

# Gender-Based Violence Edu-Kit



**Navigating the criminal justice  
system after GBV in South Africa**



University of  
Nottingham  
Rights Lab



## About this toolkit

This education toolkit (Edu-kit) has been co-designed by researchers at the Rights Lab, University of Nottingham, UK and South African Gender-based violence organisation Survivors Haven Foundation.

It has been created for people who have experienced GBV and/or those supporting people who have experienced GBV in South Africa.

It is designed to give you information about what GBV is; what your rights are; and how to navigate the criminal justice system.

The criminal justice system can be complicated and difficult to understand. This Edu-kit contains information about what should happen at each stage of the process, obstacles that might occur, and how to overcome them.

We hope that this Edu-kit can equip people with knowledge about their rights and the responsibilities of justice actors in GBV cases. We hope that it will empower those who have experienced GBV to be able to advocate for themselves when seeking justice in their cases. And we hope that this will be a helpful tool for those helping survivors navigate the criminal justice system.

**Note:** The information contained in this edu-kit pertains to adults aged 18 years and over.

# Table of Contents

**01** What is gender-based violence?

**02** What are my rights?

**03** Where can I go for help?

**04** Justice actors

**05** Navigating the justice system

# 01 What is gender-based violence?

## Definition

Gender-based violence is violence directed against a person because of their gender or violence that affects persons of a particular gender disproportionately.

It most often, though not only, affects women and girls and is rooted in gender inequality, power imbalances and harmful norms.

It can also affect men and boys and LGBTQ+ individuals.



## What are the types of GBV?

### Physical violence and abuse

Any act(s) or pattern of behaviour which causes or threatens physical harm as a result of unlawful physical force. It can take the forms of, among others, assault, deprivation of liberty, manslaughter and murder.

### Femicide

The intentional killing of a woman or girl because she is a woman or girl. It is the most extreme expression of gender-based violence.

### Sexual violence and abuse

Any harmful or unwanted sexual behaviour. It includes acts of abusive sexual contact, forced engagement in sexual acts, attempted or completed sexual acts without consent (rape or attempted rape), sexual harassment, verbal abuse, threats, exposure, unwanted touching, incest, and others.

### Psychological and/or emotional abuse

Any act(s) or pattern of behaviour that cause psychological harm to an individual. Examples of psychological violence and abuse coercion, defamation, verbal insult, or harassment.

### Verbal abuse

Includes words or behaviours used to manipulate, intimidate, and maintain power and control over someone. This can include insults, humiliation in public or in private, ridicule, shouting abusive statements, and constant criticism.

### Economic violence and abuse

Any act or pattern of behaviour which causes economic harm to an individual. Examples include, for example, property damage, restricting access to financial resources, education or the labour market, or not complying with economic responsibilities, such as child support.

### Domestic violence and domestic abuse

Any act or pattern of behaviour from a person with whom you are in a domestic relationship, including physical abuse, sexual abuse, emotional abuse, psychological abuse, verbal abuse, economic abuse, intimidation, harassment, stalking, damage to property.

It also includes when the person comes into the place where you live which you do not share with that person without your invitation or agreement. As well as any other behaviour by the person that is abusive or harmful and has a bad effect on your safety, health or wellbeing.

## **Intimate partner violence**

Behaviour within an intimate relationship that causes physical, sexual or psychological harm, including acts of physical aggression, sexual coercion, psychological abuse and controlling behaviours. This includes violence by both current and former spouses and partners.

## **Harassment**

When a person watches or follows you all the time or sends you unwanted letters, messages on your phone or emails. Also if the the person calls you all the time even when you've asked them to stop.

## **Harmful practices**

A variety of harmful practices exist, including female genital mutilation (FGM), child and forced marriage, virginity testing and related practices, extreme dietary restrictions, including during pregnancy (force-feeding, food taboos), binding, scarring, branding/ infliction of tribal marks, corporal punishment, stoning, violent initiation rites, widowhood practices, accusations of witchcraft and ritual attacks, son preference, daughter aversion and gender-biased sex selection, honor crimes, dowry related violence, menstruation restrictions, infanticide, incest and body modifications that are performed for the purpose of beauty or marriageability of girls and women.

## **Female genital mutilation**

refers to all procedures involving partial or total removal of the female external genitalia or other injury to the female genital organs for non-medical reasons.

## **Forced marriage**

A marriage in which one or both people do not, or cannot, consent (agree) to the marriage.

## **Human trafficking**

The recruitment, transportation, transfer, harbouring or receipt of persons through force, fraud or deception for the purpose of exploitation.

Exploitation shall include at a minimum sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

# 02 What are my rights?

Knowing your rights is an important first step in being able to speak up for yourself and hold both perpetrators and justice actors to account when an incident of GBV happens, or if you are at risk of GBV.

You have a right to human dignity, equality and freedom - this includes your right to be free from violence and discrimination.

Your rights are protected under **The Constitution of South Africa 1996**, including:

- the right to equality (Article 9);
- human dignity (Article 10);
- the right to life (Article 11); and
- freedom and security of the person (Article 12).

Under Article 9 you have a legal right to equal protection and benefit of the law and equal enjoyment of all rights and freedoms.

You also have the right to not be unfairly discriminated against on grounds of race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

Under Article 12, you have the right to be free from all forms of violence from either public or private sources, and the right to bodily integrity.

This means that if someone inflicts any kind of violence upon your person, and if that violence is motivated by your gender identity, they are a perpetrator of gender-based violence.

This is a violation of your human rights and you have a right to protection under the law.

## What other laws exist to protect me from GBV?

**The Criminal Law (Sexual Offences and Related Matters) Amendment Act, 32 of 2007** defines sexual offences as sexual activities without consent and refers to a wide range of sexual behaviours leading to the victim feeling uncomfortable. Sexual offences include rape, attempted sexual assault, and contact sexual offences.

**The Criminal Law (Sexual Offences and Related Matters) Amendment Act, 6 of 2012** amended the law to introduce sexual offences courts to deal with cases more quickly and effectively.

**The Domestic Violence Act, 116 of 1998 (DVA)** exists to give people experiencing domestic violence the best possible protection under the law and commits the government to stop domestic violence.

Under the DVA

- law enforcement bodies such as South African Police Services (SAPS) are obligated to protect victims
- you can get a protection order against an abuser. If an abuser commits an act of DV against you while you have an order in place, they can be arrested and taken to court.

In 2021, additional forms of violence were added to the DVA:

- spiritual abuse,
- elder abuse,
- coercive and controlling behaviour,
- exposing a child to domestic violence and
- unauthorized entry into a complainants workplace or place of study.

Failure to comply with a protection order issued under the DVA is a crime.

**The DVA defines sexual abuse as:**



any conduct that abuses, humiliates, degrades or otherwise violates the sexual integrity of the complainant, irrespective of whether or not such conduct constitutes a sexual offence as contemplated in the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007

## Additional Relevant Rights

Under the **South African Service Charter for Victims of Crime** you have the following rights that should be upheld during your interaction with the criminal justice system:

- The right to be treated with fairness and with respect for dignity and privacy
- The right to offer information
  - during the criminal investigation and trial
- The right to receive information
  - to be informed of your rights and how to exercise them in a language you understand
  - to be informed of all relevant services available to you
  - to be informed about the status of the case, court dates, witness fees, notification of proceedings.
- The right to protection
  - to be free from intimidation, harrassment, fear, tampering, bribery, corruption and abuse
- The right to assistance
  - to request assistance and, where relvant, have access to available social, health, and counselling services, as well as legal assistance
- The right to compensation
  - for loss of or damage to property suffered as a result of a crime being committed against you.

