

REPORTING SEXUAL OFFENCES TO THE POLICE

Handbook and Pilot Project

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PURPOSE OF THE HANDBOOK

The Centre for Applied Legal Studies (CALs) was approached by the leadership of Women Affected by Mining United in Action (WAMUA) in 2021 to partner in developing a series of handbooks and/or training guides around gender-based violence (GBV). This emerged from increased requests by various community members for training around specific forms of GBV and how to negotiate the criminal justice and judicial systems.

This specific handbook deals with how to report any sexual offence to the South African Police Service (SAPS) and ways to monitor the movement of the criminal case through the investigation, prosecution, and conviction stages of the process.

This handbook is limited to cases of **sexual offences** (such as rape and sexual assault). It does not deal with **harassment** (such as stalking and intimidation by someone outside of your home) and **domestic violence** (such a physical and sexual abuse by an intimate partner). This is because harassment and domestic violence have their own system of reporting, which involves both criminal penalties and other accountability mechanisms. Both harassment and domestic violence will be set out in their own handbook.

The handbook contains relevant information, law and procedures that are correct and up to date in 2021. There may be additions that need to be made in the future when developments occur in legislation and/or policy.

ABBREVIATIONS

AIDS	Acquired Immune Deficiency Syndrome
ARV	Anti-Retroviral
CAS	Case Administration System
CALS	Centre for Applied Legal Studies
DPP	Director of Public Prosecutions
GBV	Gender-based violence
HIV	Human Immunodeficiency Virus
NPA	National Prosecuting Authority
PEP	Post-Exposure Prophylaxis
OB	Occurrence book
SAPS	South African Police Service
SORMA	Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007
STI's	Sexually Transmitted Infections
TCC	Thuthuzela Care Centre
WAMUA	Women Affected by Mining United in Action

DEFINITIONS¹

Accused	<ul style="list-style-type: none"> • A person or group of people who are charged with or on trial for a crime
Acquittal	<ul style="list-style-type: none"> • When a criminal case is complete, the presiding officer makes an order. This order can either be that the accused is found guilty or that they are acquitted. An order that an accused is acquitted means that the State did not prove the case beyond a reasonable doubt, and therefore the accused is free to go.
Bail	<ul style="list-style-type: none"> • When bail is granted, an accused will be released from custody once they have paid or given a guarantee to pay, a sum of money determined by the court.²
CAS number	<ul style="list-style-type: none"> • The number is given to a specific report of an offence by the police. It is similar to a file number.
Case number	<ul style="list-style-type: none"> • The number is given by a court for a criminal offence case.
Complainant	<ul style="list-style-type: none"> • The person who a crime has been committed against and the person makes a complaint in a criminal offence case.
Consent	<ul style="list-style-type: none"> • Legal: voluntary and uncoerced agreement to a sexual act.³ • Plain language: an agreement between participants to engage in sexual activity. Consent should be clearly and freely communicated (not coerced). • Children under 12 cannot consent to a sexual act. • There is a rebuttable presumption that children older than 12 but under 16 cannot consent to a sexual act.

¹ With definitions which have specific legal criteria, the definition as set out in law is referenced first and then a 'plain language' definition is supplied.

² J, Joubert, *Criminal Procedure Handbook*, (11ed), 2014, 165.

³ Section 1(2) OF SORMA.

Criminal capacity	<ul style="list-style-type: none"> The age at which it is presumed in law that a child has the cognitive ability and maturity to distinguish between right and wrong and understand the consequences of their actions.
Defence lawyer/attorney/advocate	<ul style="list-style-type: none"> The person who represents the perpetrator or the accused in a criminal case. They usually argue that the accused should not be found guilty of an offence.
Docket	<ul style="list-style-type: none"> This is the file of evidence for a case kept by the investigating officer and then the prosecutor. It has three sections: (a) statements of witnesses, expert reports and documentary evidence, (b) internal reports and memoranda (c) investigation diary.
Domestic Violence (Covered in further handbooks)	<ul style="list-style-type: none"> Legal: is 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, where the parties do not share the same residence; or any other controlling or abusive behaviour towards a complainant, where such conduct harms, or may cause imminent harm to, the safety, health or wellbeing of the complainant.⁴ Plain language: violent or aggressive behaviour within the home, typically involving the violent abuse of a spouse, partner, or other person in your family or your household.
Full statement or full victim statement	<ul style="list-style-type: none"> A full statement is taken <i>after</i> the initial statement. The full statement aims to record any information that the complainant may have forgotten to include in the first or the initial statement. The full statement should <i>ideally</i> be taken within 24 to 36 hours of the initial statement.
Harassment (Covered in further handbooks)	<ul style="list-style-type: none"> Legal: directly or indirectly engaging in conduct that the respondent knows or

⁴ Section 1 of the Domestic Violence Act 116 of 1998.

	<p>ought to know- (a) causes harm or inspires the reasonable belief that harm may be caused to the complainant or a related person by unreasonably- (i) following. Watching, pursuing or accosting of the complainant or a related person, or loitering outside of or near the building or place where (10) the complainant or a related person resides, works, carries on business, studies or happens to be; (ii) engaging in verbal, electronic or any other communication aimed at the complainant or a related person, by any means, whether or not conversation ensues; or (iii) sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects to the complainant or a related person or leaving them where they will be found by, given to or brought to the attention of, the complainant or a related person; or (b) amounts to sexual harassment of the complainant or a related person.⁵</p> <ul style="list-style-type: none"> • Plain language: violent or aggressive behaviour outside of the home, typically involving people who are not in your family or part of your household. Such as work colleagues or friends.
Investigating officer	<ul style="list-style-type: none"> • The SAPS member appointed to conduct a formal investigation into a report of a criminal offence.
Legal duty	<ul style="list-style-type: none"> • This is an obligation that someone has that is set out in law. Sometimes failing to do this can be a criminal offence.
Magistrate's Court	<ul style="list-style-type: none"> • The main courts that hear criminal matters.
Marital rape/spousal rape	<ul style="list-style-type: none"> • This is rape that occurs within an intimate relationship. This form of rape is not isolated to married individuals. Section of the SORMA states that the old defence of 'conjugal rights' is not permitted in marital rape cases.⁶

⁵ Section 1 of the Protection from Harassment Act 17 of 2011.

⁶ Section 56(1) of SORMA.

Parole	<ul style="list-style-type: none"> Parole refers to the part of a sentence of imprisonment served out in the community, under the supervision of correctional officials and subject to conditions.⁷
Perpetrator	<ul style="list-style-type: none"> A person who commits a criminal offence.
Plea	<ul style="list-style-type: none"> An accused person gives a plea when they 'answer' to the crime they are charged with. They can either plead not guilty or guilty.
Presiding officer/magistrate/judge	<ul style="list-style-type: none"> The person who hears the criminal case. In the Magistrates' Court this they are called magistrates. In the High Court, they are called Judges. An overarching term is 'presiding officer'.
Private prosecution	<ul style="list-style-type: none"> This is where the victim of a crime institutes criminal proceedings against the accused themselves. This can occur if the DPP withdraws their right to prosecute (decides not to prosecute).⁸
Prosecutor	<ul style="list-style-type: none"> The person who represents the State in a criminal case. This is the person who usually argues that an accused person is to be found guilty of an offence.
Rape	<ul style="list-style-type: none"> Legal: any person ("A") who unlawfully and intentionally commits an act of sexual penetration with a complainant ("B"), without the consent of B, is guilty of the offence of rape.⁹ Plain language: the intentional and non-consensual sexual penetration of one person by another. Examples include: <ul style="list-style-type: none"> (1) The genital organs of Lee into the genital organs, anus or mouth of Mpho, (2) Any other part of Lee's body or, any object, into the genital organs or anus of Mpho;

⁷ Department of Correctional Services, *Community Corrections*. Available at http://www.dcs.gov.za/?page_id=317.

⁸ J D, Mujuzi, 'The history and nature of the right to institute a private prosecution in South Africa, *Fundamina*, (2019).

⁹ Section 3 of SORMA.

	(3) or the genital organs of an animal into the mouth of Mpho. ¹⁰
Reporting officer	<ul style="list-style-type: none"> The person at SAPS that a complainant reports a criminal offence to.
Sexual Assault	<ul style="list-style-type: none"> Legal: (1) A person (“A”) who unlawfully and intentionally sexually violates a complainant (“B”), without the consent of B, is guilty of the offence of sexual assault. (2) A person (“A”) who unlawfully and intentionally inspires the belief in a complainant.¹¹ Plain language occurs when Lee intentionally sexually violates Mpho without the consent of Mpho. <p>Sexual assault is also committed where Lee threatens to sexually violate Mpho. ‘Sexual violation’ includes any act which causes – direct or indirect contact between the genital organs, anus or female breasts of one person, and any part of the body of another person, an animal, or object; the mouth of one person and genital organs, anus or breasts of another; the mouth of another person; any other part of the body of another person which causes sexual arousal; any object resembling genital organs, anus or breasts; Mpho’s mouth and the genital organs or anus of an animal; Masturbation of one person by another; or the insertion of any object similar to the genital organs of a person or animal into or beyond Mpho’s mouth. For example, when Lee touches Mpho’s breasts or kisses Mpho without Mpho’s consent.¹²</p>
Sexual offence	<ul style="list-style-type: none"> Legal – Any offence set out in the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (SORMA) or in the common law. Plain language – Sexual offences refer to any crimes of a sexual nature that are

¹⁰ Centre for Applied Legal Studies and Tshwaranang, *A summary of the Criminal Law Sexual Offences Amendment Act 32 of 2007*. Available at <https://shukumisa.org.za/wp-content/uploads/2017/09/A-summary-of-the-Criminal-Law-Sexual-Offences-Amendment-Act-CALS-and-TLAC.pdf>,

¹¹ Section 5 of SORMA.

¹² As above.

	<p>recognised in South African law. This includes (but is not limited to) rape, sexual assault, grooming, being forced into committing a sexual offence, being forced to watch a sexual offence, forcing children to watch pornography.</p>
Station commander	<ul style="list-style-type: none"> This is the person at SAPS who is the head of a police station.
Subpoena	<ul style="list-style-type: none"> The subpoena is a legal process used to make certain that a witness appears to give evidence in a case. There are penalties for not appearing when an individual has been issued with a subpoena.¹³
Survivor	<ul style="list-style-type: none"> This is a person against whom a criminal offence was committed. Individuals often choose to be described as a 'victim' or a 'survivor'.
Trial	<ul style="list-style-type: none"> The legal process where an accused person is charged with an offence and evidence is given to support (State) and to negate (the defence) commission of that crime. The presiding officer considers this evidence and decides (order) whether the accused is guilty or not guilty.
Verdict	<ul style="list-style-type: none"> Decision by the presiding officer on whether the accused is guilty or not guilty.
Victim	<ul style="list-style-type: none"> This is a person against whom a criminal offence was committed. Individuals often choose to be described as a 'victim' or a 'survivor'.
Witness	<ul style="list-style-type: none"> A person who witnessed a crime being committed or know information about the commission of a crime. Both the State and the defence can bring witnesses.
Witness fees	<ul style="list-style-type: none"> A witness is entitled to fees in certain instances (such as travel expenses). A witness is not paid for their testimony.¹⁴

¹³ HG.Org Legal Resources, *To subpoena or not to subpoena an expert? - South Africa*. Available at <https://www.hg.org/legal-articles/to-subpoena-or-not-to-subpoena-an-expert-south-africa-26630>.

¹⁴ Department of Justice and Constitutional Development, *Witnesses & testifying in court*. Available at <https://www.justice.gov.za/vg/witness.html>.

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CHAPTER 1

WHAT TO DO WHEN A SEXUAL OFFENCE IS COMMITTED?

After the sexual offence and before going to the police station

- Sexual offences include various forms of illegal acts. Most commonly, we know of sexual offences such as rape and sexual assault. Yet, there are many other forms acknowledged in our law. This includes ‘child grooming’, ‘flashing’ or showing your genitals to another person without consent, forcing someone to rape another person, and forcing someone to watch a sexual offence being committed. For the purposes of this handbook, however, we will focus on rape. Yet, the same or similar procedures are relevant to other sexual offences too.
- If you or a person you know, who is an adult, has been raped, you have the option to report the rape to the police.¹⁵ When you are an adult, no one can force you to report, though. This remains your choice. However, if the person you know was raped as child, then you have a legal duty (required by law) to report the rape to the police.¹⁶
- If you, or someone you know who is a victim of rape, decides to report the case, there are some things to do before going to the police:
 - Write down everything that happened, you may forget some things, but you can add more information later. This includes if you know the name of the person, how they look, where it happened and when it happened. You should keep a copy of this throughout the process.

¹⁵ ‘Police’ is used interchangeably with the South African Police Service and SAPS.

¹⁶ See section 110 of the Children’s Act 38 of 2005 and section 54 of SORMA.

- If there are any physical marks, sores, scratches or bruises from the rape then, take pictures of these. If your clothes have dirt, blood or anything else on them take photos of this too.
- Avoid taking a bath or washing yourself if you can. Your body might have evidence of the rape and can be important for your case. You can either put your clothes in a bag or continue wearing them when you go to the police.

Did you know?

There is no 'expiry date' on rape cases. You can report a rape many years after it has happened. SAPS has a duty to open a case and investigate the rape whether it occurred that day or twenty years ago.

