

**IN THE EQUALITY COURT
(HIGH COURT, CAPE TOWN)**

Case number: EC3/2016

In the matter between:

SOCIAL JUSTICE COALITION

First Applicant

EQUAL EDUCATION

Second Applicant

NYANGA COMMUNITY POLICING FORUM

Third Applicant

and

MINISTER OF POLICE

First Respondent

NATIONAL COMMISSIONER OF POLICE

Second Respondent

WESTERN CAPE POLICE COMMISSIONER OF POLICE

Third Respondent

MINISTER FOR COMMUNITY SAFETY, WESTERN CAPE

Fourth Respondent

and

WOMEN'S LEGAL CENTRE TRUST

Amicus Curiae



FILING SHEET

DOCUMENTS FILED HEREWITH:

1. Affidavit of GENINE JOSIAS for Amicus Curiae

DATED AT CAPE TOWN ON THIS 7th DAY OF APRIL 2017



WOMEN'S LEGAL CENTRE

Amicus Curiae attorney

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AND

TO: THE CLERK OF THE EQUALITY COURT

Western Cape High Court

Cape Town



AND

TO: THE MINISTER OF POLICE

First Respondent

C/o The State Attorney

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AND

TO: NATIONAL COMMISSIONER OF POLICE

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TO: **WESTERN CAPE POLICE COMMISSIONER**

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AND

TO: **MINISTER OF COMMUNITY SAFETY, WESTERN CAPE**

Fourth Respondent

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**IN THE EQUALITY COURT
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case number: EC3/2016

In the matter between:

**SOCIAL JUSTICE COALITION
EQUAL EDUCATION
NYANGA COMMUNITY POLICING FORUM**

First Applicant
Second Applicant
Third Applicant

and

**MINISTER OF POLICE
NATIONAL COMMISSIONER OF POLICE
WESTERN CAPE POLICE COMMISSIONER
MEC FOR COMMUNITY SAFETY, WESTERN CAPE**

First Respondent
Second Respondent
Third Respondent
Fourth Respondent

and

WOMEN'S LEGAL CENTRE TRUST


Amicus Curiae

AFFIDAVIT

I, the undersigned

GENINE JOSIAS

do hereby make oath and state that:


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1. I am an adult female medical doctor Medical Officer 3 at the Khayelitsha Thuthuzela Forensic Centre, also known as the Khayelitsha Thuthuzela Care Centre (“the Thuthuzela Care Centre”) situated at Khayelitsha Hospital, Steve Biko Drive, Khayelitsha. I have been in my current role since 2004.
2. The facts contained in this affidavit are within my personal knowledge, save where the context indicates otherwise, and are true and correct to the best of my knowledge and belief. Where I make submissions of a legal nature I do so on the advice of legal representatives of Women’s Legal Centre, which advice I verily believe to be correct.


NATURE OF THIS AFFIDAVIT

3. At the heart of the application brought by Social Justice Coalition and others is the system employed by the South African Police Service to determine the allocation of police human resources to police stations, particularly in poor and previously disadvantaged townships of South Africa. Khayelitsha, a township on the outskirts of world renowned Cape Town, is one such affected area.
4. It is the case of the applicants that the allocation of police human resources, particularly in the Western Cape Province, unfairly discriminates against Black and poor people. The crux of the relief sought by the applicants is a review of the allocation system to


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address the most serious disparities in the allocation of police human resources in the province.

5. I have been working in Khayelitsha as a medical doctor and interacting with the community on a regular basis for the past 13 years. I have first-hand knowledge and experience of the community of Khayelitsha, the various ways in which they are affected by crime and how they interface with the Khayelitsha police. I have seen the way that Khayelitsha police operate and how they interact with the Khayelitsha community. I share my experience in this affidavit.
6. In this affidavit I deal with the government's legal and policy framework particularly in regard to crime, crime prevention strategies with a particular focus on gender based violence; interface between, on the one hand, Khayelitsha police in general and Khayelitsha Family Violence, Child Protection and Sexual Offences Unit ("the FCS Unit") in particular and, on the other hand, the Khayelitsha community in general and women and children in particular who are victims/survivors of crime.
7. I also refer to some of the evidence that forms part of the record of the Khayelitsha Commission, particularly the evidence which demonstrates the challenges of capacity that the Khayelitsha SAPS, particularly the FCS Unit, is experiencing.