Under the **South African Witness Protection Act** [No.112 of 1998) any witness who has reason to believe that his/her safety or the safety of any member of his/her extended family may be threatened by reason of being a witness, may apply for protection.

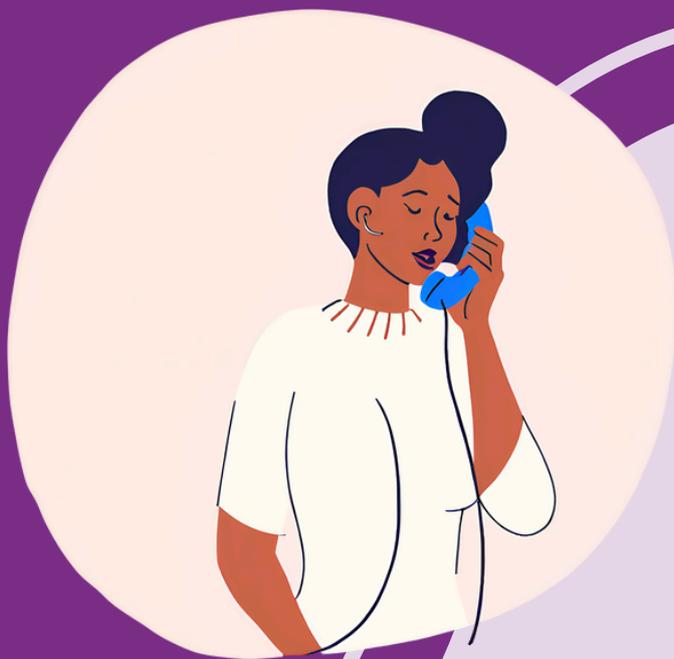
# 03 Where can I go for help?

If you have experienced any form of GBV and are seeking help, or if you are concerned that someone else might be experiencing GBV you can call:

- National GBV Helpline for reporting incidents of domestic violence: 0800 150 160
- 24 hours GBV National Command Center: 0800 428 428
- Rape Crisis: 021 447 9762
- National Counselling Line: 0861 322 322
- Childline South Africa (if incident involves a child): 0800 055 555
- SAPS: 10111

You can report GBV and receive help at any Thuthuzela Care Centre (TCCs). There are currently 66 TCCs across South Africa.

There are many anti-GBV organisations across South Africa who can help you through the justice process and help you find medical, legal, and social help.



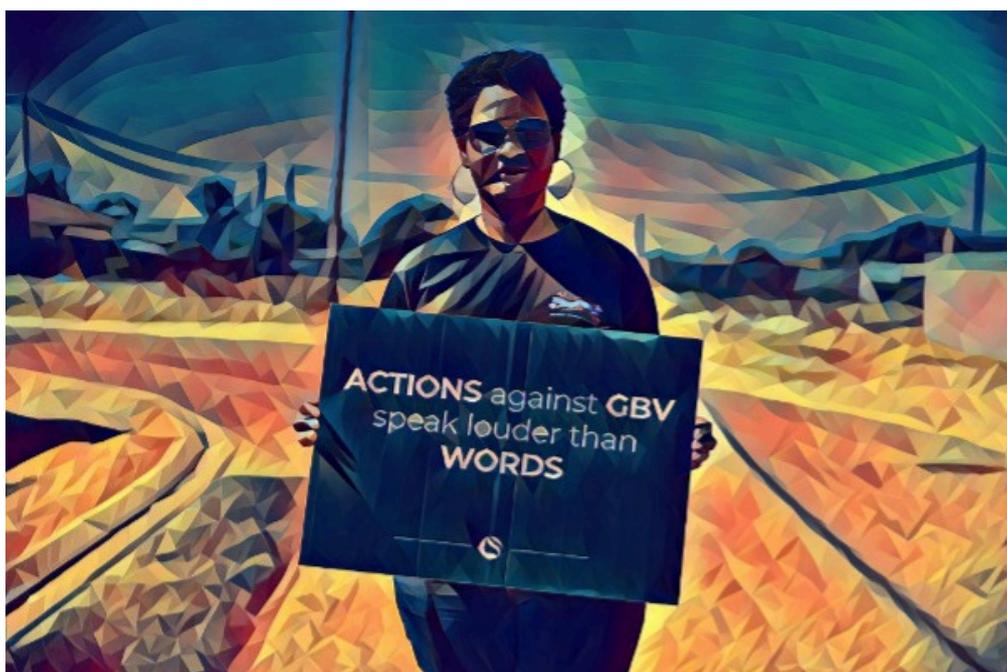
## Survivors Haven Foundation

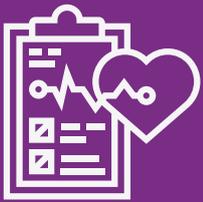
Survivors Haven Foundation (SHF) is an anti-GBV community service organisation founded in 2020. Based in Mamre, Western Cape, they advocate against GBV, provide victim support and work on youth development in the surrounding areas.

They can support you through your journey through the criminal justice system, from reporting your incident through to going with you to court. They will be able to give you the information you need to understand each stage of the process and can refer you to trauma counselling at a TCC.

SHF also have support groups for victims and survivors of GBV where you can learn about and receive support for protection order application, child maintenance application and take part in awareness programmes about your rights and the responsibilities of justice actors.

As well as directly helping survivors of GBV, Survivors Haven Foundation run community awareness and prevention programmes to further educate communities about GBV.





## Thuthuzela Care Centres

A Thuthuzela Care Centre (TCC) is a health facility that provides emergency service in the 72 hours immediately after a rape. Centres are based in hospitals across South Africa.

TCCs are one-stop facilities that offer the following services:

- Medical examination
- Bath or shower facilities for victim use
- Allocation to investigating officer to take a statement
- A social worker to offer counselling
- Follow-up visits, treatment and medication for Sexually Transmitted Infections (STIs), HIV and AIDS
- Transportation home by an ambulance or the investigating officer
- Arrangements for the survivor to go to a place of safety, if necessary
- Consultations with a specialist prosecutor before the case go to court
- Court preparation by a victim assistant officer
- An explanation of the outcome and update of the trial process by a case manager.



# 04 Justice actors



## South African Police Service (SAPS)

SAPS have responsibility to implement the Domestic Violence Act (DVA) and the Sexual Offences Act (SOA).

### What are their obligations?

- Protection from further harm
  - the relevant SAPS official must take all necessary actions to prevent you from coming to further harm.
- Helping you find suitable accommodation and medical assistance
  - SAPS officials must give such assistance that they are reasonably able to give in the circumstances.
- Ensuring you have the necessary information to claim your rights
  - SAPS must give you a written notice in any official language of your choice whether to report an incident of GBV and ensure you understand the content of the notice
- Criminal charges and protection orders
  - SAPS must make sure you understand you have the right to lay a criminal charge and to apply for the protection order (in the case of domestic violence)
- Enforcing protection orders
  - SAPS must ensure protection orders are complied with and respond to any notice that a protection order has been breached. This can include arrest.