CHAPTER 2

HOW TO GO ABOUT REPORTING RAPE TO THE POLICE?¹⁷

Did you know?

SAPS cannot refuse to open a case because:¹

1. You cannot remember all the details of the rape.
2. You were drinking alcohol or taking drugs (legal or illegal) before, or after, the rape.
3. The rapist was your husband, partner, ex-husband, ex-partner or a family member.
4. You had previously had consensual intercourse with the perpetrator.
5. Of the type of clothing you were wearing at the time of the rape.
6. You bathed/showered/washed yourself after the rape.
7. The rape occurred many days or years ago.
8. You are not a South African citizen.
9. You are a sex worker.
10. You have HIV/AIDS.
11. The perpetrator gave you money or gifts before or after the offence.

- On arriving at the police station, you are allowed to ask for the following:
 - A separate or private space to explain what happened to you. This must be away from the main desk at the police station.
 - A police officer of a specific gender to interview you.
 - Medical assistance before laying a charge. Medical assistance and collecting evidence from the victim's body take priority over the laying of the charge.²⁰

¹⁷ Although in theory (according to section 6 of the SAPS National Instruction 3/2008) reports can be made telephonically, it is extremely unlikely that this is being practiced at police stations.

¹⁸ [Where is the number in the body text that this footnote and the next corresponds to?] See section 5(3)(d) of the SAPS National Instruction 3/2008, Sexual Offences, which says that officers should ask the victim "whether he or she would prefer to have another person present to support him or her during the interview and, if the victim prefers that such person be present". [This quoted sentence doesn't make sense to me. Is it unfinished or am I just missing something?]

¹⁹ See chapter 2 of the National Policy Guidelines of Sexual Offences, South African Police Service (SAPS) Support to Victims of Sexual Offences and section 3(4) of the SAPS National Instruction 3/2008, Sexual Offences.

²⁰ See chapter 2 of the National Policy Guidelines of Sexual Offences, South African Police Service (SAPS) Support to Victims of Sexual Offences

The initial interview

- This is known as a 'preliminary statement' or a 'skeletal docket'. A police docket is a file of the case and consists of all the evidence gathered in the case.
- You have the right to have the interview conducted in a language you understand as well as have any questions you have answered in a language you understand.
- A further and more in-depth statement should be taken later on. This initial interview is mainly to establish that a crime was committed and details of the accused and possible witnesses.
- You should be asked questions around the following:
 - the time and date on which the offence happened;
 - where the offence was committed;
 - nature or type of sexual offence (It is okay if you don't know what the offence is called. You can just describe what happened);
 - the manner or way in which the sexual offence was committed;
 - the first person to whom the you reported the sexual offence before reporting it to the police;
 - any details regarding the offender(s) that may assist in identifying and finding the perpetrator;
 - any details regarding possible witnesses (people who saw the offence taking place or saw the events before or after the offence) that may assist in identifying and locating the offender.
- When the police official is finished taking down your statement make sure you read through it and correct any errors that may be present. You can then sign the document.

- Once you have given this information to the police they must *as soon as possible* supply you with a case number AND the details of the investigating officer.²¹ If you have been waiting for this information for more than an hour or two without success then you should ask either the reporting officer or investigating officer about providing you with this information.
- If the complainant is a child then the Child Protection Unit or a Specialised worker must be contacted immediately.²²
- If the complainant is a child and an adult gives the initial report on behalf of that child, then the child cannot be present for that statement. This is so that the adult's explanation of what happened does not influence the child's explanation. In this type of scenario try to have an extra trusted person present to remain with the child while the statement is being taken.
- You should be advised by the police of possible places of safety or gender-based violence shelters that you can stay at if you need to.
- You should also be advised by the police of counselling services that are available for you.
- The police have a duty to have a list of both shelters and counselling services available for victims.²³

Did you know?

Thuthuzela Care Centres are 'one-stop' facilities where individuals can report sexual offences, receive medical attention, be provided with counselling and be assisted with preparation for court. There are about 54 TCC's across South Africa. Check if there is one in your area.

²¹ See chapter 5, number 8 of the SAPS National Instruction 3/2008, Sexual Offences

²² See chapter 2, National Policy Guidelines of Sexual Offences, South African Police Service (SAPS) Support to Victims of Sexual Offences.

²³ See chapter 10 of the National Policy Guidelines of Sexual Offences, South African Police Service (SAPS) Support to Victims of Sexual Offences and section 3 of the SAPS National Instruction 3/2008. This duty is also contained under section 2 of the Domestic Violence Act 116 of 1998.

THUTHUZELA CARE CENTRES

All Thuthuzela Care Centre (TCCs) will remain open to survivors reporting rape during the **COVID-19 lockdown** period as an essential service.

The TCCs will remain open as a 24 hour service

WESTERN CAPE TTCs

Heideveld Day Hospital	021 699 3246
Karl Bremer Hospital	021 918 1321
Khayelitsha District Hospital	021 360 4570
Victoria Hospital Forensic Unit	021 799 1111/1235
George Hospital	044 873 4858
Wesflur Hospital, Atlantis	021 010 0421
Worcester Hospital	023 348 1294

EASTERN CAPE TTCs

St Patrick's Hospital, Bizana	039 251 0236
Butterworth Hospital	047 491 2506
Dora Ngizwa Hospital	041 406 4112
Grey Hospital	043 643 3300
St Barnabas Hospital, Mthatha	047 555 1010/11
St Elizabeth Hospital, Luiziskisi	039 253 5000
Cecilia Makiwane Hospital, East London	043 761 2023
Mthatha General Hospital	047 502 4000
Taylor Bequest Hospital, Matatiele	039 737 3107
	039 737 3186

FREE STATE TTCs

Bongani TCC Health Complex Welkom	057 355 4106
Metsimaholo District Hospital, Sasolburg	016 973 3997
Phekolong Hospital, Bethlehem	058 304 3023
Tshepong TCC National District Hospital, Bloemfontein	051 448 6023

GAUTENG TTCs

Chris Hani Bara Hospital, Diepkloof	011 933 1140
Kopanoeng Hospital, Vereeniging	016 428 5959/7105
Laudium Hospital, Pretoria	012 374 3710
Lenasia Hospital	011 211 0632
Mamelodi Day Hospital	012 841 8413
Tembisa Hospital	011 923 2180
Thelle Moggerane Hospital, Vosloorus	011 590 0086

KWAZULU NATAL TTCs

Edendale Hospital	033 395 4325
Madadeni Hospital	034 328 8508
Ngwelezana Hospital	035 794 1471
Port Shepstone, Regional Hospital	039 688 6021
Umlazi TCC	031 907 8496
Phoenix TCC, Unit 2	031 502 2338
RK Khan TCC, Westcliffe	031 401 0394
Stanger Regional Hospital	032 551 6632

NORTH WEST TTCs

Job Shimankane, Tabane Hospital	014 590 5474
Klerksdorp Hospital	018 465 2828
Maikeng TCC, Provincial Hospital	018 383 7000
Potchefstroom Hospital	018 293 4659
Taung TCC, District Hospital	053 994 8228

LIMPOPO TTCs

Grabersdal Hospital	013 262 3024
Mankweng Hospital, Polokwane	015 286 1000
Mokopane Hospital, Mokopane	015 483 4000
Mosina Hospital	015 534 0446
Nkhensani Hospital, Giyani	015 812 0227/0233
Seshego Hospital	015 223 0483
Tshildini Hospital, Thohoyandou	015 964 3257

MPUMALANGA TTCs

Ermelo Hospital	017 811 2031
Evander Hospital	017 632 2211
Themba Hospital	013 796 9412
Tonga Hospital, Nkomanzi	013 780 9231/9232
Witsaak Hospital	013 653 2000

NORTHERN CAPE TTCs

Central Karoo Hospital	053 631 7093
Galeshewe Day Hospital	053 830 8900
Kuruman Hospital	053 712 8100/33
Springbok Hospital	027 712 1551



The full statement

- If a full statement was not taken when you first arrived to report the rape then a full statement must *ideally* be taken within 24 to 36 hours of the initial report.²⁴ Suppose a full statement is not taken within 2 or 3 days. In that case, you should contact the investigating officer or if you are not successful in contacting the investigating officer then speak to the station commander.
- The investigating officer should contact you in order to obtain your full statement. The statement does not need to be taken at the police station and can be taken at your home or if you are in a gender-based violence shelter or the hospital it can also be concluded at these places.
- The police officer must allow for sufficient time for you to recount the event and must not make you feel rushed.

²⁴ See chapter 9 of National Policy Guidelines of Sexual Offences, South African Police Service (SAPS) Support to Victims of Sexual Offences. Do however note, it is extremely unlikely that SAPS will actually take your full statement in that time period.

- Although it is important to write down and keep your own document reflecting your experience, it is unlikely that the police will accept this as a statement. This is because statements need to take the form of an affidavit and take a specific form (e.g. affidavits are in first person and are set out in a specific way). However, keep your own document to remind you of events when you are having your statement taken by police.
- When the police official is finished taking down your statement make sure you read through it and correct any errors that may be present. You can then sign the document.
- A full list of the types of questions you should be asked can be found at **Annexure A** – which is the SAPS checklist that SAPS officers are supposed to use²⁵

Post-interview – medical assistance and examination

Post-exposure prophylaxis

- If the rape was recent (within 72 hours), you should be advised by a healthcare practitioner of your right to get access to post-exposure prophylaxis (PEP). This is to prevent you from contracting HIV. The healthcare provider must explain all details around taking PEP in a language you understand. It is your choice whether or not to proceed with taking PEP.²⁶

The medical examination

- The police should advise you around the need for you to undergo a medical examination to assist in securing physical evidence. This must take place with

²⁵ The Sexual Offences Statement Checklist in terms of the SAPS National Instruction 3/2008, Sexual Offences is attached as “**Annexure A**”.

²⁶ See section 11 of the SAPS National Instruction 3/2008, Sexual Offences.

your consent.²⁷ The investigating officer in your case must organise and take you to the examination.²⁸

- If you identify as a woman then only healthcare practitioners who are women can be present for your examination. The same is true if you identify as a man, then only healthcare practitioners who are men can be present for your examination.²⁹
- Before the examination takes place, the healthcare practitioner must explain what will happen during the procedure with you. This must be done in a language you understand.
- The form that the healthcare practitioner fills in when doing the examination is called the J88. A copy of this form is attached as **Annexure B**.
- The medical examination may include samples or swabs being taken from your body for testing.³⁰ This can include:
 - Swabs of your genitals;
 - Hair from your head and/or genitals;
 - Scapings from underneath your nails;
 - A sample of your blood.³¹

²⁷ See chapter 3 of the National Policy Guidelines of Sexual Offences, South African Police Service (SAPS) Support to Victims of Sexual Offences.

²⁸ See section 10(1) of the SAPS National Instruction 3/2008, Sexual Offences.

²⁹ See section 10(3) of the SAPS National Instruction 3/2008, Sexual Offences.

³⁰ See chapter 4 of the National Policy Guidelines of Sexual Offences, South African Police Service (SAPS) Support to Victims of Sexual Offences.

³¹ See chapter 6 of the National Policy Guidelines of Sexual Offences, South African Police Service (SAPS) Support to Victims of Sexual Offences.

Did you know?

Before you undergo *any* medical procedure a healthcare practitioner *must* obtain your informed consent. Informed consent means the following:

1. You are given all the information about the medical procedure;
2. This information is (1) in a language you understand *and* (2) described in a way that you can understand (no complicated medical terms);
3. You are not feeling threatened or forced to consent;
4. It is explained that you can take away your consent at any time, even during the procedure, and the procedure will then not go ahead.

CHAPTER 3

THE INVESTIGATION OF A SEXUAL OFFENCE

- As set out above, you have a right to the details (name and contact numbers) of the investigating officer in your case.
- In terms of the Service Charter for Victims of Crime in South Africa (the Victims' Charter) your rights in terms of the investigation of your case include:³²
 - The right to receive information such as how far the investigation is and how long the entire process will take;
 - The right to receive information such as the status of the case; whether or not the perpetrator has been arrested, charged and granted bail; whether the perpetrator has been convicted and if so sentenced.
- The investigating officer has certain duties with regard to you and the case, these include:
 - Keeping details of correspondence with you in an investigation diary;
 - Submitting a statement with regard to the crime scene irrespective of how long ago the rape occurred.³³

Discontinuing the investigation (Standing Order 325)

- You may be advised by the investigating officer that there will be no more investigation into your case and that your case will not be pursued by the police. This decision not to continue with investigation cannot be taken lightly and must be in line with the Standing Order (General) 325.

³² See section 3 of the Service Charter for Victims of Crime in South Africa. The Victim's Charter is attached as "**Annexure C**".