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8. It is the case of the *Amicus Curiae* that the experiences and treatment of women and children victims/survivors of crime when dealing with the police is an important factor to be considered when weighing the capacity of the police to deliver a proper service and in considering the allocation system of police human resources.
9. As someone who has worked with both the Khayelitsha community as well as the Khayelitsha police over a sustained period of more than a decade I have made many first-hand observations relating to the capacity of police in Khayelitsha in dealing with the special needs of particularly women and children and how this affects the quality of the service provided to this segment of the community. I have observed that Khayelitsha police in general and the FCS Unit, in particular, have been poorly staffed and badly managed over this period. This was the situation before the Khayelitsha Commission. And it remains the situation even after the efforts of the Khayelitsha Commission. I come to the conclusion that in reality the Khayelitsha police, including the FCS, are failing to cope with the workload and in my view this is because they are poorly resourced both in relation to human resources, structural resources and also poorly equipped to perform their work.
10. This affidavit is thus written from a gender perspective. It outlines the vulnerabilities of particularly women and children to crime in that area.


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The women and children I refer to either live or work or attend school or otherwise conduct their various businesses in Khayelitsha.

11. The ultimate purpose of this affidavit is to assist this Honourable Court on what I believe needs to be done to improve the service provided by Khayelitsha police to particularly victims and survivors of gender based crimes in that community.

Legal and Policy Framework

12. The legislation governing the South African Police Service (**SAPS**) is the South African Police Service Act of 1995 which makes provision for, *inter alia*, organisation, regulation and control of the SAPS.
13. Section 205(3) of the Constitution provides that the objects of the police service are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law.
14. Since 1994, government policy in relation to safety and security has been articulated in certain key documents such as the National Crime Prevention Strategy, and the White Paper on Safety and Security (1998-2004), National Victim Empowerment Programme, Service Charter for Victims of Crime in South Africa, Minimum Service

Standard for Victims of Crime, Minimum Service Standard for Victims of Crime

National Crime Prevention Strategy

15. The National Crime Prevention Strategy adopted in 1996 (“**Crime Prevention Strategy**”) came about due to the following conditions which were prevailing generally in many South African communities:

- 15.1. High levels of crime which posed a serious threat to the country’s emergent democracy.
- 15.2. Violent crime which often led to a tragic loss of life and injury, and the loss of possessions and livelihood due to crime being incalculable.
- 15.3. Crime resulting in the deprivation of the rights and dignity of citizens, and posing a threat to peaceful resolution of differences and rightful participation of all in the democratic process.
- 15.4. The fear cast by crime into the hearts of South Africans from all walks of life and preventing them from taking their rightful place in the development and growth of the country.

- 15.5. The inhibiting effects of crime on our citizens from communicating with one another freely, from engaging in economic activity and preventing entrepreneurs and investors from taking advantage of the opportunities which our country offers.
16. According to the Crime Prevention Strategy, rights and freedoms which the constitution entrenches are threatened every time a citizen becomes a victim of crime.
17. It was for these reasons that the government regarded the prevention of crime as a national priority. The Crime Prevention Strategy applied not only to the Cabinet, and the departments concerned with security and justice, but also to all other national departments which were able to make a contribution to a reduction in crime levels.
18. When it was launched the Crime Prevention Strategy was said to be based on a fundamentally new approach by government. In particular, it required the development of wider responsibility for crime prevention and a shift in emphasis from reactive "crime control"; which deploys most resources towards responding after crimes have already been committed, towards proactive "crime prevention" aimed at preventing crime from occurring at all.

19. One of the crime categories cited in the Crime Prevention Strategy as of particular concern was gender violence and crimes against children which were acknowledged as being not only highly prevalent but also had a profoundly negative impact on the rights and future well-being of women and children.
20. As regards gender violence and crimes against children the Crime Prevention Strategy noted that the actions that were by then already underway to address the problem were that this category of crime was receiving special attention through the establishment of specialised police units to investigate crimes against children and the creation of victim aid centres at which interdisciplinary services were being offered to victims of these crimes.
21. The Crime Prevention Strategy was developed from the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985 (GA/RES/40/34) (**"the UN Declaration"**).
22. The UN Declaration is based on the philosophy that victims should be adequately recognized and treated with respect for their dignity. Victims are entitled to access to the mechanisms of justice and prompt redress for the harm and loss suffered. They are also entitled to receive adequate specialized assistance in dealing with emotional trauma and other problems caused by the impact of victimisation.