SAPS has GBV desks at every police station and there are 1,161 Victim Friends Rooms at police facilities (police stations, contact points, satellite stations, two international airports and at Family Violence Child Protection and Sexual Offences Units).



## Medical Professionals

Medical professionals do not have a legal obligation to report incidents of GBV to the authorities. But they do have duties to you as a patient and a victim of crime.

### What are their responsibilities?

- To treat you with respect for dignity and privacy
- To treat all patients equally and provide them with the same level of concern
- To not discriminate or refuse emergency treatment.

Doctors have the duty not to harass patients, colleagues or others on the basis of sex, gender, sexual orientation, race or any (presumed) group characteristic.

- To protect the privacy and confidentiality of the patient and to only disclose information with your informed and written consent or when authorised by law or a court to do so.
- To provide access to information requested by patients and to ensure health data is stored safely.
- To assist in legal proceedings when called upon as expert witnesses.
  - Healthcare practitioners have a particular responsibility in relation to crimes such as child abuse and domestic violence.

You have the right to be free of physical and psychological violence, particularly sexual violence including sex without consent within marriage.

Medical practitioners have an obligation to affirm these rights, to advocate for non-violent resolutions in relationships by enlisting the aid of social workers and other health care workers where appropriate, and to make themselves and others aware of the harmful effects of discrimination against women.





## Social Workers

Social workers are guided by a Code of Conduct which describes the standards of professional conduct social workers should adhere to.

They also have an Ethical Code which sets forth specific enforceable rules of conduct for social workers

### **What are the duties of social workers?**

To provide counselling, support, treatment evaluation, developmental, therapeutic and referral services to individuals, couples, families and groups of people.

### **What are their obligations to clients?**

- You should be treated with respect for your dignity and privacy
- Social workers must uphold confidentiality

Any knowledge or information you share with the social worker should be kept between yourself and them

There are situations in which social workers may be legally required to share confidential information if requested by a court. In this case, your social worker should:

- Inform you as much as possible prior to disclosure
- Disclose as little information as is possible under the order.
- and if the request to disclose has been made without your consent or if disclosure could cause harm, you and/or the social worker can request the court withdraw the order to disclose.
- Whenever possible, you should be provided with information in a language you understand.
- A social worker must have respect for your right to decide whether or not to cooperate with the social worker, even in the case of statutory order. The implications of refusal should be explained to you.



## Legal Practitioners

Legal practitioners are bound by norms, standards, and regulations set by the Legal Practice Council. As a client, you have certain rights and responsibilities.

### **Your rights as a client:**

- to professional, honest, and unbiased advice at all times
- to be treated with professional courtesy, respect and fairness, regardless of your race, gender, nationality, age, sexual orientation or disability
- to privacy and attorney confidentiality
- to clear explanations in language and terms you understand
- to be kept updated on development and on progress as work on your case proceeds
- to responses to your letters and phone calls within a reasonable time
- to complain about your attorney if you believe they are acting unethically or in an unprofessional manner
- to an explanation of costs, to be kept informed of costs, and to a clear bill which shows work done and amounts charged.

### **Your responsibilities as a client:**

- to treat your attorney with respect and courtesy
- to provide correct and complete information, and to disclose all relevant facts
- to give your attorney clear instructions
- to enquire about costs and pay a deposit if requested to do so
- to respond to information requests in a timely manner
- to use the legal system, including the courts, appropriately

### **Your right to complain about:**

- Persistent delays in answering letters
- Failure to account for money held on the clients behalf
- Improper, unprofessional or unethical conduct
- Failing to give proper attention to the matter

Complaints can be lodged with the relevant provincial office of the Legal Practice Council.



## Court Clerks

Clerks of the court have obligations under the domestic violence legal framework in South Africa. If you are applying for a protection order (PO), clerks have obligations to:

### Explain your rights as a complainant:

- This includes handing you a notice setting out your rights, reading it to you if necessary, and making sure you understand your rights.
- Give you the application for a protection order.
- Assist you in completing application forms by either reading forms aloud or assisting with filling out the forms as needed.
- Receive the application and affidavit and submit it to the court
- Inform you of the date you must return to court.
- Arrange for the service of notice, interim order, and return date upon the respondent (the person you are applying for a PO against)
- Arrange for a copy of the interim PO to be sent to the police.
- Serve the complainant with a certified copy of the interim PO.
- Issue the final PO and make sure a copy is provided to you as the victim.
- Make sure you understand the terms of the final PO, including any prohibitions or obligations placed on the perpetrator.

Court clerks are responsible to ensure that POs are completed correctly and filed correctly with the necessary documents attached (such as affidavits and police reports).

They must ensure victim information, court records and case details are kept confidential and that victims personal details are protected.



# 05 Navigating the justice system

## Stages of the justice process

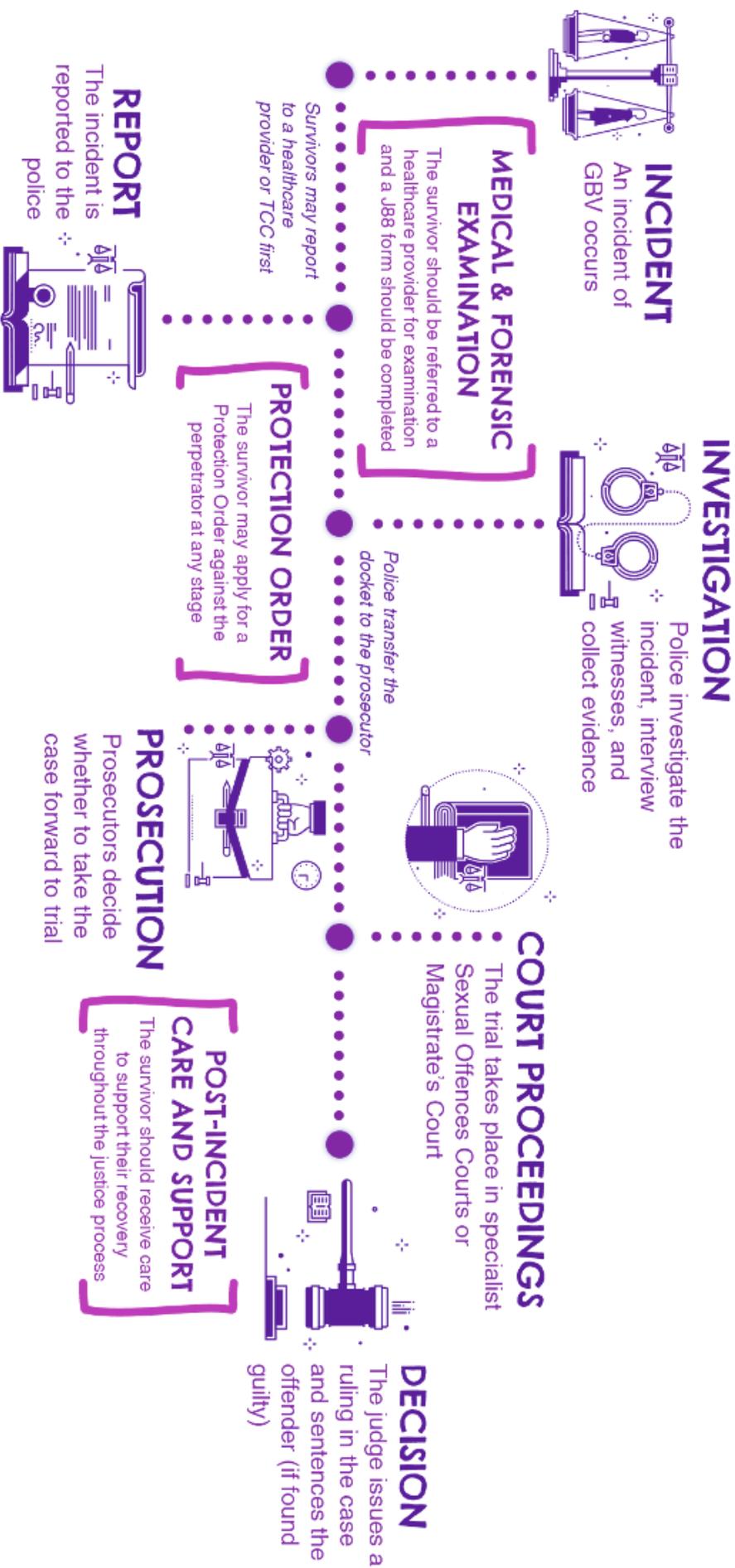
The criminal justice process after an incident of GBV can be long and complex. People who have experienced gender-based violence seeking criminal justice, as well as those advocating on their behalf, and officials within the justice system can face obstacles and challenges.