³³ See section 9 of the SAPS National Instruction 3/2008, Sexual Offences

- The Standing Order makes certain requirements in order to permit SAPS to stop investigating a case.³⁴ There are 4 categories that can lead to a decision by SAPS not to continue the investigation. This occurs when:
 - Withdrawn – this can occur in two different ways, (1) the complaint is withdrawn by the prosecutor and (2) the complaint is withdrawn by the complainant. In the case of (1) if the police deem that prosecution ‘is undesirable’ then the case can be sent to the prosecution for a decision. If the decision is not to proceed then this case will be listed as ‘withdrawn’. In the case of (2) the complainant withdraws the complaint. Complainants sometimes withdraw a complaint if they do not want to continue with the criminal process. This must be done in writing. Also on this, no police official is permitted to suggest you withdraw your case. The case can still be continued by the police and prosecution if the complainant withdraws.
 - Undetected – a case may be closed as ‘undetected’ when (1) through the investigation a perpetrator has not been identified; (2) the perpetrator cannot be found or traced; or (3) the complainant cannot later be traced.
 - Unfounded – a case may be closed as ‘unfounded’ only when through investigation it is found that no offence has not been committed.
 - Responsibility – a case may also be closed under what is called ‘responsibility’ - where responsibility ‘for ensuring that the case was properly investigated and that all possible sources of information have been explored’ is put onto the supervising officer for closing the docket.³⁵
- When a case is closed this can only be authorised by an officer who has the rank of being a Captain or higher in SAPS.³⁶

³⁴ It must be noted that this Standing Order is not easily available on the internet.

³⁵ D, Smythe, *Rape Unresolved*, 2015, 39. Due to the Standing Order being unavailable online, the work of Smythe is relied upon.

³⁶ See section 23 of the SAPS National Instruction 3/2008, Sexual Offences. See “**Annexure D**” for an explanation of SAPS ranking systems.

- In light of the Victims' Charter you have a right to be given details if your case is closed for one of the reasons above.
- If you have been told that no more investigation will be done into your case and your case is closed, you have the right to ask for more details about this decision. This will be discussed below at Chapter 6.

CHAPTER 4

THE PROSECUTION OF A SEXUAL OFFENCE

Deciding whether to prosecute

- The State, represented by the state prosecutor, prosecutes alleged criminals on behalf of complainants.
- The prosecutor has the decision on whether or not to prosecute a sexual offence.³⁷
- The prosecutor may make the following decisions around the case:
 - Request the police to investigate further;
 - Start the prosecution;
 - Decline to prosecute but still decide that the incident should be resolved another way (non-criminal resolution);
 - Decline to prosecute and pursue no other action (*nolle prosequi*).³⁸
- The decision of whether to prosecute or not is about considering if there is enough evidence to have a reasonable chance of convicting the perpetrator.
- A decision not to prosecute cannot be based on discriminatory views about the victim or a witness. The choice not to prosecute a rape cannot be made simply because the victim is a child, a person with a severe mental disability or a sex worker.
- If you have been told that your case will not be prosecuted you have the right to ask for more details about this decision. This will be discussed below at Chapter 6.

³⁷ Prosecution Policy and Directives, 1 December 2015.

³⁸ Section 4, Prosecution Policy and Directives, 1 December 2015.

Prosecuting children

- All issues relating to children and criminal offences are contained in the Child Justice Act 75 of 2008 ('Child Justice Act').
- This act is important as it creates a separate criminal justice system for children and gives different processes for child offenders, such as diversion.³⁹
- Children may be diverted if they commit a serious offence such as a criminal offence, however this can only be approved by the Director of Public Prosecutions ('DPP'), after a range of conditions have been met.
- In order to determine if a child can be diverted in the case of a serious crime such as a sexual offence, it must first be determined if a child has the *criminal capacity* to act.
- Here capacity means the age at which a child has the age at which it is presumed in law that a child has the cognitive ability and maturity to distinguish between right and wrong and understand the consequences of their actions.
- Currently, in terms of the Child Justice Act, the thresholds around capacity are as follows:

Child below 12 years	No capacity	Cannot be held criminally liable.
Child of 12 and under 14	Limited capacity	Presumed not to have capacity and will not usually be liable. However, can be proved beyond reasonable doubt to have, and will then be liable.
Child of 14 and older	Full capacity	Can be held criminally liable.

³⁹ T, Boezaart, *Child Law in South Africa*, 2016.

Private prosecution

- A private prosecution is where an individual complainant decides to prosecute a criminal offence committed against her without the State's involvement.
- This can only occur where the DPP decides not to prosecute the case and withdraws from their right to do so.
- This right to prosecute your own case can be found under section 11 and 12 of the CPA.
- The main problem emanating from a private prosecution is that the person (complainant) must pay for the process themselves. The complainant would, thus, need to get her own attorneys to 'prosecute' the accused. So, the process can become extremely costly.

CHAPTER 5

THE SEXUAL OFFENCE TRIAL

Before trial

- According to Section 3 of the Victims' Charter you have a right to be informed about your role in the criminal case. You also have the right to receive information around court dates, witness fees (travel fees), and who the prosecutor in your case will be along with their contact details.
- You can ask the prosecutor in your case to write a letter to your employer and/or school and/or place of tertiary education on your behalf so that you can attend court.⁴⁰
- It is important that you note that the court case process can take a long time. This can be anything from 6 months to a couple of years. There are often many postponements which may leave you feeling disappointed. You have the right to speak to the prosecutor on your case about this.
- The investigating officer must explain the court process to you and what you can expect at the hearing, so that you can prepare yourself.⁴¹

Bail

- An accused person has the right to apply for bail. This is where bail an accused person is released from custody by paying or guaranteeing to pay money.⁴² The amount of money is determined by the presiding officer.

⁴⁰ See section 3 of the Victims' Charter.

⁴¹ See section 21 of the SAPS National Instruction 3/2008, Sexual Offences.

⁴² Joubert, 165.

- Once bail is granted, the accused will be ‘warned’ of the time and date that he must appear before the court again. This is usually the date of trial.⁴³
- Because rape is a serious crime (a Schedule 5 offence), for the accused to be able to secure bail, he must prove that it is ‘in the interest of justice’ for him to be released.⁴⁴
- Here ‘interest of justice’ means the consideration of 4 criteria. They are:
 - (1) Is the accused likely to be a ‘flight-risk’? In order to show that he is not likely to be a ‘flight-risk’, the accused must show that he has property or assets in or near the court’s jurisdiction, and/or, he has family or community ties to that area, and/or, he works in the area, and/or, that he does not have travel documents and/or, has handed his travel document to the investigating officer.
 - (2) Will the accused interfere with witnesses? The court will consider whether there has been any interference with witnesses by the accused in the current case. The court will then look at whether the accused has interfered with witnesses in other cases he has been an accused in. Finally, in the absence of actual interference in the current case, the court will look at the complainant or other witness’s fears of interference.
 - (3) Will the accused will commit further crimes whilst on bail? In terms of this factor, the court will look at the nature of the violence on the part of the accused, by considering his past conduct and a threat of violence which the accused may have made to any person.
 - (4) What personal factors related to the accused should be considered? The court is permitted to look at personal factors that the accused may have which would lend to him being granted bail. Personal

⁴³ As above.

⁴⁴ V, Karth, ‘*Between a rock and a hard place*’ *Bail decisions in three South African courts*, Open Society Foundation for South Africa, (2008), 6.

characteristics of the accused include factors such the health of the accused, the advanced age of the accused, the fact that the accused is particularly young, the fact that the accused has dependants to support, and the financial position of the accused.⁴⁵

- Suppose the court permits the accused to be given bail. In that case, there can be 'conditions' set by the court, which the accused must comply with, or he will have his bail 'revoked' (cancelled) and return to custody. These conditions can include not tampering with witnesses (especially the complainant), or even not being the vicinity of the complainant's home, workplace, or school.
- The prosecutor should advise you (as the complainant) that the accused is applying for bail and must attempt to 'oppose' the application. (For any Schedule 5 or 6 offences, a prosecutor can only agree to bail if they have permission from the DPP.⁴⁶)
- You can give the prosecutor information about your feelings about the accused's application, such as being afraid of him being allowed out in the community.
- If the prosecutor is successful in 'opposing' bail, you should speak to them about some of the conditions you would like to see in place.

At trial

- Either before trial or on the trial date the investigating officer or the prosecutor should give you copies of your statement so you can refresh your memory.
- Unless you are a child or a person with a 'mental state' under 18, you will have to see the accused in court for trial.⁴⁷ However, the accused may not speak to you or address you in any way.

⁴⁵ See section 60 of the CPA.

⁴⁶ Karth, 6.

⁴⁷ See section 170A of the Criminal Procedure Act 51 of 1977. Children and persons with mental states of under 18 will testify in another room and through an intermediary.

- The State will start with its case against the accused first, and then the accused will turn to make their defence. The State's case will include your evidence. You will be asked to take an oath and tell the court what happened to you. The prosecutor will guide you through this.
- The accused's lawyer will then get a chance to ask you questions.
- After the accused's lawyer has finished, the prosecutor may ask you some more questions for clarity.
- At this point, the State will call other witnesses to support your story and then 'close its case'.
- After 'closing its case', the accused's legal representatives can call the accused to give their version of events. It is not compulsory for the accused to testify.
- If the accused does testify, then, the prosecutor may challenge the accused's version. Once the prosecutor is done, the accused's lawyer is allowed to ask them points of clarity.
- The accused's lawyer is then allowed to call other witnesses. Once this is done, the prosecutor will then get a chance to ask these witnesses questions. The accused's lawyer may request some more questions for clarity, after which it will also 'rest their case'.
- At this point, both the prosecutor and the accused's lawyer are allowed to give final legal arguments before the judge (usually a magistrate) decides whether the accused is guilty or not.
- The judge will then decide if the accused was guilty or not. If the decision is that the accused is not guilty, this is the end of the case.
- If the judge decides that the accused is guilty, the prosecutor and the accused's lawyer make arguments again. This will be arguments around how long the prison sentence must be.

- You may be asked to speak before the court again during this stage. This will be around what you have experienced physically, emotionally and psychologically after the rape. Your family members may also be called to answer questions about how the rape has affected you and them.
- A sentence for rape is governed by something called Mandatory Minimum sentencing.⁴⁸ This states that if a person is a first-time offender in a rape case, they ought to be sentenced to 10 years, second-time offenders ought to get 15 years, and third-time offenders ought to get 25 years.
- The accused is also given an opportunity to *mitigate or* argue for a lesser sentence. The judge can only consider this if there are *substantial and compelling reasons* to give a shorter sentence than the crime would usually carry.⁴⁹
- After these arguments, the judge will give the sentence. In sexual offence cases, the accused's name must be entered on the sexual offences registry if the offence was against a child or a person with a psycho-social disability.
- The accused would be taken to prison after the trial if they were found guilty. However, the accused is permitted to contest the entire case or the prison sentence in the form of an 'appeal'. The accused will have to apply for bail if they wish to be outside of prison while waiting for the appeal decision.

Did you know?

If a judge finds that an accused is NOT GUILTY this does not mean that you were not raped. Instead it means that the state failed to prove you were raped *beyond a reasonable doubt*. The '*beyond a reasonable doubt*' threshold is a very high threshold used in criminal cases. This means that the prosecutor must convince the judge that there is no other reasonable that can come from the evidence which is before the court other than the accused being guilty.

⁴⁸ Criminal Law Amendment Act 105 of 1997.

⁴⁹ See section 51 of the Criminal Law Amendment Act 105 of 1997.

Bail pending appeal

- Similar to that discussed under 'Bail' above, the accused can apply for bail if he appeals his conviction.
- This will follow the same procedure as that set out above.
- If the accused is successful, he will be released with certain conditions applying to him.

Parole

- Suppose the accused person was found guilty and sentenced to time in prison. In that case, the question of whether they are permitted to be released on parole will arise. Parole is the release of a prisoner before the entire sentence is served.
- In terms of the Correctional Services Act 11 of 1998, if a court did not state when parole will come into effect, a person can qualify for parole after serving at least half of their sentence.⁵⁰
- This means if the accused was sentenced to 10 years, they could apply for parole after 5 years.
- The Parole Board will decide parole by considering these factors:
 - The seriousness of the offence;
 - Length of the sentence;
 - Perpetrator's behaviour while in prison;
 - Whether the perpetrator has a support structure outside prison;
 - Whether the perpetrator will be able to live independently;
 - Whether the perpetrator has been rehabilitated;
 - Any other factors that are relevant.

⁵⁰ See section 73 of the Correctional Services Act 11 of 1998.

- You can both attend the Parole Hearing and make submissions to the Parole Board. This process involves you filling out the form at Annexure E. This form can be sent to the following contact:
 - Tel: 012 307 2998 or 012 307 2999

Physical address: 124 WF Nkomo Street
Poyntons West Block
Pretoria
0001

Postal address: Department of Correctional Services
Private Bag X136
0001

CHAPTER 6

SUMMARY OF HOW TO GET INFORMATION OR LAY A COMPLAINT AT EACH STAGE

- In terms of the Victims' Charter and the Promotion of Administration of Justice Act 3 of 2000 (PAJA), you have a right to get information at each stage of the criminal justice process (reporting, investigation, prosecution, trial). Along with having a right to information, you have a right to complain should you not receive this information and if you are not receiving a reasonable level of service at each stage.
- Below are the ways you can ask for information at each stage and how to complain if you are not satisfied with the service.

