.	Women Inkwelo Network	Lesley-Ann Foster	Executive Director	
9.	Women on Farms Project	Rebecca Mort	programme Coordinator	







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