This section of the Edu-kit has been created to help you, as someone who has or might experience GBV, navigate the criminal justice system. It contains information about what the different stages of the justice process are, what should happen at each of those stages, some possible barriers you might experience, and how to overcome them.

While different cases may progress in varying ways, the overall process can be summarised as consisting of seven distinct stages:

- 1) Reporting
- 2) Medical and forensic examination
- 3) Protection Orders
- 4) Post-incident care and support
- 5) Investigation
- 6) Prosecution
- 7) Court proceedings

**Some of these stages might happen at the same time and you might not experience all of these stages, depending on the case.**



# What to do after an incident of GBV

If you experience GBV, whether it is a singular incident or a broader pattern of abuse, it is your choice about what to do. Your safety is the most important thing and you should make sure you are as safe as possible.

Here are some options of what you can do after GBV:

- visit or contact a TCC. They are open 24 hours, 7 days a week.
- contact the national emergency number on 1011 from a landline or 112 from a mobile phone
- contact SAPS
- if you need medical attention, go to a medical facility such as a community clinic or a hospital.

It may help to tell a friend or family member who can support you after GBV and help you obtain medical attention. However, this may not be possible or appropriate in all situations.

You might want to move to a safer location after GBV (if you can).

You do not have to report GBV and/or lay a criminal charge, but if you do, below are details about how to report and information and what should happen at each stage of the justice process.

If you do not want to lay a criminal charge you can still report the crime to the police and insist that they log it in the Occurrence Book.

If you do want to report the crime, try to do so as soon as possible so that the police and medical professionals can obtain forensic evidence.

Note: if you have experienced sexual assault, do not shower before a medical examination can take place. This will wash away vital evidence.

If you change clothes, take the clothes you were wearing when the incident(s) happened with you to the TCC or police station as they might also contain evidence.



# Reporting

After an incident of GBV, you might want to report what happened and lay a charge against the person who committed a crime against you.

The crime can be reported by the victim, a family member, colleague or a person who witnessed or received information about the crime.

## Where can I report an incident of GBV?

- To the police at a police station
- To a TCC (based in community clinics or public hospitals)

If you report at a TCC:

- With your consent, the staff will contact the police and assist you in getting immediate medical attention if needed.
- Staff will arrange counselling at the centre.
- Staff will arrange for ongoing counselling if required and court preparation if the case goes to trial.

## When reporting an incident of GBV to SAPS:

- The SAPS officer should determine if you are in danger and take necessary action to protect you from further harm.
- They should explain your rights, and the processes and procedures in a language and using terminology you understand. This includes your right to lay a criminal charge against the perpetrator.
- You should be provided with a victim-friendly room from which to give your statement (unless you report your incident to SAPS at the scene).
- The SAPS officer should take your statement and statements from any witnesses(es).

**Note:** you will be asked for a detailed account of what happened. Some of the questions may feel intrusive and be upsetting, but you should be treated with sensitivity and respect. If at any point you are uncomfortable with the officer asking questions, you should ask to speak with another officer.

- Statements should be taken in a language that you understand and an interpreter arranged if necessary.
- SAPS should explain the nature and purpose of taking your statement.
- Your statement should be written down and you should be given the opportunity to read your statement back, or have your statement read back to you, to make sure that it has been recorded accurately. This includes making sure that your name, address, and contact details are correct. You should also be given a copy of your statement.
- You should be given a case number and the name of the investigating officer.
- They should assist you in accessing medical treatment, shelter, and/or counselling.
- You should be told what support services are available in your area, including which services are free and what time of day they are available.
- You should be treated with sensitivity, respect, and with the urgency required at all times.



**If you are reporting at the scene of a GBV incident:**

The police will send a patrol to your location. Be aware you might have to wait a long time.

If there is reason to believe an act of violence has been committed, the suspected perpetrator must be arrested immediately.

SAPS officers should make sure that a medical officer collects and records any medical evidence in support of a criminal charge.



## Common issues at reporting stage:

It is important that you are aware of and prepared for potential problems that might arise when you report your GBV case to the police. Knowing a problem helps overcome that problem and create strategies and tactics to tackle it.

Knowing your rights, what SAPS are supposed to do, and some of the issues you might encounter when reporting your incident(s), will help you advocate for yourself, know what questions to ask, and hold SAPS accountable.

Some issues you might face are:

### Lack of information and communication

SAPS might not explain the support services available to you or how you can access them. They might not explain your rights or the procedures in your case.

- You are entitled to this information and SAPS are legally obligated to give it to you. Do not be afraid to ask the SAPS officer about anything you do not understand. If they do not tell you the next steps after reporting, ask them to explain this.
- If the SAPS officer assisting you cannot answer questions about your case, support services, or police processes and procedures, ask to speak to someone who can.

## Delays

People have reported experiencing long delays before receiving assistance at police stations. This can be because of understaffing and a lack of officer capacity. While SAPS are required to treat GBV cases with necessary urgency, be prepared if you have to wait to be seen by an officer.

You can:

- Ask how long the wait to be seen will be and why there is a delay.
- Remind officers of their legal obligations to you as a victim of GBV.
- Ask to wait in a victim-friendly room (VFR).

Sometimes, long wait times are used to dissuade you from laying a charge in the hopes that you will give up and go home. **Be persistent!** It is your right to live free from violence, abuse, and discrimination, and to lay a criminal charge against anyone who violates that right.

If you have been waiting a long time, do not be afraid to ask for updates on when your statement will be taken.

**Be aware:** some stations may not have victim-centred facilities such as a VFR. Stations that do have VFRs may not be well-equipped. This is linked to a general lack of adequate infrastructure at police stations.



## Unacceptable treatment

Reporting an incident(s) of GBV can be daunting and sometimes gender and social norms can make people feel fear and shame about what happened to them.

Remember that experiencing GBV is **NEVER** your fault!

Some people have reported that they have been stereotyped and treated negatively by the police when reporting GBV. People have been made to feel like it was their fault or that there must be a justification for the perpetrators actions. As well as gender stereotypes and sexism, some people have reported racism when reporting their GBV to the police.