<u>Stage of Process</u>	<u>Type of issue</u>	<u>What to do?</u>
1. Reporting a sexual offence	You were turned away and not assisted	<ol style="list-style-type: none"> 1. Ask to speak to and/or write to the station commander. Their details cannot be withheld from you. You can also ask the officer who turned you away for their details (they have a duty to tell you).⁵¹ 2. Lodge a complaint with the SAPS complaint centre at 0800 333 177 or ComplaintsNodalPoint@saps.gov.za 3. If this fails, you can lay a complaint with the Provincial Police Commissioner by looking up their details online. 4. If this fails, you can lay a complaint with the National Police Commissioner by looking up their details online. 5. Make a complaint to the Commission for Gender Equality at cgeinfo@cge.org.za.

⁵¹ You can figure out what a station commanders email address is by, inserting the name of station and then adding [.sc@saps.gov.za](mailto:sc@saps.gov.za) (e.g. capetown.sc@saps.gov.za).

	You were discriminated against: E.g. Turned away because you are a sex worker, or you were drunk at the time of the rape, or the rapist is your husband/boyfriend (not a closed list).	As above
	You were not told who the investigating officer is.	As above
	You do not receive feedback around the case	<ol style="list-style-type: none"> 1. Contact the investigating officer in your case and ask for an update. Refer them to your rights in the Victim's Charter. 2. Follow steps 1 – 5 above. <p style="text-align: center;">Or</p> <p>*Make a Standing Order 101 complaint. This is a service delivery complaint. See Annexure F for a copy of the Standing Order and Annexure G for a precedent</p> <p style="text-align: center;">Or</p> <p>Request access to parts of the docket. This is through the PAIA process. See Annexure J.</p>
	The case has not progressed over a long period	<ol style="list-style-type: none"> 1. Contact the investigating officer in your case and ask for an update 2. Follow steps 1 – 5 above. <p style="text-align: center;">Or</p> <p>*Make a Standing Order 101 complaint. This is a service delivery complaint. See Annexure F for a copy of the Standing Order, Annexure G for a precedent of a letter requesting a Standing Order,</p>

		<p>and Annexure H for how an order looks.</p> <p style="text-align: center;">Or</p> <p>Request access to parts of the docket. This is through the PAIA process. See Annexure J.</p>
	The case has been closed by the police	<ol style="list-style-type: none"> 1. Follow steps 1 – 4 above.
Prosecution	The prosecution has decided not to prosecute.	<ol style="list-style-type: none"> 1. You can request that the National Prosecuting Authority provide reasons for their decision not to prosecute. Annexure H is precedent of the type of letter.
	The prosecutor has not met with you or does not explain the details of the case to you.	<ol style="list-style-type: none"> 1. You can contact the prosecutor and ask for updates and to explain the details of the case. 2. You can contact the senior prosecutor at the specific Magistrates' Court.
Trial	You feel the judge in your matter has acted unprofessionally, is biased or if there is any other issue.	<ol style="list-style-type: none"> 1. You can report any misconduct to the Magistrates' Commission to MaDawood@justice.gov.za

CONTACT NUMBERS & ADDRESSES

1. Police Stations

Mecklenburg Police Station situated in Moroke village

Station Commander name: Shirinda FS

Number: 0824142696

Mecklenburg Victim Empowerment Programme office

Name: Maria

Number:0760558857

Apel Police Station situated in Ntshabeleng Village

Station Commander Name: Mrs Moela

Number: 0825658260

Office of Family Violence, Child Protection and Sexual Offences (FCS) in Burgersfort

Warrant Seoke

Number: 0726591818

Malepisi Police Station situated in Mathabatha village

Station number:0726463693 name of a person: Mr Mohlatlole

Malepisi Victim Empowerment Programme office

Name: Elliase Juba

Number: 0720198848

National Prosecuting Authority GBV Command Centre

0800 428 428 / *120*7867# from any cell phone

National Prosecuting Authority Women Abuse Helpline:

0800 150 150

National Prosecuting Authority GBVF-related service complaints about SAPS

0800 333 177

Provincial Hotline

0824517170

2. GBV Helplines

National

0800428428

National (SMS)

*134*7355#

3. Thuthuzela Care Centres in Limpopo

Grobersdal Hospital

0132623024

Mankweng Hospital, Polokwane

0152861000

Mokopane Hospital, Mokopane

0154834000

Monsina Hospital

0155340446

Nkhesani Hospital, Giyani

0158120227 or 0158120233

Seshego Hospital

0152230483

Tshilidzini Hospital, Thohoyandou

0159643257

4. Shelters

Ekuphumleni Restoration Home ThyREST, Polokwane

Contact person: Nobesuthu Carol Javu

0152230091 or 0731749185 or thyrest@gmail.com

Khuseleka One Stop Centre (Government-run)

Contact person: Emma Pilusa

0152931182-5 or 0844668212 or emma66@gmail.com

5. Courts and parole

14. Sekhukhune Magistrate Court

Address: Next to Police Station, Sekhukhune

15. Parole Office

Area Commissioner

Ms M C Maile

Cel: 079 341 6358

Tel: 018 487 9000

LEGISLATION AND POLICY

Legislation

- Constitution of the Republic of South Africa, 1996
- Correctional Services Act 11 of 1998
- Child Justice Act 75 of 2008
- Children's Act 38 of 2005
- Criminal Law Amendment Act 105 of 1997
- Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007
- Criminal Procedure Act 51 of 1977
- Domestic Violence Act 116 of 1998
- Promotion of Administration of Justice Act 3 of 2000
- Prescription in Civil and Criminal Matters (Sexual Offence) Amendment Act 15 of 2020

Policy

- National Policy for Victims of Sexual Offences, Department of Correctional Services
- National Policy Guidelines of Sexual Offences, South African Police Service (SAPS) Support to Victims of Sexual Offences
- Prosecution Policy and Directives, 1 December 2015
- SAPS National Instruction 3/2008, Sexual Offences
- Service Charter for Victims of Crime in South Africa
- Standing Order (General) 325: Closing of case dockets

INDEX OF ANNEXURES

<u>ANNEXURE</u>	<u>DESCRIPTION</u>
A	Sexual Offence Statement Checklist
B	Report on a Medico-Legal Examination by a Health Practitioner
C	Service Charter for Victims of Crime in South Africa (“The Victims Charter”)
D	South African Police Service Rank Structure
E	Request to Make a Representation to a Parole Board
F	Standing Order 101: The Management of Complaints against the South African Police Service
G	Example of Standing Order 101 Complaint Letter
H	Confirmation of Attendance to a Complaint
I	Example of Request for Reasons for Decision to Prosecute Letter
J	South African Police Service Request for Access to Record

Annexure A

ANNEXURE E

SEXUAL OFFENCE STATEMENT CHECKLIST

Please note that the checklist should only be used as a guideline, and that it remains the responsibility of the investigating officer to take a full statement in every case.

Item	Detail
1	Paragraph statements.
2	Do not prime the victim - it must be his or her own statement. (Never ask leading questions.)
3	Full names (Maiden name, if applicable) <ul style="list-style-type: none">- Age and date of birth- Identity number- Occupation- Residential & postal address- Telephone number and code- Place of employment, if applicable- Cellphone number- Facsimile number
4	Detail of events leading up to the incident. (This will vary according to circumstances and there will be more information in some cases than in others.)
5	Describe the scene of crime prior to the attack.
6	Fully describe the victim's clothing and the victim (this may assist forensic identification).
7	Describe the other victims (if more than one victim was involved).
8	Day and date. Specify the day of week.
9	Clarify time - how did the victim know what the time was?
10	Describe, if possible, any route taken by the victim prior to attack.
11	Witness - any known to victim, describe other witnesses and give their names (if possible), witnesses may link the victim to the suspect.
12	How the suspect approached victim.
13	How the suspect maintained control of the victim.
14	If restraints were used, did the suspect bring them with him or her or did they belong to the victim?
15	Weapons, etc, used, displayed, mentioned.

Item	Detail				
16	Exact words spoken by the suspect . Use direct speech.				
17	Exact words spoken by the victim to suspect. Use direct speech.				
18	If there is more than one suspect, briefly identify each one by some distinguishing feature such as a moustache, facial mark, colour of shirt.				
19	Details of anything left at the scene by the suspect.				
20	Describe anything touched by the suspect.				
21	Did the suspect have an escape route prepared prior to the attack?				
22	Describe the victim's state of mind throughout the entire incident. What was the victim feeling or thinking in relation to each event as it occurred?				
23	Threats made by suspect - exact language.				
24	Was there any resistance by the victim? Include reasons for resisting or not resisting.				
25	If the victim resisted, explain the suspect's reaction (speech, facial expression, physical reaction).				
26	Did the suspect force the victim into any particular physical position?.				
27	Did the suspect photograph the victim?				
28	Describe if and how clothing was removed and by whom, and in what order - where the clothing was placed or left.				
29	Was the victim made to dress in any specific items of clothing.				
30	Were these items brought to the scene by the suspect?				
31	Were any items of clothing stolen by the suspect?				
32	Did the suspect force the victim to use any specific words or sentences during the attack?				
33	Fully describe the sexual assault. Describe the acts. Was the victim given any options?				
	<table> <tr> <td>Consider: Touching</td> <td>Where and by whom; Victim by suspect. Suspect by victim.</td> </tr> <tr> <td>Kissing</td> <td>Suspect by victim. Victim by suspect.</td> </tr> </table>	Consider: Touching	Where and by whom; Victim by suspect. Suspect by victim.	Kissing	Suspect by victim. Victim by suspect.
Consider: Touching	Where and by whom; Victim by suspect. Suspect by victim.				
Kissing	Suspect by victim. Victim by suspect.				

	Use of Instruments	Foreign objects used or placed in vagina, anus, etc.
	Digital penetration (Fingers)	In vagina or anus.
	Fetishism	Particular attraction / request for certain object (clothing / perfume / baby oil).
	Voyeurism	Watching a particular act (eg suspect watching victim masturbate).
	Cunnilingus	Mouth to vagina
	Sexual sadism	Beatings, burning, whipping, biting, twisting breasts, asphyxiation (strangulation) until victim is unconscious, painful bondage (tied up).
	Annullingus	Licking anus.
	Urination	Urinating on victim.
	Defecation	Defecation of human waste matter (faces) on victim.
	Bestiality	Forced to perpetrate sexual act with animal.
34	If sexual intercourse took place, exact description of how the victim felt (force, fear, fraud).	
35	How penis entered vagina (or other orifices) - position of bodies - position of hands - position of legs	
36	Was the suspect's penis erect?	
37	Was any lubricant used?	
38	Was the suspect circumcised?	
39	Did the suspect have difficulty in achieving an erection or maintaining it or experience premature ejaculation?	
40	Was the victim forced manually to masturbate the suspect to achieve or maintain his erection?	
41	Did suspect ejaculate? How did the victim know that the suspect had ejaculated?	
42	Did the suspect use anything to wipe his penis after the offence?	
43	Was anything done by the suspect to remove or stop semen being left behind, Eg forcing the victim to wash, combing victim's pubic hairs, using a condom?	

44	If tissues were used, what happened to them? Where did they come from?
----	--

Item	Detail
45	If oral sex occurred, did the victim spit out semen or vomit - if so, where?
46	Did the suspect tell or force him/her to take any drugs or medication or alcohol?
47	Was there any blood anywhere ? Describe whether it was on the victim or suspect or scene of crime.
48	If a number of sexual acts were carried out, describe the exact position in which they were committed and the speech used towards the victim, prior, during and after these acts.
49	Any specific threats made to victim not to report the offence. The exact words used must be given.
50	Any actions or words used to prevent that the victim recognize the suspect.
51	Did the suspect take steps to avoid leaving fingerprints?
52	Was any of victim's property taken to assist the suspect in locating him or her again? Was this taken to stop the victim from reporting the incident? Was this specifically mentioned by the suspect?
53	Did the suspect suggest they meet again ? Give specifics.
54	Was the suspect curious about the victim's life, family or previous relationships, sexual or otherwise?
55	Did the suspect pay any compliments to the victim?
56	Did the suspect make excuses for what he had done or apologize for it?
57	Did the suspect make any mention of Police procedures?
58	How did the attack end?
59	How did the victim leave the scene?
60	How did the suspect leave the scene. Was it by foot, by car, or bicycle?
61	Did the victim tell anyone and when did he or she do so?
62	A full description of the suspect(s) from head to toe.
63	Include a description of the suspects clothing. It may be necessary to state what the suspect was not wearing, eg a jacket.
64	Did the suspect speak in language known to victim? Clarify.
65	Did the suspect have an accent? Clarify, if possible.

Item	Detail
66	Did the victim know the suspect? If the answer is in the affirmative, give details. Would the victim be able to recognize suspect again?
67	How was the incident reported to police?
68	Permission from victim for the examination of the scene or his/her property and for the removal of items for evidence and forensic examination.
69	Fully describe all property taken, including serial numbers, colours, sizes, identifying marks.
70	Get the victim to formally identify any property left by the suspect at the scene.
71	Describe all the injuries inflicted on the victim.
72	Include the fact that victim did not consent, even if this is obvious.
73	Record the absence of consent for the removal of any of the victim's property by the suspect.
74	Is the victim willing to attend court?
75	Make sure that the victim reads the statement thoroughly and that it is signed in all the right places.
76	When was the last time the complainant had sexual intercourse? If within 72 hours before the incident, control blood samples are required from all the partners.
77	Victim's consent to forensic testing of articles seized for examination and that the victim knows that the articles may be damaged in the process of the forensic examination.