23. At its launch in 1996 the Crime Prevention Strategy was said to represent a turning point in the battle against crime.

White Paper on Safety and Security (1998-2004)

24. In the foreword to the launch of the White Paper on Safety and Security (1998-2004), the Minister of Safety and Security notes the following aspects which are important in the determination of this matter:

24.1. The White Paper provides the means of realising our vision of improving the safety of our citizens.

24.2. The focus of the White Paper is limited to those areas which will have maximum impact in improving the quality of the service delivered to the public. This is motivated by the need to dedicate resources and capacity to specific goals to ensure delivery.

24.3. In keeping with the approach outlined in the National Crime Prevention Strategy, the White Paper advocates a dual approach to safety and security – effective and efficient law enforcement and the provision of crime prevention programmes to reduce the occurrence of crime.

24.4. The White Paper also advocates institutional reform which will create a clear separation between the political responsibility for policy formulation on the one hand, and the managerial responsibility for the implementation of policy on the other. This implies that government will take firm control of the policy environment within which the police are required to operate and, at the same time, provide greater managerial autonomy for the police to execute their operational mandate. This will, in effect, ensure greater accountability for improved service delivery.

24.5. The SAPS needs to upgrade the skills, competencies and capacity of its members and its ability to gather and use crime intelligence. Therefore, implicit in the institutional reform outlined in the White Paper is the development of our human resources in terms of their ability to meet the complex challenges of constantly changing crime.

Victim empowerment programme

25. The National Victim Empowerment Programme (**“the Victim Empowerment Programme”**) was adopted as government programme and policy in 1999.

26. The Victim Empowerment Programme recognises that the needs of victims vary considerably depending on who they are and the nature of the crime they have experienced. It furthermore recognises that the SAPS would typically perform the role of attending the crime scene, attend to crime reporting at the Customer Service Centre, attend to the investigation of crime through the Detective Services and other specialist units.
27. In terms of the programme the prioritised target groups are victims of domestic violence, sexual assaults and rape, child abuse, elder abuse, abuse of disabled people, human trafficking, other violent crimes, e.g. car hijacking, murder, house-breaking and assault.
28. In terms of the National Policy Guidelines for Victim Empowerment the SAPS must provide a professional, accessible and sensitive service to victims of crime and violence during the reporting and investigation of crime. Services required of the SAPS include, but are not limited to:
- 28.1. Professional and sensitive treatment of victims and witnesses during statement taking and investigation of crime;
- 28.2. Informing victims of their rights, taking statements in private, referral to victim support services, notification of case number;

28.3. Feedback regarding status of their case (including outcome of bail hearings) and notification of closing of case or referral of case to court;

28.4. Training of personnel in victim empowerment and related legislation; and

28.5. Establishment of Victim Support rooms at all police stations for privacy.

Victims Charter

29. The Service Charter for Victims of Crime in South Africa (“**the Victims Charter**”) was adopted in 2004 as a government policy and programme.

30. The Victims Charter is an important instrument for promoting justice for victims of crime in South Africa. It draws from the spirit of the Constitution and the UN Declaration.

31. The Victims Charter committed government to providing services 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.

32. The rights of a victim of crime enshrined in the Victims Charter are the following:

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

32.2. The right to offer information.

32.3. The right to receive information.

32.4. The right to protection.

32.5. The right to assistance.

32.6. The right to compensation.

32.7. The right to restitution.

Minimum Service Standard

33. In order to define what services victims are entitled to in terms of the seven rights listed in the Victims Charter, a Minimum Service Standard for Victims of Crime, 2004 ("**the Minimum Service Standard**"), was also developed and adopted as a policy of government.


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34. The Minimum Service Standard sets out responsibilities that each government department, such as the South African Police Services (“the SAPS”), should provide when victims present themselves at police stations.
35. The Victims Charter and Minimum Service Standards are important documents that victims can use to claim their rights and to act with responsibility in ensuring the realization of justice.
36. The Victims Charter can be traced back to the Crime Prevention Strategy as well as the Victim Empowerment Programme.