**This is unacceptable!**



SAPS have a legal obligation to treat you with sensitivity, dignity, and respect.

If you experience unacceptable treatment, including discrimination, stereotyping, harassment, racism, sexism, or any other unfair treatment from a SAPS officer at the reporting stage you can:

- Report it to the station commander at the police station.
- If the station commander does not address your complaint adequately you can report the matter to the Independent Police Directorate. The local police station should give you their contact details.
- Ask or a different officer to take your statement.

## Mediation

If GBV has occurred between intimate partners or spouses, sometimes police will try to get you to 'work things out' with your perpetrator.

There can be a view that domestic violence is a personal matter to be dealt with among partners.

This is not the case.

The Domestic Violence Act (1998) affords legal remedies to people who experience domestic violence. You have the right to lay a criminal charge and apply for a protection order.

If SAPS tries to mediate between yourself and the perpetrator of GBV do not be afraid to say that you wish to lay a criminal charge and that it is your legal right to do so.



## Misinformation

You might be given inaccurate or incorrect information by police officers. This could be because of a lack of training among police, attempts to discourage laying a charge, failure to follow procedures, and genuine ignorance.

It is important that you are as knowledgeable and informed about your rights and the criminal justice process as possible so that you can advocate for yourself and hold police accountable.

A common piece of misinformation given is police officers telling people they cannot open a docket because of where the incident(s) happened.

Note: The incident must be dealt with by the police station where it is reported, even if this is not the closest station to where the incident occurred.

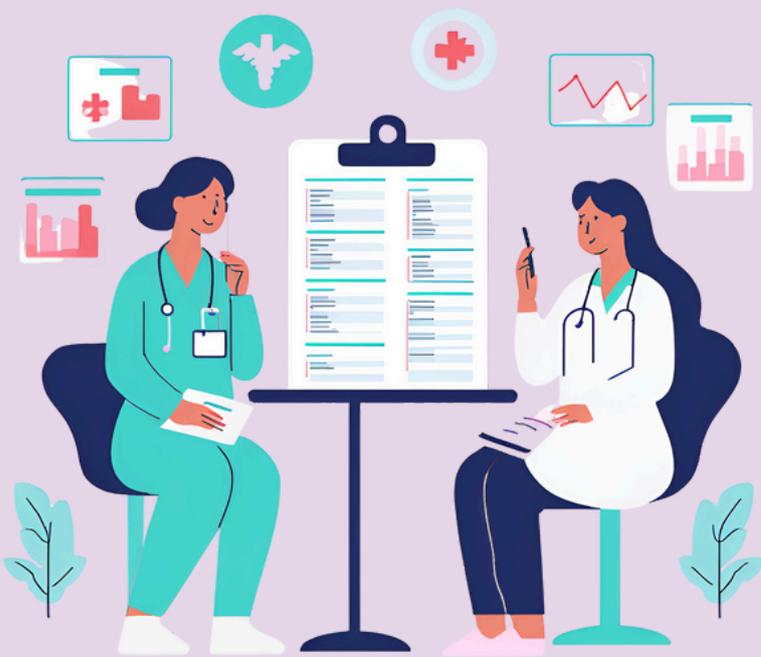
The police should not turn you away if the incident took place elsewhere. They should open the docket and treat the incident as if it occurred in their area. Once all the necessary actions have been completed, including your statement taken and SAPS responsibilities upheld, the docket will then be transferred to the area where the incident took place.

You should also not be turned away if the incident took place a long time ago. SAPS still have an obligation to open a case and investigate if that is what you want.



If a medical report is required it is SAPS' obligation to help you get medical attention and they should work with medical professionals to obtain the report.

If SAPS tell you that they can not open a case without a medical or social worker report first being obtained by yourself - this is contrary to legislation. It is NOT TRUE. You do not need a medical report before opening a case and not all cases of GBV require a medical report (for example if physical violence did not occur).



## Medical and forensic examination

If you have experienced physical violence and/or sexual assault you will likely need to be examined by a medical professional as part of your case.

### Why is medical and forensic evidence important?

The prospect of a medical examination can be daunting after GBV but it is important for both your physical health and wellbeing to be checked by a medical professional, and as a step in the criminal justice process. A medical examination allows for the gathering of medical and forensic evidence of the incident.

This evidence can assist the police in establishing what happened, who is involved, when and where the incident took place and how the incident occurred. Forensic evidence can be instrumental in progressing cases of GBV and obtaining justice for survivors.

For example, biological material like blood, saliva and semen and trace evidence like hair, skin and fibres can provide evidence to help confirm what kind of GBV occurred and DNA analysis can help identify individuals involved in the incident(s).

From the medical examination, a medical professional will complete a J88 form. The J88 form is the document that records medical evidence that might be needed to obtain a conviction in a GBV case. It is the most important written evidence of the medical indications of what has taken place. The J88 form will be given to the investigating officer and form part of the larger effort to collect evidence in the case.



A J88 form is the official document from the Department of Justice used exclusively for criminal proceedings to record injuries sustained by victims of crime.

On the form, there is space for medical professional observations about the physical and emotional condition of the person being examined. This can include written words, photographs, drawings and quotes. The form gives evidence for a single incident of violence. It is submitted to the court at the beginning of a trial together with an affidavit from the health professional.

Its purpose is to convey the precise clinical description of the injuries sustained. It is important that it is filled out appropriately and completely.

Where to go for a medical examination:

- Thuthuzela Care Centre
- Hospital
- Community clinic

### **When should I get a medical examination?**

You should get a medical examination as soon as possible after sexual violence and/or assault and incidents of physical violence.

**IMPORTANT NOTE: Sometimes your medical examination might happen at the same time you report your incident of GBV, depending on when and where you report.**

If you report GBV directly to SAPS at a police station, they will assist you in getting medical treatment and issue a J88 form for you to take to a medical professional at a hospital or TCC to complete.

If the police officer does not give you a J88 to take to the hospital/TCC, they should have one there.

### **What happens when you report to a TCC?**

If you report to a TCC, the specialised staff will get you immediate medico-legal attention that will include a medical examination (with your consent). They will also help you report your case to the police. Incidents can be reported immediately or at a later stage.



## What to expect

The procedure for the medical examination should be explained to you beforehand so that you are aware of what will happen.

The examination will be carried out by an accredited healthcare practitioner. The purpose of the examination is to collect evidence for your case that will help bring your perpetrator to justice.

Depending on the kind of GBV you have experienced, the examination may involve a pelvic exam, vaginal/penile/anal swabs, head/pubic hair samples and/or skin/fingernail scrapings.

Alcohol and bodily fluid samples may be taken and photographs may be taken in places on your body where there is evidence of violence, like cuts and bruises.

The medical professional examining you should treat you with dignity and respect at all times.

The medical professional will fill out the J88 form, which you will have to consent to by signing a form SAP 308 which must be retained by the practitioner on your patient file. The consent is for the medical examination and permission for the J88 form to be handed to the police for investigative and court purposes.

**Note: The entire report must be completed in the practitioner's own handwriting and they must sign every page.**

## Common issues faced at medical examination stage:

### Long delays and wait times

When you get to the clinic/hospital/TCC for your examination, you might find that there are long wait times. While this can be incredibly frustrating and can potentially interfere with other responsibilities you may have, it is extremely important that you stay and get examined.

If you are waiting to be seen for a long time, you can ask for regular updates on wait times and when you might be seen.