Annexure B

G.P.S. 01/02



J88
(81/805259)

REPUBLIC OF SOUTH AFRICA

Police Station:	CAS/ No / /
Name of Investigating officer:	Contact No:

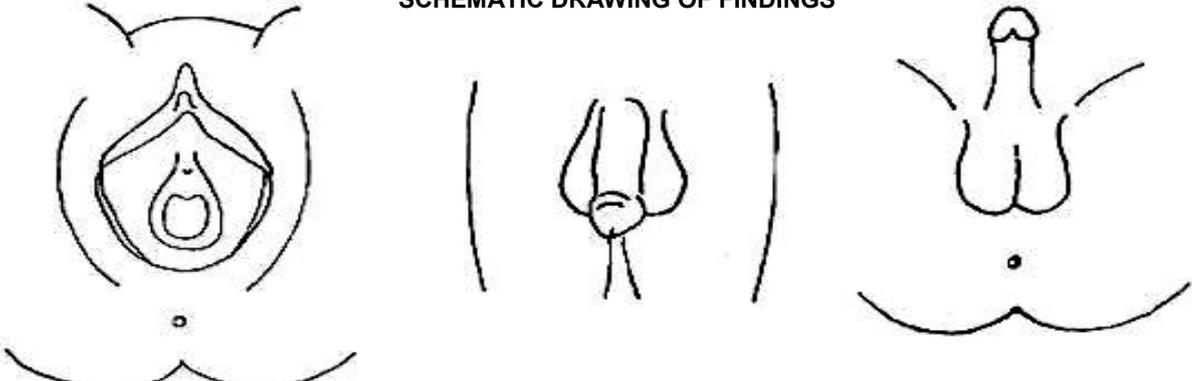
REPORT ON A MEDICO-LEGAL EXAMINATION BY A HEALTH CARE PRACTITIONER To be diligently completed electronically or in legible handwriting and signed on every page		
PART I		
CERTIFICATE IN TERMS OF SECTIONS 212(4), 212(8) AND 213(3) OF ACT 51 OF 1977 (AS AMENDED)		
I, <i>(Full names and Surname)</i>		
hereby certify as follows:		
- I am in the service of the *State/in the service of or attached to a university in the Republic in my capacity as *registered medical practitioner/nurse/other <i>(please specify)</i>		
- On the day of <i>(month)</i> <i>(year)</i> at H..... <i>(time of examination)</i>		
- and at <i>(state place where examination took place)</i> , I examined the person indicated in Part II, Paragraph B.1 (page 2 of 6) of this J88 form.		
- I recorded my findings and observations on pages 2 to 6 of this J88 form and any additional pages indicated. The facts recorded on pages 2 to 6 of this J88 form, including any additional pages used where indicated, were established by means of an examination requiring skill in anatomy and pathology.		
- In the performance of my official duties:		
* a) I received and collected from <i>(name of person/institute/ State department or body)</i> clothing; object/s; specimens and/or tissue described in this J88 form.		
* b) I delivered or dispatched to <i>(name of person/institute/ State department or body)</i> the clothing, object/s, specimens and/or tissue specified in this J88 form.		
- * I packed and marked the clothing; object/s; specimens and/or tissue in the manner described in this J88 form.		
The contents of this J88 form is true to the best of my knowledge and belief and I am making this statement knowing that, if it were tendered in evidence, I would be liable to prosecution if I willfully stated in it anything I knew to be false or which I do not believe to be true.		
DATED AT <i>(place)</i> ON THE DAY OF <i>(month)</i> <i>(year)</i> AT H <i>(time)</i> .		
..... SIGNATURE OF HEALTH CARE PRACTITIONER PRINT NAME AND SURNAME STAMP OF HEALTH CARE PRACTITIONER
(NB: Section 212(4) and 212(8) provide for a certificate issued in terms of either of these sections to constitute, upon its production at criminal proceedings, prima facie proof of the facts alleged.)		

* Delete which is/are not applicable

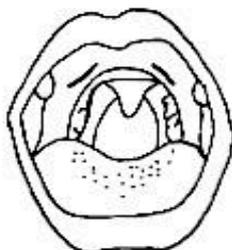
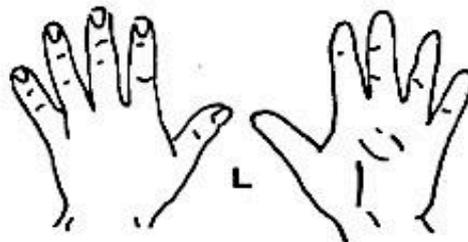
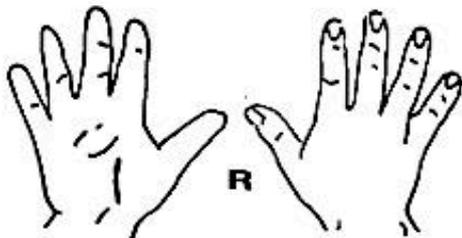
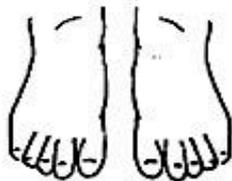
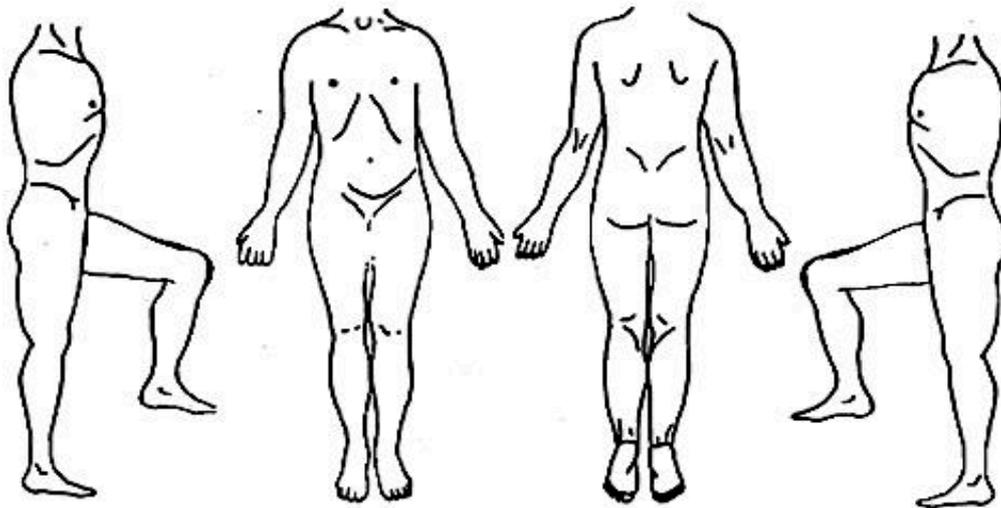
PART II															
DETAILS OF MEDICO-LEGAL EXAMINATION															
A. DETAILS OF PRACTITIONER AND FACILITY															
1. Name of health facility/practice:	2. Physical address of facility/practice:														
3. Telephone number of facility/practice:	4. Fax number of facility/practice:														
5. Qualifications of practitioner:	6. Registration number of practitioner:														
7. Cellular phone number of practitioner:	8. Email of practitioner:														
9. Fax number for practitioner:	10. Health care facility/practitioner's patient record no:														
B. PATIENT INFORMATION															
1. Full names and surname (of patient):	Consent to Examination: <i>Signature of patient</i>														
2. Gender of patient: <table border="1" style="display: inline-table; border-collapse: collapse;"><tr><td style="padding: 2px;">Male</td><td style="padding: 2px;">Female</td></tr></table>	Male	Female	3. Date of birth/age of patient:												
Male	Female														
4. Patient accompanied by:	5. People present during examination and capacity:														
C. MEDICAL HISTORY															
1. Intellectual disability noted: None <table border="1" style="display: inline-table; border-collapse: collapse;"><tr><td style="padding: 2px;">Yes</td><td style="padding: 2px;">No</td></tr></table> Possible impairment <table border="1" style="display: inline-table; border-collapse: collapse;"><tr><td style="padding: 2px;">Yes</td><td style="padding: 2px;">No</td></tr></table> Definite impairment <table border="1" style="display: inline-table; border-collapse: collapse;"><tr><td style="padding: 2px;">Yes</td><td style="padding: 2px;">No</td></tr></table> Specify:	Yes	No	Yes	No	Yes	No	2. Other impairments or disabilities noted: Hearing impairment <table border="1" style="display: inline-table; border-collapse: collapse;"><tr><td style="padding: 2px;">Yes</td><td style="padding: 2px;">No</td></tr></table> Visual impairment <table border="1" style="display: inline-table; border-collapse: collapse;"><tr><td style="padding: 2px;">Yes</td><td style="padding: 2px;">No</td></tr></table> Mental illness <table border="1" style="display: inline-table; border-collapse: collapse;"><tr><td style="padding: 2px;">Yes</td><td style="padding: 2px;">No</td></tr></table> Other disability <table border="1" style="display: inline-table; border-collapse: collapse;"><tr><td style="padding: 2px;">Yes</td><td style="padding: 2px;">No</td></tr></table> Specify:	Yes	No	Yes	No	Yes	No	Yes	No
Yes	No														
Yes	No														
Yes	No														
Yes	No														
Yes	No														
Yes	No														
Yes	No														
3. Relevant medication taken:															
4. Relevant medical history that can assist with differential diagnosis (State source & method of obtaining information e.g. patient him/herself, third persons: e.g. parent or caregiver, medical records or combination. Indicate if an interpreter was used as well as the language that was interpreted):															
5. History of the alleged assault and/or rape e.g. date and time (State source & method obtaining information e.g. patient him/herself, third persons: e.g. parent or caregiver, medical records or combination. Indicate if an interpreter was used as well as the language that was interpreted):															

Signature of health care practitioner

D. HISTORY OF RELEVANCE TO A SEXUAL OFFENCE (delete if not applicable)															
<p>1. Since the alleged offence took place has the patient:</p> <p>Wiped <input type="checkbox"/> Yes <input type="checkbox"/> No Bathed/washed <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Urinated <input type="checkbox"/> Yes <input type="checkbox"/> No Defecated <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Showered <input type="checkbox"/> Yes <input type="checkbox"/> No Swam <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Been exposed to rain <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>2. Menstruating</p> <p>At time of alleged sexual offence: <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Since the alleged sexual offence: <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Currently menstruating: <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>3. During alleged sexual offence was:</p> <p>Condom used: <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Lubricant used: <input type="checkbox"/> Yes <input type="checkbox"/> No</p>														
<p>4. Currently pregnant: <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If yes, indicate Duration: __ weeks</p>	<p>5. Ever had vaginal delivery: <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If yes, indicate Number: __</p>														
E. GENERAL EXAMINATION															
<p>1. Physical Appearance</p> <p style="text-align: center;">a. Height _____ cm b. Weight _____ kg</p> <p>c. General body build: *Frail /Normal /Muscular /Obese /Other: _____ Percentiles (children only): _____</p>															
<p>2. Clothing</p> <p>a. Left clothes at the scene: <input type="checkbox"/> Yes <input type="checkbox"/> No (If yes, move to section E 3)</p> <p>b. Changed clothes: <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If clothing is available:</p> <p>c. Torn/ripped/damaged: <input type="checkbox"/> Yes <input type="checkbox"/> No Specify item of clothing: _____</p> <p>Describe:</p> <p>d. Stained: <input type="checkbox"/> Yes <input type="checkbox"/> No Specify item of clothing: _____</p> <p>Possibly blood: <input type="checkbox"/> Yes <input type="checkbox"/> No Swabbed: <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Describe where on clothing:</p> <p>Possibly semen <input type="checkbox"/> Yes <input type="checkbox"/> No Swabbed: <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Describe where on clothing:</p> <p>Other: <input type="checkbox"/> Yes <input type="checkbox"/> No Swabbed: <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Nature of specimen: _____</p> <p>Describe where on clothing:</p> <p>e. Clothing collected for Forensic analysis <input type="checkbox"/> Yes <input type="checkbox"/> No } Record sample seal number in Section H</p> <p>If yes, list the items:</p>															
<p>3. Clinical evidence of drugs / alcohol at time of examination (e.g. Nystagmus, ataxia, slurred speech, dilated pupils):</p> <p>.....</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 40%;">Intoxicated / drugged</td> <td style="width: 10%;"><input type="checkbox"/> Yes</td> <td style="width: 10%;"><input type="checkbox"/> No</td> <td rowspan="4" style="font-size: 3em; vertical-align: middle;">}</td> <td rowspan="4" style="vertical-align: middle;">Record sample seal number in Section H</td> </tr> <tr> <td>Blood samples taken</td> <td><input type="checkbox"/> Yes</td> <td><input type="checkbox"/> No</td> </tr> <tr> <td>Alcohol evidence collection kit completed</td> <td><input type="checkbox"/> Yes</td> <td><input type="checkbox"/> No</td> </tr> <tr> <td>Urine samples taken</td> <td><input type="checkbox"/> Yes</td> <td><input type="checkbox"/> No</td> </tr> </table>		Intoxicated / drugged	<input type="checkbox"/> Yes	<input type="checkbox"/> No	}	Record sample seal number in Section H	Blood samples taken	<input type="checkbox"/> Yes	<input type="checkbox"/> No	Alcohol evidence collection kit completed	<input type="checkbox"/> Yes	<input type="checkbox"/> No	Urine samples taken	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Intoxicated / drugged	<input type="checkbox"/> Yes	<input type="checkbox"/> No	}	Record sample seal number in Section H											
Blood samples taken	<input type="checkbox"/> Yes	<input type="checkbox"/> No													
Alcohol evidence collection kit completed	<input type="checkbox"/> Yes	<input type="checkbox"/> No													
Urine samples taken	<input type="checkbox"/> Yes	<input type="checkbox"/> No													
<p>* Delete which is/are not applicable</p> <p>Mark appropriate block</p>															
<div style="border: 1px solid black; padding: 5px; display: inline-block;">Signature of health care practitioner</div>															