SAPS commitments

37. The South African government has committed itself through international obligations, domestic legislation and a plethora of government policies and programmes to address gender based violence, and to allocate resources to achieve these commitments.
38. For its part, and in addition to its obligations to adopt and implement government policy, the SAPS has also made various commitments to deliver services in line with the above captioned government policies and programmes, particularly as regards issues relating to crime and violence on vulnerable groups in society.

Batho Pele

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39. The SAPS subscribes to *Batho Pele*, a principle that refers to the culture of putting people first, with clients being a priority in service delivery. Batho Pele, a Sesotho phrase meaning People First, is the name of the government programme for transforming public service delivery from an inefficient bureaucracy, with a focus on rules, to a culture of customer care, in which the needs of all the citizens of South Africa are truly served, irrespective of their race, gender or creed.

Reporting of sexual offences

40. According to the SAPS website the SAPS undertakes, among others, to provide a specialised service to victims of sexual offences¹.

Victim Empowerment Service in the SAPS

41. Through the 'Victim Empowerment Service in the SAPS' document, available on its website², the SAPS acknowledges and states that it is the initial point of entry to the criminal justice system in the majority of cases, and is therefore responsible for ensuring that the victims of crime, especially sexual offences and other serious and violent crimes, are provided with a victim-friendly service.

¹ https://www.saps.gov.za/services/report_sexual_offence.php. The contents of the document are incorporated into this affidavit.

² https://www.saps.gov.za/resource_centre/women_children/amended_victim_empo_service.pdf. The contents of the document are incorporated into this affidavit.

42. The SAPS goes on to explain what it means by a victim friendly service. It describes victim friendly service as “a service where the dignity and rights of victims are protected, and the victim is empowered and not subjected to secondary victimization by the inefficiency of the members of the criminal justice system”. It lists the four basic elements of victim empowerment as being: emotional support, practical support, providing information, referral to professional support services.³

National Instruction on Sexual Offences

43. The SAPS National Instruction 3/2008 on Sexual Offences came about after the promulgation of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007) which created a framework for the provision of adequate and effective protection to *victims of sexual offences*.
44. The purpose of the National Instruction is to ensure that SAPS members render a professional service to victims in respect of the investigation of offences of this nature and to assist victims in this regard.
45. The National Instruction makes provision for and sets out the procedure to be followed by, and obligations of, SAPS members when dealing with sexual offence related cases, namely: responsibility of the

³ Ibid.

Station Commissioner; receiving a report of a sexual offence at a police station; victim assistance; telephonic report of a sexual offence; responsibility of the first member on the crime scene; steps to be taken to safeguard the crime scene; the role of the investigating officer; medical examination of the victim; inform the victim of a sexual offence of services available and hand over a notice to the victim; handling of application for HIV testing of offender; application for HIV testing of offender by investigating officer; execution of order for HIV testing of offender; record keeping of results of HIV testing; medical examination of the suspect; preventing contamination of exhibits; taking an in-depth statement from the victim; victim after-care; identification parades; preparation for court proceedings; assisting the victim during the court proceedings; discontinuation of an investigation.

Public Service Regulations on human resources

46. In terms of Resolution 7 of 2002 of the Public Service Regulations:

6.1 "Every department (including the SAPS) must, in accordance with the Public Service Regulations and other applicable regulations-

- (a) develop a strategic plan;
- (b) determine the organisational structure;
- (c) define the posts necessary to perform its functions;
- (d) develop a human resource plan.

6.2 The human resource plan must include, among others, post requirements and employee profiles taking into account, amongst others:

- (a) qualifications;
- (b) current and past experience in relevant and related fields;
- (c) training requirements; and
- (d) other skills and competencies.

6.3 Every department must develop an implementation plan which must include-

- (a) steps to implement its strategic plan and human resource plan; and
- (b) time frames to implement those plans.

The Thuthuzela Care Centre model

- 47. In 2000 Cabinet instructed the Heads of the Departments of Social Development and Health to develop the Anti Rape Strategy as a response to the alarming rape statistics. In 2002 this process was transferred to the Department of Justice and Constitutional Development.
- 48. The Interdepartmental Management Team (IDMT) was formed under the leadership of the Department of Justice and Constitutional Development and comprised of representatives of the following

national departments: Justice and Constitutional Development (as it then was), Health, Social Development, Safety and Security (as it then was), Correctional Services (as it then was), Education Treasury and Government Communication and Information System (GCIS).