Understaffing and resource restraints can result in significant backlogs in processing medical and forensic evidence by government laboratories. This could lead to your case being postponed because the evidence is not yet available. It is important not to give up despite the potential for long delays.

### Incomplete J88 forms

It is extremely important that your J88 form is completed accurately and fully and that it is sent to the police to be placed in dockets. You can check with the medical professional that they have completed the form and ask for confirmation that it has been sent to the police station.

You can also contact the police station dealing with your case to ensure that they have received your J88 form and that it has been completed correctly.

### Lack of sensitivity

Some people have reported being treated with a lack of sensitivity (particularly gender-sensitivity), dignity, and respect by medical professionals. This is unacceptable! Medical professionals have a responsibility to treat you appropriately and if at any time you feel uncomfortable or are discriminated against by a medical professional you can ask for a different practitioner to carry out your examination.



## Post-incident care and support

After you have reported GBV and received medical attention, SAPS or the health care provider should ensure that you are referred for post-reporting care and counselling services.

In many cases, a community service organisation (CSO) is contacted because the State does not provide support and care services to survivors.

Post-incident care and counselling can also be provided by Thuthuzela Care Centres.

You should also be helped by SAPS to find shelter if you cannot return to your home.

It is the responsibility of the investigating officer of SAPS to:

- Provide you with details of medical and counselling services in the area;
- Provide reasonable assistance to you to use such services; and
- Ensure appropriate steps are taken to safeguard children or other vulnerable victims.



# Protection orders

## What is a protection order?

If you have experienced domestic violence you can apply for a protection order (PO) which is a document issued by the court which aims to prevent it happening again.

If the person breaks the conditions of the protection order, they may be arrested.

**You do not need to lay a criminal charge to apply for and obtain a PO.**

## Key Protections Under a Protection Order

A protection order aims to prevent an abuser from:

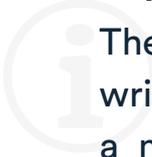
- Committing any further act(s) of domestic violence or any other act as specified by the protection order
- enlisting the help of another to commit any such act
- entering a residence shared by the complainant and the respondent
- entering a specified part of a shared residence
- entering the complainant's place of work

## Who can apply for a protection?

### Eligible individuals

- anyone who is or has been abused
- a minor, who may lodge an application unassisted
- anyone who has an interest in the life of the complainant.

### Supporters who can apply with consent

 The following people can apply for a protection order with the written consent of the complainant, unless the complainant is a minor or if the court is satisfied they are unable to give consent:

- Counsellor
- Health worker
- Policeman
- Social worker
- Teacher

### **How to apply for a protection order?**

- You can get a PO application form from the police station or a Magistrates Court in an area where you live or work, the respondent lives or works, or where the act(s) of domestic violence occurred.
- Apply for a protection order at a Magistrates Court at any time during and outside court hours, as well as on public holidays or weekends.

### **Filling Out the Forms (Two-Step Process)**

- You will first be given a notice (Form 8) informing you of your right to apply for a protection order. This must be provided in your preferred language.
- You can then fill Form 6 to apply for a protection order. The completed form can be submitted electronically, in person with the clerk, or through an online portal.

### **The application must be made by way of an affidavit stating:**

1. The facts on which the application is based
2. The nature of the order applied for
3. The name of the police station where the complainant is likely to report any breach of the protection order
4. The court having jurisdiction at which you will be able to or prefer to attend the hearing of the matter



## What next?

- The clerk will send your application to the magistrate immediately who will set a date for you to return to court so that your application can be considered.
- If there is sufficient evidence you may be issued an interim protection order which is in force from the time it has been served.
- The magistrate will also notify the abuser about the protection order and when they should come to court.
- After the court appearance the magistrate may grant the PO.
- 

## Service information:

In emergencies, the service is available 24hrs a day

You can obtain a PO on the same day but this depends on the complexity of your case

The order is valid until you cancel it.

If the abuser appeals the order, it continues to be in effect until it is cancelled by the Appeal Court.

**Getting a PO is free (No application fees required.)**

## Common issues faced when applying for a PO:

### Language barriers

PO application forms are most often in English. If you are unable to fill in your application form in English, you can ask for assistance in filling it in.

### Information and assistance

Court officials and SAPS often do not explain the process of obtaining a PO (both interim and final). SAPS often do not advise what kind of evidence is needed to strengthen an application, if you need witness statements and what forms of violence you experienced.

If you are unsure of what evidence you need or how to fill out the application form, and you do not have legal representation, you can ask a court clerk for assistance. They can explain the process of applying for a protection order, how to fill in the application form, and what information to include.

Be aware that courts can be understaffed and it could take a while for someone to be able to assist you but it is important that PO applications are filled in completely and correctly.

Do not be afraid to ask for help.

# Investigation

Once you have laid a charge against your perpetrator, SAPS have to investigate your case.

Once a case has been opened, it will be assigned to an investigating officer. Investigation should be conducted by the **Family Violence, Child Protection and Sexual Offences Investigation Unit** or a detective with relevant training.

The investigating officer will be appointed to conduct the investigation and obtain statements from you as the victim/survivor, witnesses and the perpetrator.



**As a victim/survivor, your statement must be taken in private.**

The investigating officer might make a decision to arrest the perpetrator at this stage and keep him in custody for up to 48 hours.

You should be provided with information about the case, including the case number, the name and contact details of the investigating officer and a copy of your statement.

The investigating officer must keep you regularly informed about your case, including:

- the arrest of the suspect(s)
- the court case number
- whether you are required to attend an identity parade and of its date
- of the progress of the investigation of the case and the prosecution of the suspect(s). This includes if the suspect is arrested, released on bail and dates of appearance in court.

Details of all contacts by the investigating officer with you must be recorded in the investigation diary, including date, time and place of contact and whether in-person, on the phone, or in writing.

### **Giving a statement**

After giving an initial statement about what happened, the investigating officer should take an in-depth statement once you have had time to recuperate. This is ideally taken 24-36 hours after the incident.

Your statement should be taken in a way that is sensitive to your cultural, language and religious background as well as in a gender sensitive way.

You should not be rushed in giving your in-depth statement. This statement should give as much detail as possible for the investigation.

You should be asked if you wish to have someone present to support you while taking your statement. This cannot be someone who is also a potential witness to the crime.

If you choose to have someone present, they cannot comment on the case, prompt you in any way, or interfere with the process of taking the statement.

Giving a statement will involve the discussion of intimate details of any sexual incident.

You must not hide anything about the incident, even if there are details that may paint you in a bad light, for example the consumption of alcohol or drugs at the time of the incident.

## **Common issues faced at the investigation stage:**

### **Length of investigations**

Investigations into GBV by police can take a long time. This is caused by a lack of police capacity, resources and appropriate training. Be prepared for this stage to take a long time and do not be afraid to contact your investigating officer for regular updates on your case.

If an investigating officer is not keeping you up to date with your case, make sure you have their contact details to be able to ask for updates yourself.

**If you have not been given their contact details you can contact the police station to obtain them.**



## Social attitudes

Sometimes violence is seen as private matter between two people, especially in cases of domestic violence. People have reported that rather than investigating their case, officers have told them that it is a private matter that they should sort out between themselves and the perpetrator.

It has also been reported that sometimes police fail to take witness statements or their investigation is of poor quality.

This is not ok. The police have legal obligations to investigate sexual offences and cases of domestic violence.