G.4 GYNAECOLOGICAL EXAMINATION (delete if not applicable)	
1. Breast development (children) Tanner stage 1-5: <input type="checkbox"/>	2. Pubic hair (children) Tanner Stage 1-5: <input type="checkbox"/>
3. Mons Pubis	4. Clitoris
5. Frenulum of clitoris	6. Urethral orifice
7. Labia Majora	8. Labia Minora
9. Posterior fourchette/Commissure	10. Vestibule Fossa navicularis Paraurethral area
11. Hymen Configuration: Posterior rim: Margin or edge of hymen:	
12. Vagina	13. Discharge (describe)
14. Cervix	15. Other injuries noted:
SCHEMATIC DRAWING OF FINDINGS	
	
H. SPECIMENS COLLECTED FOR INVESTIGATION (delete if not applicable)	
1. Sexual assault evidence collection kit seal no./ sticker	2. Alcohol collection kit seal no./ sticker
3. Clothing kit seal no./ sticker	4. Urine and/or other samples (specify & provide seal no.)
I. TECHNOLOGY USED (delete if not applicable)	
Photographs taken Name of photographer: <input type="checkbox"/> Yes <input type="checkbox"/> No	Colposcope used Toluidine Blue used Other (specify): <input type="checkbox"/> Yes <input type="checkbox"/> No
J. ADDITIONAL PAGES USED AND ATTACHED	
Number of pages added:	
K. CONCLUSIONS (take account of history and all findings, both positive and negative)	
Motive reasons for conclusions made:	
.....	
.....	
.....	
L. TRANSFER DETAILS	
J88 form handed to:	
Name:	Rank:
Signature:	Contact No.:

Signature of health care practitioner



Signature of health care practitioner



**SERVICE CHARTER
FOR VICTIMS OF CRIME IN SOUTH AFRICA**

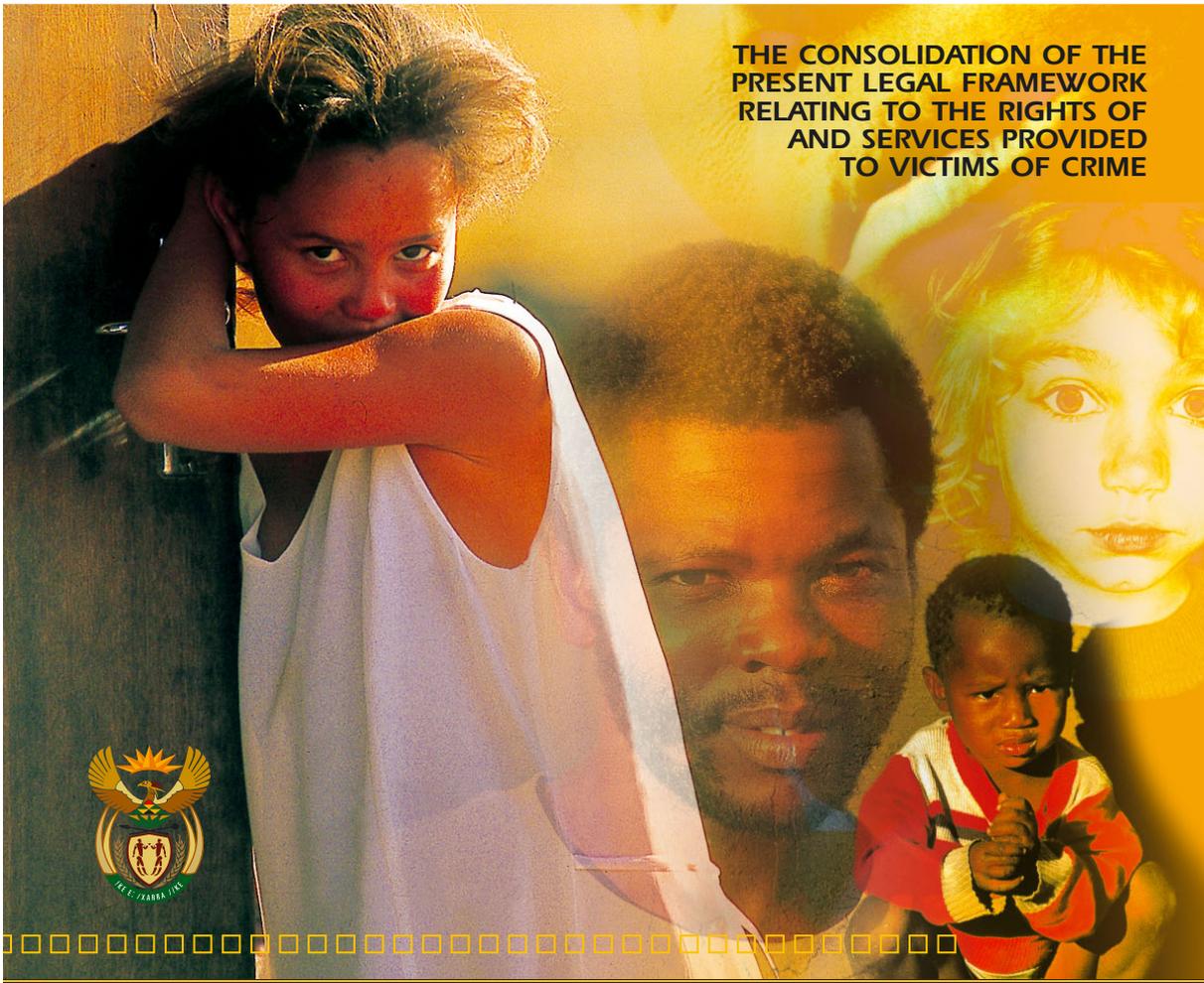


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· Recognising	p. 2
· Noting	p. 2
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YOUR RIGHTS AS A VICTIM OF CRIME

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2. The right to offer information	p. 2
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FOREWORD



FOREWORD BY THE MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT

The Service Charter for Victims of Crime in South Africa (the "Victims' Charter") is an important instrument for promoting justice for all. The Victims' Charter is compliant with the spirit of the South African Constitution, 1996, Act 108 of 1996, and the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985 (GA/RES/40/34).

Since 1994, and in keeping with the cultivation of a human rights culture, the focus has gradually shifted from an adversarial and retributive criminal justice system to that of Restorative Justice. Central to the concept of Restorative Justice is the recognition of crime as more than an offence against the state, but also as an injury or wrong done to another person. This is in line with the National Crime Prevention Strategy's victim-centred vision for the criminal justice system. The ultimate goal is victim empowerment through meeting victims' needs, be they material or emotional.

The Victims' Charter and the attached minimum standards document are important instruments elaborating and consolidating rights and obligations relating to services applicable to victims and survivors of crime in South Africa. The Victims' Charter is consonant with the provisions of section 234 of the Constitution.

I am confident that with the commitment and dedication of all role-players in the criminal justice process, this Victims' Charter will assist in the implementation of the applicable laws in such a way that it serves its purpose - making justice a reality for all!



**Mrs BS Mabandla, MP
Minister for Justice and Constitutional
Development**





YOUR RIGHTS AS A VICTIM OF CRIME



PREAMBLE

The Government of South Africa generally and agencies involved in the criminal justice system specifically:

Affirming

Government's commitment to implement measures aimed at continuous reform of the criminal justice system to protect and promote the rights of victims in compliance with international obligations under international human rights instruments, such as the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) and the Prevention and Eradication of Violence Against Women and Children Addendum to the 1997 SADC Declaration on Gender and Development;

Believing

That it is part of the responsibility of the state to promote the equal enjoyment of all the rights and freedoms that are guaranteed in the Constitution by all and that an equitable criminal justice system can only be achieved if the rights of both victims and accused persons are recognised, protected and balanced;

Recognising

The serious impact of crime on victims, and its potential for undermining a victim's human rights;

Noting

The significant progress made since the onset of democracy, with regard to transforming the criminal justice system to ensure access to justice and responsiveness of processes to all, regardless of race, gender, culture and class. That various measures have been implemented as part of the transformation of the justice system, with a view to ensuring the centrality of victims, balancing their rights with those of accused persons and minimising secondary victimisation in the various stages of the criminal justice process;

Hereby adopt this Victims' Charter

To provide for the consolidation of the present legal framework in South Africa relating to the rights of and services provided to victims of crime and to:

- eliminate secondary victimisation in the criminal justice process;
- ensure that victims remain central to the criminal justice process;
- clarify the service standards that can be expected by and are to be accorded to victims whenever they come into contact with the criminal justice system; and
- make provision for victims' recourse when standards are not met.

YOUR RIGHTS AS A VICTIM OF CRIME

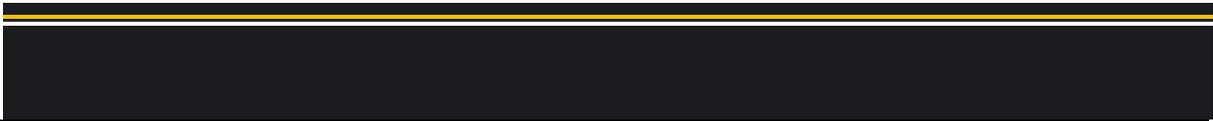
If you have been a victim of crime the following rights, as contained in the Constitution and relevant legislation, will be upheld in your contact with the criminal justice system:

1. The right to be treated with fairness and with respect for dignity and privacy:

- You have the right to be attended to promptly and courteously, treated with respect for your dignity and privacy by all members of any department, institution, agency or organisation dealing with or providing a service to you (hereafter referred to as a service provider).
- The police, during the investigations; the prosecutors and court officials during preparation for and during the trial proceedings; as well as all other service providers, will take measures to minimise any inconvenience to you by, among others, conducting interviews with you in your language of choice and in private, if necessary.
- These measures will prevent you from being subjected to secondary victimisation.

2. The right to offer information:

- You have the right to offer information during the criminal investigation and trial.
- The police, prosecutor and correctional services official will take measures to ensure that any contribution that you wish to make to the investigation, prosecution and parole hearing is heard and considered when deciding on whether to proceed with the investigation, or in the course of the prosecution or Parole Board hearing.
- This right means that you can participate (if necessary and where possible) in criminal justice proceedings, by attending the bail hearing, the trial, sentencing proceedings and/or Parole Board hearing.
- It means that you will have the opportunity to make a further statement to the police if you realise that your first statement is incomplete; you may also, where appropriate, make a statement to the court or give evidence during the sentencing proceedings to bring the impact of the crime to the court's attention.
- Furthermore, you may make a written application to the Chairperson of the Parole Board to attend the parole hearing and submit a written input.





3. The right to receive information:

- You have the right to be informed of your rights and of how to exercise them.
- You can, as part of this right, ask for explanations in your own language of anything you do not understand.
- You have the right to receive information and to be informed of all relevant services available to you by service providers.
- You will be informed of your role in the case and of the approximate duration of the case. You can request information regarding court dates, witness fees and the witness protection programme.
- You can request to be informed of the status of the case, whether or not the offender has been arrested, charged, granted bail, indicted, convicted, or sentenced.
- You may request reasons for a decision that has been taken in your case on whether to prosecute or not.
- You are entitled to receive documents that the law entitles you to have access to.
- You can request to receive notification of proceedings which you may attend.
- You can request the prosecutor to notify your employer of any proceedings which necessitate your absence from work.

4. The right to protection:

- You have the right to be free from intimidation, harassment, fear, tampering, bribery, corruption and abuse. If you are a witness, you must report any such threats to the police or senior state prosecutor.
- The police will, if you comply with certain requirements, apply for you to be placed in a witness protection programme.
- If such an application is successful, you will be placed in a witness protection programme where you will be protected, as far as possible, from all forms of undue influence, harassment or intimidation.
- This will ensure your safety as a witness and the availability of your testimony, and prevent you from withdrawing from giving evidence as a result of undue influence.

- This right includes that in certain circumstances the court may prohibit the publication of any information (including your identity), or it may order that the trial be held behind closed doors (*in camera*).
- You can request Correctional Services to inform you if the offender has escaped or has been transferred.