49. As one of the initiatives to address rape care management the IDMT developed the Thuthuzela Centre model. In isiXhosa Thuthuzela means “to comfort”.
50. On 4 May 2016 President Jacob Zuma gave his budget vote speech in Parliament⁴. He referred to government strategies and institutional mechanisms which are in place to respond to violence against women, including the Thuthuzela Care Centres, recognised by the United Nations Secretary General in 2011 as a "world best practice model" in the field of gender violence management and response. The Thuthuzela Care Centre model is thus clearly recognised and endorsed by government as an effective means to address levels of gender based violence. This indicates that the government is committed to implementing the model.
51. There are Thuthuzela Care Centres (also referred to as TCCs) around the country, with six (6) in the Western Cape: Heideveld TCC, Karl

⁴ <https://pmg.org.za/briefing/22473/>.

Bremer TCC, George TCC, Atlantis TCC, Worcester TCC, and Khayelitsha TCC.

52. The Thuthuzela Centre model represents a radical approach to rape care management, with its strength being a multi-disciplinary model comprising of several government and non - governmental partners providing the necessary services. All the Thuthuzela Care Centres are located at a health care facility; in the case of the Khayelitsha TCC, it is based at the Khayelitsha hospital. I am the medical co-ordinator of the Khayelitsha TCC.
53. The aim of the Thuthuzela Care Centre is to provide survivors of sexual offences with immediate medical care, reduce secondary trauma for the survivor, improve perpetrator conviction rates and reduce turnaround time for finalising cases. It is important to stress that the model can work well if there is full and complete commitment and participation by all stakeholders, including the SAPS.
54. The Thuthuzela Centre model works in such a manner that survivors of sexual offences in its various forms receive specialised care from police officers who record their statements, collect exhibits, and follow up on initial investigation leads; clinical forensic examiners (comprising of medical doctors and nurses) who provide immediate medical care and collect samples for forensic analysis; social workers who assess the family and other circumstances of the survivor and see to the

survivor's immediate social needs; counsellors who provide immediate containment counselling.

55. The operational implementation of the Thuthuzela Care Centre model needs to be clearly guided, which is done through protocols. These protocols are developed by the local stakeholders to address and take into account local requirements, and are implemented and monitored by these stakeholders. The intention of the protocols is to detail the roles of each stakeholder, with clear explanations of responsibilities and functions, and to ensure accountability among all service providers. The protocols provide for an approach to joint decision making, and require stakeholders to meet monthly to monitor operational challenges. Ideally the protocols should be reviewed on an annual basis.
56. Although the protocols are developed at local community level and not signed off by provincial heads of services or departments, they are the manifestation of the recognition of Thuthuzela Care Centres being an official government mechanism as confirmed by the President in his 2016 budget speech.
57. The Khayelitsha Thuthuzela Care Centre became fully operational in 2011.

58. Prior to 2011 the Thuthuzela Centre existed under the name of Simelela Forensic Unit based at Site B Day Hospital. It became a fully-fledged Thuthuzela Centre in 2011 when all stakeholders contributed dedicated staff to attend to the needs of victims of sexual violence.
59. As with all Thuthuzela Centres nationally, the Khayelitsha TCC is comprised of the government departments: the National Prosecuting Authority, Health, Social Development, City of Cape Town, South African Police Services (specifically the Family Violence, Child Abuse and Sexual Offences Unit “FCS”), Education, and non-governmental organisations such as Rape Crisis, Nonceba Family Counselling, and Mosaic. These are all vital stakeholders. Without the full participation of all stakeholders, the work of the Thuthuzela Care Centre is severely undermined. A compromised service affects survivors of sexual offences and the community, breaking the commitments made by government through legislation and policies.
60. The FCS form a vital part of the Thuthuzela Centre model. The FCS Investigation Mandate (**Annexure A-** extrapolated from the Khayelitsha Commission record) stipulates that the main focus of the FCS is to provide a sensitive, professional service endearing to the victims of FCS-related crimes.
61. In terms of the Khayelitsha TCC protocol (**Annexure B**), the following is the protocol for FCS officers:

- The FCS officer serving the area who is on standby will be informed by the TCC staff of the reported case.
- Where the CSC personnel are not involved and the victim has reported directly at FCS, the FCS officer will assist the victim by transporting her/him to the TCC. The J88 and the SAECK (sexual assault evidence collection kit) are kept at the Khayelitsha TCC.
- The FCS member must ensure that the SAPS 308 (this is the document which records the informed consent of the victim as obtained by the SAPS member for physical examination; collection of specimens; investigations on specimens; taking of photographs; documentation of findings; breach of patient-doctor confidentiality (releasing patient information for criminal proceedings)) is/was completed before the medical examination is conducted.
- The victim must be asked whether he/she wants to apply for the alleged offender, once arrested or located, to be tested for HIV at state expense. This request should be a written application in terms of the prescribed forms, done within 90 days from the date of the alleged offence.
- Once the examination is complete the FCS officer should then take receipt of all of the sealed SAECK and/or evidence bags and

J88 along with the section 212(4) statements and the SAP 308 from the health care professional who had completed the medical examination.

- The FCS investigating officer will only take the victim's statement after the crisis intervention counselling, the medical examination has been completed and the victim has been given an opportunity to bathe and change clothing.
- The FCS officer must leave the following copies at the TCC to be kept in the TCC folder before the folder is scanned: (1) the J88⁵, (2) the SAECK form, (3) Sec. 212 and (4) A1 Statement⁶.
- In some cases, such as where the doctor is not immediately available or the case is unclear, the Investigating Officer may take the statement before a medical examination is conducted.
- The statement taking room must be conducive to the victim's needs with drinking water, tissues, anatomically correct dolls, etc.
- As far as possible the FCS member should not be given access to the medical folder before taking the victim's statement so that the

⁵ J88 is a medical certificate form.

⁶ This refers to an affidavit by an expert in terms of section 212 of the Criminal Procedure Act 51 of 1977.

medical examination does not influence the direction of the statement taking process.

- Where the victim has bathed and /or changed clothing before coming to the TCC and the clothing was not brought to the TCC the FCS investigating officer should establish from the victim where such clothing is and ensure that it, as well as any other applicable exhibits, is collected at the first opportunity.
- A counsellor or social worker may be present at the interview should the victim request it, but they must not interfere with the taking of the statement.
- The FCS investigating officer should contact LCRC (Local Criminal Record Centre) to visit the crime scene to collect evidence that may be present at the scene of the crime where applicable.
- If there is a query or guidance is required the FCS investigating officer should first contact the local FCS head or the TCC case manager or prosecutor, if necessary.
- Where the need arises, the FCS officer should be able to immediately contact and obtain the guidance and/or assistance



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from a social worker. The names and contact details of the above should be kept at the TCC.

- If the suspect must still be identified by the victim, or if the crime scene must still be pointed out by the victim or evidence pointed, the FCS officer should transport the victim in order to identify the suspect and follow up on the investigation as mentioned above. Thereafter, the victim should be transported home or to a place of safety where applicable.
- Where a placement will be required the social worker/SAPS should make the necessary arrangements for the placement of the survivor. The VAO should follow relevant protocols in this regard i.e. make the necessary phone call and complete referral form for the crisis centre. The FCS/SAPS must accompany the survivor to the place of safety.
- Where applicable, witness protection should be made available to the victim.
- The original docket and sealed SAECK is taken to the station for registration on the relevant administration system, and where evidence is collected it should immediately be recorded in the appropriate registers, correctly.



- The suspect should as far as reasonably possible be arrested within 48 hours.
- All outstanding statements must be taken within reasonable time.
- Once an arrest is made, the complete docket must be prepared for court in terms of the SAPS docket screening process.
- Relevant bail information will be communicated by the investigating officer in the investigation diary in the docket. If the prosecutor is unclear on any aspect relating to the bail information, then the Prosecutor should contact the Investigating Officer (also referred to as FCS officer) directly before the issue of bail is communicated to the court.
- The counsellor should be contacted to arrange a consultation between the victim and the prosecutor as soon as possible after the accused's first appearance in court.
- The FCS officer is responsible for contacting the victim to make arrangements for the consultation.
- As the investigation continues, the FCS officer shall adhere to the 'brought forward' dates entered into the investigating diary in the docket by the SAPS screening officer, in order to ensure that the

docket is properly screened and monitored in terms of SAPS screening policy and to ensure effective case flow.