If you feel that your investigating officer is not investigating your case properly you can report it to the Family Violence, Child Protection and Sexual Offences Unit and you can ask for a different officer to take over the investigation.

## Prosecution

When the investigation is completed, the police send the docket (your case file) to the Public Prosecutor who is appointed by the National Prosecuting Authority (NPA).

The Prosecutor decides if there is enough evidence to prosecute the perpetrator.

The investigating officer and the Prosecutor may decide to hold an identity parade where the identity of the perpetrator is in dispute. You will be required to attend and identify the perpetrator.

If the prosecutor decides not to proceed with the prosecution, as the victim you can institute a civil prosecution, request reasons for the decision not to prosecute from the Prosecutor/Attorney General's office, or contact a lawyer or legal services organisation for legal advice and support.

If it is considered that there is not enough evidence, the case docket can be sent back to the investigating officer for further investigation.

You must be informed of the Prosecutors decision whether or not to prosecute.

This stage of the criminal justice process is less visible to victims and survivors and it can be difficult to gain access to information about what is happening.

### Common issues faced at prosecution

#### Lack of communication

Some people have reported a lack of communication from Prosecutors.

Reasons for not prosecuting cases of GBV are often not explained and information is not reported in any central and accessible location.

**You must be told once a decision has been made whether to prosecute or not.**



## Long wait times

Prosecutors often experience very high case loads which can contribute to the lack of communication and can lead to further delays in cases when you might already be long periods of time to go to court.

Poor investigation at the investigation stage can also cause delays when dockets have to be sent back to the investigating office.

There are also cases of perpetrators changing lawyers or not appearing for court dates which causes postponements and delays in prosecution.

## Mediation

Some survivors have reported that, like police, prosecutors and defence lawyers sometimes attempt to send cases for mediation to avoid prosecution, particularly in cases of intimate partner violence or domestic abuse/violence.

**This is not ok and you have a right to refuse mediation.**



# Court Proceedings

The criminal trial is conducted in Regional Court or the High Court, and in some cases might take place in a separate Sexual Offences Court.

The perpetrator may ask for postponement to get legal representation, to prepare for the case, and apply for bail. There are often many postponements and court appearances before the actual trial begins.

## Bail application and hearing

The perpetrator has a right to apply for bail and as the complainant, you have a right to attend the bail hearing. The prosecutor can argue against the court granting the bail application. For example, if the perpetrator is facing other charges of sexual offences or on the basis of the seriousness and extent of the sexual offence.

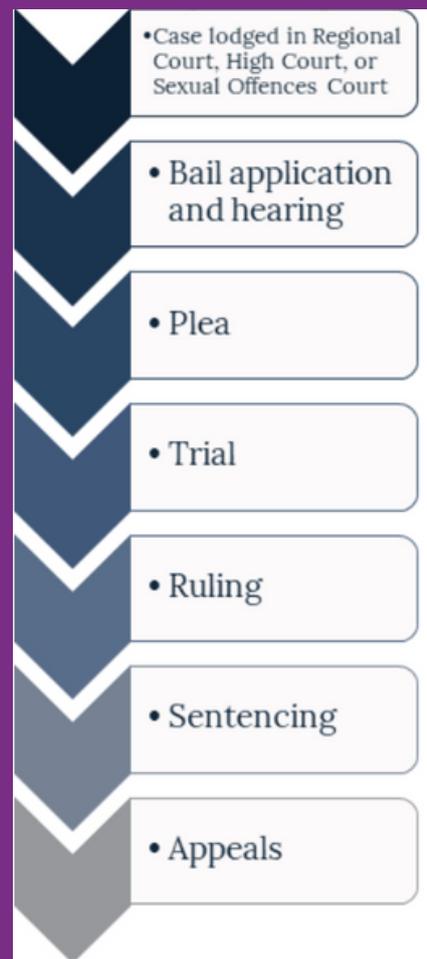
The presiding officer will make a decision on whether bail will be granted.

If bail is granted, it is usually done so with conditions that the perpetrator must follow.

If bail conditions are not complied with, bail can be terminated and can result in the alleged perpetrator being fined or imprisoned for up to 1 year.

## Plea and trial

A date will be set, and the perpetrator will be formally charged as an accused and will appear to plead guilty or not guilty and the trial will continue.



If the accused pleads guilty, they enter into a plea agreement with the prosecutor. In this case, the victim has a right to be consulted and make representations to the plea agreement itself, and the sentencing after the plea agreement has been accepted.

### **Court ruling**

Once the trial is completed the presiding officer will issue a ruling either acquitting or convicting the accused.

### **Conviction and Sentencing**

If the accused is convicted, a date will be set for sentencing or the sentence could be issued on the same day as the conviction.

There are minimum sentences for certain sexual offences such as rape. The minimum sentence for rape is 10 years imprisonment.

The minimum sentence for a first-time offender is 10 years imprisonment, 15 years imprisonment for second-time offenders and 20 years imprisonment for third-time offenders.

Life imprisonment, which is 25 years imprisonment, can be given to offenders who committed rape in certain circumstances.

### **Appeal**

An appeal can be lodged by the Prosecutor if the sentence is insufficient or against an acquittal. The appeal goes before three judges of the High Court. Depending on their decision a further appeal can be lodged before the Supreme Court of Appeal, or to the Constitutional Court if there is a constitutional issue that is raised. Once the appeal proceedings are exhausted the criminal's name is provided to the Registrar to be entered into the National Register of Sexual Offenders.

## Common issues faced during court proceedings:

### Not survivor-centred

Going to trial can be daunting. Court processes are not often survivor-centered. Some people have reported not being treated with sensitivity and intimidated during trial. In some cases, you might come face to face with your perpetrator and their legal representation.

**REMEMBER: you are not the person on trial here.**

### Long delays

The shortage of specialised staff in the justice system and high sexual offences case loads can cause long delays in going to trial. When your case does make it to the court proceedings stage, you can face a series of additional delays at postponements.

The system is under-resourced in terms of material and human resources. Court rolls are often full, meaning trials have to be postponed.

Sometimes the perpetrators' lawyers will try to use stalling tactics to cause further delays in proceedings.

This can be extremely frustrating and stressful, especially if you have experienced delays at other stages of the process. It is important, however, not to withdraw your charges because of these delays.

## **Getting legal representation**

It can be difficult to obtain legal advice and support. Free legal aid services prioritize support for defendants in criminal proceedings and for protection orders the operate on a first-come-first-serve basis.