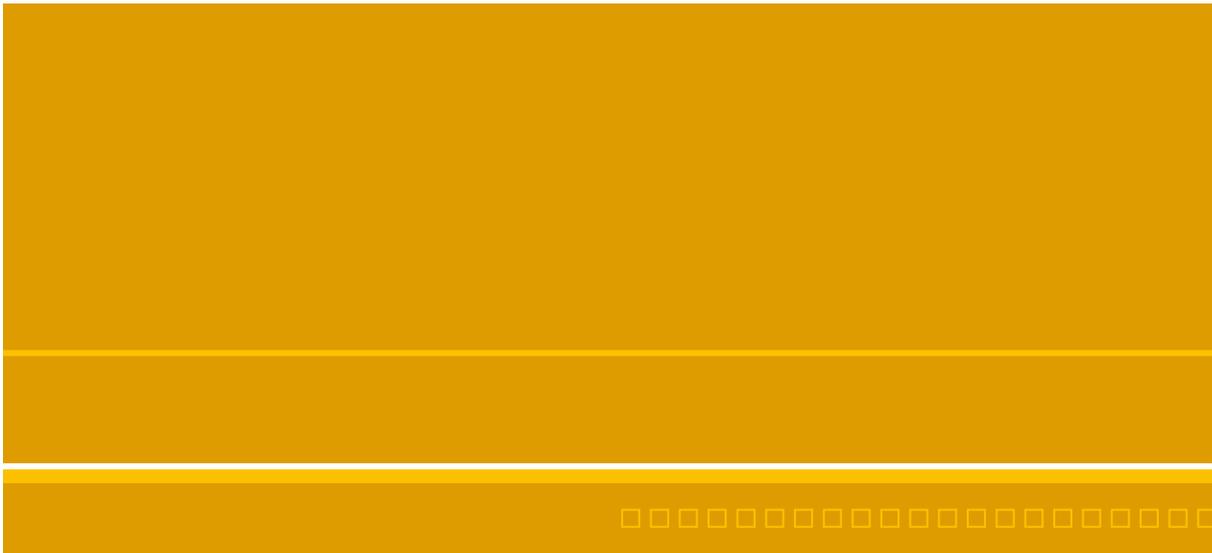
5. The right to assistance:

- You have the right to request assistance and, where relevant, have access to available social, health and counselling services, as well as legal assistance which is responsive to your needs.
- The police will assist you by explaining police procedures, informing you of your rights and making the appropriate referral to other relevant service providers.
- The office manager or head of office at the court will provide for the services of an interpreter.
- The prosecutor will ensure that special measures are employed in relation to sexual offences, domestic violence and child support or maintenance matters and that, where available, such cases are heard in specialised courts.
- If you have special needs, all service providers will, within the scope of their functions, take all reasonable steps to accommodate you and ensure that you are treated in a sensitive manner.

6. The right to compensation:

- You have the right to compensation for loss of or damage to property suffered as a result of a crime being committed against you.
- You can request to be present at court on the date of sentencing of the accused and request the prosecutor to apply to court for a compensation order in terms of section 297 and 300 of the Criminal Procedure Act, Act 51 of 1977.
- "Compensation" refers to an amount of money that a criminal court awards the victim who has suffered loss or damage to property, including money, as a result of a criminal act or omission by the person convicted of committing the crime.
- The prosecutor will inform you if a compensation order has been granted, explain its contents and how to enforce it. You can institute a civil action against the accused where the criminal court did not grant a compensation

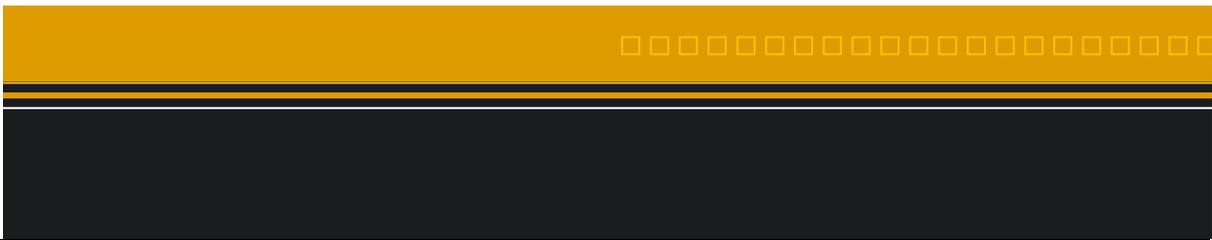


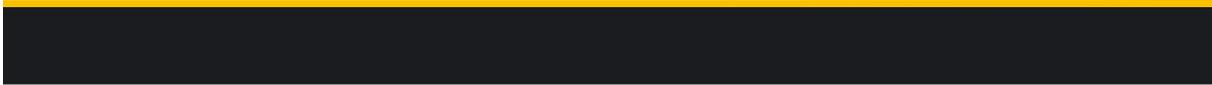


DEPARTMENT OF JUSTICE AND
CONSTITUTIONAL DEVELOPMENT

Private Bag X81
Pretoria, 0001

329 Pretorius Street, Momentum Building
Pretoria, 0002





MORE INFORMATION

If you require more information on any issue contained in this document, you can contact the Department of Justice and Constitutional Development's Gender Directorate at the following numbers:

Tel: (012) 315 1670
Fax: (012) 315 1960
Email: VictimCharter@justice.gov.za

Toll-free number: 0800 011 022

ACKNOWLEDGEMENTS

The Service Charter for Victims of Crime in South Africa was developed by the Gender Directorate in the Department of Justice and Constitutional Development, in co-operation with the Departments of Social Development, Correctional Services, Education, and Health, as well as with the National Prosecuting Authority, the South African Police Service, the South African Law Reform Commission, the South African Human Rights Commission, the Office of the Public Protector, the Independent Complaints Directorate, members of the Magistrates and Judicial Service Commissions and members of Tshwane Metro Police.

The Department of Justice and Constitutional Development deeply appreciates the contributions also made by the various non-governmental organisations and academic institutions to the development of the Victims' Charter.



Annexure D



RANK STRUCTURE

South African Police Service



Senior Management - Commissioned Officers

RANK	FORM OF ADDRESS
General <i>(Gen)</i>	General
Lieutenant General <i>(Lt Gen)</i>	General
Lieutenant General <i>(Lt Gen)</i>	General
Major General <i>(Maj Gen)</i>	General
Brigadier <i>(Brig)</i>	Brigadier

Commissioned Officers

Colonel <i>(Col)</i>	Colonel
Lieutenant Colonel <i>(Lt Col)</i>	Colonel
Major <i>(Maj)</i>	Major
Captain <i>(Capt)</i>	Captain
Lieutenant <i>(Lt)</i>	Lieutenant

Non - Commissioned Officers

RANK	FORM OF ADDRESS
Warrant Officer <i>(WO)</i>	Warrant
Sergeant <i>(Sgt)</i>	Sergeant
Constable <i>(Const)</i>	Constable

Annexure E

Annexure A

Request to make a representation to a Parole Board

The Chairperson
Correctional Supervision and Parole Board

.....(Name of the Board)

Private Bag X.....

.....(City)

.....(Postal code)

Request to make a representation to the CSPB

I hereby request to be afforded the opportunity to make a representation when the possible placement of the mentioned offender is being considered as I was the **complainant (victim)** or **immediate relative of deceased complainant (delete where not applicable)**:

Name of offender:.....

Offence committed:.....

Case number:.....

Date of sentence:.....

Name of sentencing court:.....

My address for purposes of further communication is as follows:

Mr/ Ms.....
(Full names and surname)

.....

.....

.....
(Provide full address including postal code)

ID number:.....

I would appreciate it if the Board could inform me timeously before the mentioned offender's placement will be considered in order to afford me the opportunity to prepare a representation for consideration by the Board.

I understand that I will receive instructions to guide me in preparing an appropriate representation. Furthermore, I undertake to inform the Parole Board of any address changes.

Yours sincerely

Signature:

Date:.....



Annexure F

STANDING ORDER (GENERAL) 101

THE MANAGEMENT OF COMPLAINTS AGAINST THE SOUTH AFRICAN POLICE SERVICE

1. Background

The purpose of this order is to regulate the management of *complaints* against the Service.

This order regulates the management processes and practices relating to *complaints* against the Service or any of its employees.

2. Definitions

In this Instruction, unless the context otherwise indicates, –

- (a) “*business unit*” refers to the division, province, component, section, cluster station, police station or unit and includes any other organizational structure in the Service;
- (b) “*complaint*” means a complaint by a person who is dissatisfied or disappointed as a result of the action or inaction by a member or employee of the Service;
- (c) “*complainant*” means any person, organization or institution who is dissatisfied or disappointed as a result of the action or inaction by a member or employee of the Service;
- (d) “*complaint file*” means a Z 20 file used to file all documents relating to a *complaint* which is registered on the SAPS Registry Management and Crime Administration Systems;
- (e) “*investigator*” means a member of the Service designated to investigate the *complaint*;
- (f) “*place of origin*” refers to the a *business unit* within the structure of the Service where the *complaint* originated (where the service which is the basis of the *complaint* was provided or not provided).

3. Database

An electronic database must be kept at the *business unit* which keeps record of the registration, assignment and closure of all *complaints* lodged against the Service at the *business unit*. The database must be utilized to analyse *complaints*. The database must at least reflect the following elements:

- (a) date on which the *complaint* was received;
- (b) name of the *complainant*;
- (c) contact details of the *complainant*;
- (d) nature and classification of the *complaint*;

- (e) name and contact details of the *investigator*; and
- (f) the outcome of the investigation.

4. Categories of complaints

Complaints need to be categorized to facilitate the analysis thereof. The following are the categories of *complaints* managed in the Service:

- (a) service delivery *complaints* from members of the community;
- (b) service delivery *complaints* from employees of the Service and
- (c) internal employment relations *complaints* from employees of the Service which cannot be dealt with through the applicable grievance procedure.

5. Complaints Management Process

(1) Registration of a *complaint*

- (a) If a *complaint* is lodged, the member receiving the *complaint* must ensure that the *complaint* is immediately registered. If a *complaint* is about another *business unit*, the commander of the *business unit* who received it must ensure that it is forwarded to the relevant *business unit*. The member receiving the *complaint* must ensure that a written acknowledgement of receipt of the *complaint* is provided to the *complainant*.
- (b) The *complaint* must be recorded in a register or *database* kept for this purpose.
- (c) The reference number of the *complaint* must clearly identify the *complaint* in terms of its nature, classification, *station* of origin and province.
- (d) After registration, the commander of the *business unit* who received the *complaint* must ensure that the *complaint* is, within at least two working days of its receipt, referred to the *place of origin* for investigation and to be remedied as necessary.

(2) Assignment for investigation

- (a) The commander of the *station* of origin must ensure that an *investigator* is designated to investigate the *complaint*.
- (b) The *investigator* must provide a written acknowledgement of receipt for the *complaint* to the commander, which must clearly reflect —
 - (i) his or her signature;
 - (ii) rank, persal number, initials and surname;
 - (iii) name of his or her *business unit*;
 - (iv) telephone number; and
 - (v) the date and time on which he/she received the *complaint*.

(3) Investigation

- (a) The *investigator* must —
- (i) peruse the *complaint file* to determine the basis of the *complaint*;
 - (ii) arrange and conduct an interview with the *complainant*;
 - (iii) verify the *complaint* with the *complainant*;
 - (iv) determine the cause of the *complaint* and the desired outcome;
 - (v) determine relevant measures to redress the *complaint*;
 - (vi) confirm with the *complainant* whether he or she is satisfied with the proposed corrective measures;
 - (vii) ensure that the *complainant* sign a certificate (as per Annexure A) after finalization of the *investigation*, to confirm the satisfaction or dissatisfaction of the *complainant* with the outcome; and
 - (viii) compile and submit a detailed report of the *investigation* to the commander.
- (b) The report referred to in subparagraph (3)(a)(viii) must contain the following:
- (i) Date on which the *complaint* was received;
 - (ii) name of the *complainant*;
 - (iii) contact details of the *complainant*;
 - (iv) nature, classification and *place of origin* of the *complaint*;
 - (v) name and contact details of the *investigator*;
 - (vi) summary of the facts relating to the *complaint*;
 - (vii) whether the *complaint* was founded or unfounded;
 - (viii) whether any misconduct is suspected and, if so, a recommendation regarding such misconduct;
 - (ix) any other proposed corrective measures (other than that referred to in paragraph 6(3)(b)(viii)); and
 - (x) a recommendation as to what measures may be taken to avoid similar *complaints* in future.

(4) Finalization of the investigation

- (a) The commander must on receipt of the investigation report, satisfy himself or herself that the *investigation* has been conducted properly and that the report is acceptable.
- (b) If the commander is not satisfied with the report from the *investigator*, he or she must within two (2) working days, refer the report back to the *investigator*, with instructions on how to properly complete the investigation.
- (c) If the commander is satisfied with the report, he or she must sign the report and, within two (2) working days submit it to the *business unit*.

- (d) On receipt of the final report, the *business unit* commander must ensure that the *complaint* has been properly investigated, if not, the report must be sent back with instructions on how to properly complete the investigation.
- (e) If the head of the *business unit* commander finds the report acceptable, the commander thereof must officially inform the *complainant* of the outcome of his or her *complaint*.

6. Time frames

Unless the nature of the *complaint* suggests otherwise, the normal time frame of dealing with *complaints* must be as follows:

- (a) The registration, acknowledgement and forwarding of the *complaint* to the *place of origin* must be done within a period, not exceeding (5) five working days from the date of receipt of the *complaint*.
- (b) The receipt, recording and assignment of the *complaint* to the *investigator* at the *place of origin* must be done within a period, not exceeding two (2) working days.
- (c) The investigating officer must, notwithstanding subparagraph(a) complete the *investigation* within a period not exceeding nineteen (19) working days from the date he or she has been assigned the investigation of the *complaint* unless the commander deems otherwise provided that it does not exceed nineteen working days (19) and notwithstanding subparagraph (d).
- (d) In the event that an investigation of a particular *complaint* is so complex that it cannot be finalized within a period of nineteen (19) working days, the commander must provide the *investigator* reasonable extension until the finalisation thereof, and communicate such extension in writing to the *business unit*.
- (e) The commander of the *place of origin* must on receipt of the investigation report, either refer it back to the *investigator* if the complaint is not satisfactorily addressed or, if he or she is of the opinion that is satisfactorily addressed, to the *business unit* within a period not exceeding two (2) working days.
- (f) The *business unit* commander must, on receipt of the final investigation report, refer it back to the *place of origin* for correction or inform the *complainant* of the status or outcome of the investigation within a period not exceeding two (2) working days.

7. Closing of complaint files

- (1) Notwithstanding the right of the *complainant* to seek other remedies outside the Service to have his or her *complaint* addressed, a *complaint file* will be regarded as closed if the commander of the *business unit* is

Annexure G

Tel: [your phone number]
Ref: [your reference, e.g. your surname]

PROVINCIAL SAPS COMPLAINTS DIVISION
[XYZ PROVINCE]
Tel:
Fax:

[DATE]

Dear [XYZ]

RE: STANDING ORDER (GENERAL) 101 COMPLAINT FOR CAS number: [YOUR CAS NUMBER]

1. The above matter refers. I am the complainant in the above matter.
2. I write to you with urgency to formally lodge a standing order (General) 101 Complaint in terms of Consolidation Notice 25/2012 to seek the Provincial Head of South African Police Services (SAPS) to investigate the management and regulation of the complaint against the employees and/or members of SAPS within your jurisdiction.
3. The Standing Order (General) 101 Management of Complaints Against South African Police Services states that when a person is dissatisfied or disappointed as a result of the action or inaction of a member or employee of the Service are eligible to lodge a complaint and to have their case investigated and provided with reasons for the said action or inaction.
4. Hereunder, I state brief facts around my case and the reasons why I am lodging a complaint against SAPS employees in the handling of my client case.

Brief facts of the case

5. [State what your case is about]
6. [State who your investigating officer is and what they have/have not done].

Infringement of the victim's rights to information, protection and assistance

7. [If you have not received updates on your matter or very little information, then fill set that out here].
8. [If your matter has been delayed for months or years, then set that out here].

9. [If you feel you have not received a proper standard of service from SAPS, then set that out here].

Times frames of the Standing Order 101 Complaint

10. I thus request information on the State of the investigation in the above matter as stipulated in section 6(a) (b) (c) (d)(e)(f) of the standing order 101 (general).
11. Failure by your office to comply with the above-mentioned relevant sections and investigation will force us to approach the Minister of National Police.

Contact and Address of the Client

12. [Your contact details].

Yours sincerely

[Your name].

Annexure I

YOUR REF: [your case number]
Tel (direct): [your contact number]

[date]

TO: DIRECTOR OF NATIONAL PUBLIC PROSECUTIONS, [JOHANNESBURG]

Advocate XX

Per email:

CC: DIRECTOR OF PUBLIC PROSECUTIONS

Chief Clerk to the Director of Public Prosecutions

[Gauteng Division, Pretoria]

Per email:

Dear Advocate XX

**RE: REQUEST OF REASONS FOR DECISION NOT TO PROSECUTE IN THE
MATTER OF [ACCUSED'S NAME], ORANGE FARM CAS [CASE NUMBER]**

1. My name is [] with identity number []. I am the complainant in the above case.

Background

2. [A brief description of the offence]
3. [Who was it reported to and which police station].
4. [How did you find out the National Prosecuting Authority will not prosecute].

5. Regarding the decision not to prosecute, I request reasons.

Law and policy protecting complainant's right to reasons for the decision not to prosecute a crime

6. Under section 2(d) of the Code of Conduct for Members of the National Prosecuting Authority under section 22(6) of the National Prosecuting Authority Act 1998,⁵² it states that,

If requested by interested parties, prosecutors should supply reasons for the exercise of prosecutorial discretion, unless the individual rights of persons such as victims, witnesses or the accused might be prejudiced, or where it might not be in the public interest to do so.

7. Furthermore, according to the 'Service Charter for Victims of Crime in South Africa', provision 3 states that the victim has the 'right to receive information'.⁵³ This provision is further expanded in the 'Service Charter for victims of crime in South Africa – The consolidation of the present legal framework relating to the rights of and services provided to victims of crime'.⁵⁴ Under this provision, it is stated that '[y]ou may request reasons for a decision that has been taken in your case on whether to prosecute or not'.

Requests

8. Concerning my right to have reasons not to prosecute, as expressed above, I request the complete and convincing reasons for the decision not to prosecute.
9. I trust the above is in order. Kindly submit a response within 5 (five) days from receipt hereof.

⁵² https://www.gov.za/sites/default/files/gcis_document/201409/339071257.pdf.

⁵³ <http://www.justice.gov.za/VC/VCindex.html>.

⁵⁴ <http://www.justice.gov.za/VC/docs/vc/vc-eng.pdf>.

10. I look forward to hearing from you.

Sincerely yours,

[Your name]

Annexure J

SAPS 512 (n)

FOR DEPARTMENTAL USE
Reference number:

SOUTH AFRICAN POLICE SERVICE

SUID-AFRIKAANSE POLISIEDIENS

REQUEST FOR ACCESS TO RECORD OF THE SOUTH AFRICAN POLICE SERVICE

(Section 18(1) of the Promotion of Access to Information Act, 2000 (Act No 2 of 2000))

A. Particulars of public body

The name and postal or street address, fax number or e-mail address of the deputy information officer must be stated below.

The deputy information officer:

B. Particulars of person requesting access to the record

- (a) *The particulars of the person who requests access to the record must be recorded below.*
- (b) *Provide an address and/or fax number to which the record must be sent.*
- (c) *In the case of a personal requester (ie a requester requesting access to a record which contains his or her personal information), also complete the certificate on the last page of this form in the presence of a peace officer or justice of the peace who must also complete his or her part of the certificate.*
- (d) *If the request is made on behalf of a personal requester, documentary proof of the capacity of the requester to make the request on behalf of another person must be attached to this form. Such documentary proof may, amongst other, be –*
- (i) *a general or specific power of attorney and a copy of the client's ID / passport;*
 - (ii) *a certified copy of the birth certificate of a minor and a certified copy of the identity document of the parent;*
 - (iii) *the letter of appointment as the executor of an estate issued by the Master of the High Court, together with proof of identity in the case of a request on behalf of a deceased estate;*
 - (iv) *where the request is made on behalf of a corporate body, a letter by an authorised person which authorizes the requester to make the request; or*
 - (v) *a copy of the page(s) of an insurance contract where the client have signed and where it is stated that the insurance company may act on behalf of the client.*
- (e) *If the person on whose behalf the request is made, has orally authorised the requester or by means of a letter to make the request on his or her behalf, the certificate at the end of paragraph C must be completed by the person on whose behalf the request is made in the presence of a peace officer or justice of the peace who must also complete his or her part of the certificate.*

Full names and surname:

Identity number:

Postal address:

_____ Postal code:

Telephone number: _____ Fax number:

E-mail address:

C. Particulars of person on whose behalf request is made

- (a) *This paragraph must be completed if a request for information is made on behalf of another person.*
- (b) *The *certificate at the end of this paragraph must be completed if –*
- (i) *the person on whose behalf the request is made, has orally authorised the requester or by means of a letter to make the request on his or her behalf; or*
 - (ii) *documentary proof of capacity (see paragraph B(d)(i) to (v) above) to act on behalf of another person cannot be attached or is not attached to this form.*

Full names and surname:

Identity number:

Capacity in which request is made on behalf of another person:

***Certificate:**

I, _____, hereby authorise the requester to request access to the aforementioned record on my behalf.

My identity number is:

SIGNATURE OF PERSON ON WHOSE BEHALF REQUEST IS MADE

I, _____, hereby certify that I am satisfied that the person on whose
(state rank, name and surname of peace officer or justice of the peace)
the request is made, is the person that signed the letter authorising the requester to submit the request on his or her behalf or is satisfied that the person whose identity number appears on this certificate, is one and the same person that signed this certificate.

Signed on _____ (date) at _____ (place).

SIGNATURE OF PEACE OFFICER / JUSTICE OF THE PEACE
(ie the signature of a magistrate, judge, police official or correctional official, etc as defined in Act 51 of 1977 & Act 16 of 1963. Although the legal representative of a requester (eg an attorney or lawyer) or other person, may be regarded as a "commissioner of oath", he or she is not regarded as a Peace Officer or a Justice of Peace.)

D. Particulars of record

(a) Provide full particulars of the record to which access is requested, including the reference number, if that is known to you, to enable the record to be located.

(b) If the provided space is inadequate, please continue on a separate folio and attach it to this form. The requester must sign all the additional folios.

Description of record or relevant part of the record:

Reference number, if available:

Is the record is requested for:

Mark with "X"	
<input type="checkbox"/>	(i) The purpose of civil proceedings that has commenced (ie a court date for the civil case has been determined, or summons or other process has been issued (a notice of the intended institution of legal proceedings against the SAPS in terms of section 3(1) of the Institution of Legal Proceedings against Certain Organs of State Act, 2002 (Act No. 40 of 2002) is also included)]
<input type="checkbox"/>	(ii) The purpose of criminal proceedings that has commenced (ie where a criminal investigation has already started or the criminal case docket is still open)
<input type="checkbox"/>	(iii) Any other purpose not mentioned in (i) or (ii)

E. Fees

(a) A request for access to a record (excluding a record containing personal information about yourself), will be processed only after a **request fee** has been paid. The **request fee is not payable by** –

(i) a requester who requests access to a section 15 automatically available record;

(ii) a personal requester (ie a requester requesting access to a record which contains his or her personal information); or

(iii) the authorised representative (eg attorney, lawyer, insurance company, next of kin, parents of the minor child, etc) of the person whose personal information is contained in the requested record.

(b) In addition, where applicable, actual **postage fee** and an **access fee or reproduction fee** may also be payable. The access or reproduction fee depends on the form in which access is required and the reasonable time required to search for and prepare a record.

(c) You will be notified of the fees that are payable.

(d) If you are of the opinion that you qualify for exemption from the payment of any fee, please state the reason therefore.

Reason for exemption from payment of fees:

F. Form of access to record

If you are prevented by a disability to read, view or listen to the record in the form of access provided for in 1 to 4 below, state your disability and indicate in which form the record is required.	
Disability:	Form in which record is required:

Mark the appropriate box with an "X" to indicate the form in which you would prefer access to the record. (Note that it may not necessarily be possible to grant access to the record in the form or on the medium you requested. In such a case you will be informed of the form or medium in which access will be granted. Also note that the fee payable for access to the record, if any, will in part depend on the form in which access is requested.)

1. If the record is in written or printed form —			
copy of record*		inspection of record	
2. If the record consists of visual images — (this includes photographs, slides, video recordings, computer-generated images, sketches, etc.)			
view the images		copy of the images*	transcription of the images*
3. If the record consists of recorded words or information which can be reproduced in sound —			
listen to the soundtrack (audio cassette)		transcription of soundtrack*	copy of the soundtrack* (audio cassette)
4. If the record is held on computer or in an electronic or machine-readable form —			
view the record		printed copy of the record*	copy in computer readable form* (stiffy or compact disc)
*If you requested a copy or transcription of a record (above), do you wish the copy or transcription to be posted to you? If so, a postal fee is payable.			YES NO

In which language would you prefer the record?
 Note that if the record is not available in the language you prefer, access may be granted in the language in which the record is available.

G. Notice of decision regarding request for access

You will be notified in writing whether your request has been granted or refused. If you wish to be informed thereof in another manner, please specify the manner and provide the necessary particulars to enable compliance with your request.

How would you prefer to be informed of the decision regarding your request for access to the record?

Signed at _____ on this _____ day of _____ 20

SIGNATURE OF REQUESTER

Certificate for completion by the Peace Officer or Justice of Peace in the case of a personal requester (ie a requester requesting access to a record which contains his or her personal information):

I, _____, hereby certify that the requester, with Identity
(state rank, name and surname of peace officer or justice of the peace)

Number: _____ has signed the request form in my presence
(of person who is requesting information about himself or herself)

and that I have satisfied myself that the person who signed the form and the person whose identity number appears on the form, is one and the same person.

Signed on _____ (date) at _____ (place).

SIGNATURE OF PEACE OFFICER / JUSTICE OF THE PEACE

(ie the signature of either a magistrate, judge, police official or correctional official, etc as defined in Act 51 of 1977 & Act 16 of 1963. Although the legal representative of a requester (eg an attorney or lawyer) or other person, may be regarded as a "commissioner of oath", he or she is not regarded as a Peace Officer or a Justice of Peace.)

FOR DEPARTMENTAL USE

Request received by _____
(state rank, name and surname of deputy information officer)

on _____ (date) at _____ (place).

SIGNATURE OF DEPUTY INFORMATION OFFICER