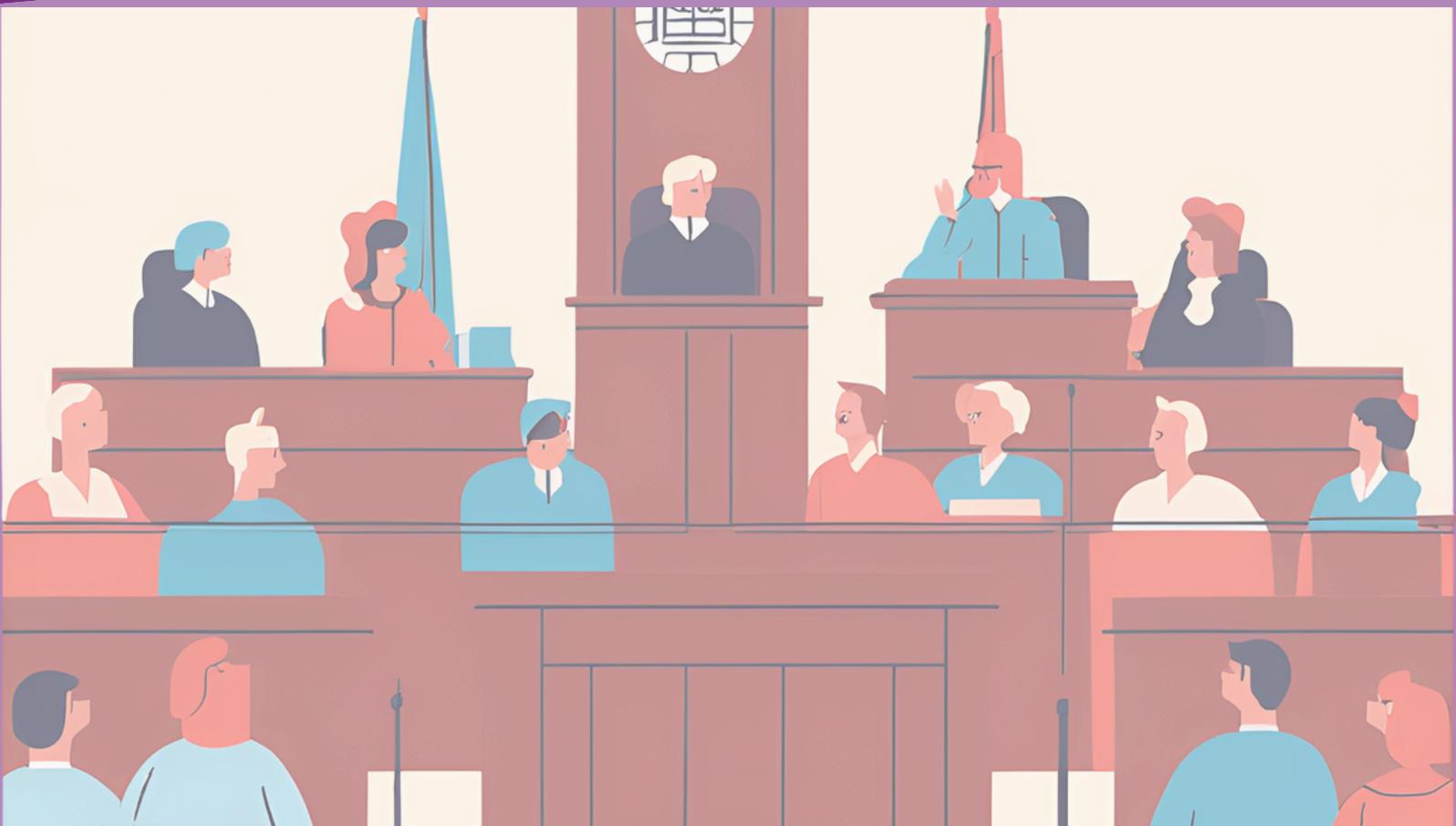
It is important that you have an advocate for your interests in the process, whether that be legal representation or support from a GBV organisation who knows the court process.

## Language barriers

English or Afrikaans are the predominant languages used in courts. If you do not speak these languages fluently, ensure that a court interpreter is present for trial.

**NOTE: The trial process can be a long and scary one. It is important that you have support throughout the process, whether this is friends, family, or the help of a GBV organisation. Do not be afraid to ask for help and support.**

Once the trial has concluded, the presiding officer will make a ruling as to whether the perpetrator is to be convicted or acquitted.



## Reference and Resource list

Artz, L., Meer, T., & Aschman, G. (2018). Legal duties, professional obligations or notional guidelines? Screening, treatment and referral of domestic violence cases in primary health care settings in South Africa. *African journal of primary health care and family medicine*, 10(1), 1-7.

Bornman, S. (2015). The criminal justice system responses to sexual violence in South Africa. *Sexualised Violence in the National Debate: Cross-border Observations on India and South Africa*. Cape Town: Heinrich Boll Foundation Southern Africa, 54-63.

Branda, Moreoagae B, Julie McGarry, Sarah Griffiths, Kathryn Hinsliff-Smith (2023). 'Accessing care services after sexual violence: A systematic review exploring experiences of women in South Africa,' *Curationis*, 46(1), e1–e10. <https://doi.org/10.4102/curationis.v46i1.2405>.

Britton, Hannah (2020). *Ending Gender-Based Violence: Justice and Community in South Africa*. University of Illinois Press.

Department of Justice and Constitutional Development, South Africa, Apply for a Domestic Violence Protection Order, <https://www.justice.gov.za/services/dv-protection-order.html>

Foundation for Human Rights, Ensuring Access to Justice in GBV Cases: An Overview of State Actor Roles and Responsibilities Towards Victims of Gender-Based Violence, <https://fhr.org.za/wp-content/uploads/2024/08/Ensuring-Access-to-Justice-in-GBV-Cases-FOR-PRINT-FINAL.pdf>.

Health Professions Council of South Africa, Ethical guidelines for good practice in the health care professions, <https://www.hpcs.co.za/ethics>.

Law Society of South Africa, Your Rights as a Client, <https://www.lssa.org.za/your-rights-as-a-client/>.

Legal Wise, Domestic Violence and Protection Orders, <https://www.legalwise.co.za/help-yourself/quicklaw-guides/domestic-violence-protection-orders>.

Legal Wise, The Role of SAPS in the Context of Gender-Based Violence (GBV), <https://www.legalwise.co.za/help-yourself/legal-articles/role-saps-context-gender-based-violence-gbv>.

National Prosecuting Authority, Thuthuzela Care Centre: Turning Victims into Survivors, <https://www.npa.gov.za/sites/default/files/human-trafficking/TCC%20Brochure%20sep%2020.pdf.#>

Public Protector South Africa, Systemic Investigation into Administrative Deficiencies Relating to Gender-Based Violence Within the South Africa Justice System, Report No. 1 (2024/25), ISBN: 978-1-7764955-8-0.

Republic of South Africa, National Strategic Plan on Gender-Based Violence & Femicide (2020). <https://www.justice.gov.za/vg/gbv/NSP-GBVF-FINAL-DOC-04-05.pdf>.

Safer Spaces, Domestic Violence Guide, [https://www.saferspaces.org.za/uploads/files/Domestic\\_Violence\\_Guide.Pdf](https://www.saferspaces.org.za/uploads/files/Domestic_Violence_Guide.Pdf).

South African Council for Social Service Professions, Code of Conduct and Code of Ethics, <https://www.sacssp.co.za/professional-conduct>.

South African Government, Thuthuzela Care Centres, <https://www.gov.za/TCC>.

UK Foreign, Commonwealth & Development Office, South Africa: Information for Victims of Rape and Sexual Assault Guidance, (2023), <https://www.gov.uk/government/publications/south-africa-information-for-survivors-of-rape-and-sexual-assault/information-for-survivors-of-rape-and-sexual-assault-in-south-africa>.

UN Women, Types of violence against women and girls, <https://www.unwomen.org/en/articles/faqs/faqs-types-of-violence-against-women-and-girls>.

Women's Legal Centre, A Guide to Domestic Violence Protection Orders, <https://wlce.co.za/wp-content/uploads/2025/07/WLC-Guide-To-Protection-Orders.pdf>.