- All dockets on the court roll should be at court on the brought forward dates / 3 days before court appearance as applicable.
- The FCS officer must see to it that all DNA samples are sent to the Forensic Science laboratory within 7 days of being collected.

Gender Based Violence Persists Despite Established Government Policy And Programmes – Soul City Report

62. The Institute for Health and Development Communication, otherwise known as Soul City, published, in 2015, a literature review on the topic: “Understanding Gender Policy and Gender-Based Violence in South Africa”, “**the Soul City report**”⁷.

63. According to the Soul City report, “Violence against women is widespread, globally studies suggest that overall Africa has some of the highest rates of physical and sexual intimate partner violence and non-partner sexual violence in the world... Similarly gender and sexually based violence in South Africa is a widespread and common

⁷ <http://www.soulcity.org.za/projects/advocacy/gbv/resources/understanding-gender-policy-and-gender-based-violence-in-south-africa-a-literature-review>.

problem which is increasingly normalized and under-reported... According to the WHO, South Africa has one of the highest rates of violence against women in the world... Victims of gender based violence include men, women and children, however there is general consensus that women and children are disproportionately affected and hence bear the greater burden on such assaults.”⁸

64. The Soul City report goes on to state that “Gender based violence is both a human rights and public health issue which not only affects the individual but has an impact on families and communities both in the short term and long term. The consequences of violence on the individual include physical effects such as bruising, broken bones, chronic pain, headaches, death, miscarriage or early labour and foetal injury in pregnant women. Psychological consequences include depression, anxiety, suicide, hypertension, substance abuse, post-traumatic stress disorders and difficulties sleeping. Violence also drains women’s energies and confidence and thereby undermining their full economic and social development and participation.”⁹

LIVED EXPERIENCES

⁸ Ibid, page 6.

⁹ Ibid, page 8.

Evidence before the Commission of Enquiry into allegations of police inefficiency in Khayelitsha and a breakdown in relations between the community and the police in Khayelitsha (Khayelitsha Commission)

65. I testified before the Khayelitsha Commission. I do not intend to repeat my testimony save to highlight a few aspects in this affidavit. The content of my transcribed oral evidence before the Khayelitsha Commission is incorporated into this affidavit and I confirm the correctness thereof.¹⁰ I also incorporate herein my written affidavit that served before the Khayelitsha Commission, attached as **Annexure C**.
66. These are the aspects I wish to highlight from my evidence before the Khayelitsha Commission:
- 66.1. Khayelitsha FCS Unit failed to attend monthly stakeholder implementation meetings.¹¹
- 66.2. Khayelitsha FCS Unit is poorly staffed and the investigating officers/police detectives employed there are terribly overworked.¹²

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<http://www.khayelitshacommission.org.za/images/transcripts/29%20January%202014%20pp%20582-755.pdf>.

¹¹ Ibid, page 610 line 19 to page 611 line 13.

¹² Ibid, page 611 line 14 to page 613 line 7.

- 66.3. Khayelitsha FCS Unit response times when called to attend to a case are poor.¹³
- 66.4. Often telephone calls go unanswered by Khayelitsha FCS Unit members.¹⁴
- 66.5. There is poor management of staff at Khayelitsha FCS Unit.¹⁵
- 66.6. The Khayelitsha FCS Unit detectives are burnt out due to a severe workload.¹⁶
- 66.7. The work of the Khayelitsha FCS Unit detectives suffers as a result. They can't cope and end up taking too much sick leave.¹⁷
- 66.8. This manifests in unprofessional and unacceptable behaviour in the manner in which the Khayelitsha FCS Unit detectives deal with Thuthuzela Care Unit staff, other stakeholders as well as victims of crime, the clients.¹⁸
- 66.9. The community, particularly victims of sexual assault who are clients of the Khayelitsha Thuthuzela Centre, have laid various

¹³ Ibid, page 613 line 8 to page 616 line 20.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid, page 617 line 20 to page 620 line 13.

¹⁷ Ibid, page 620 line 14 to page 621 line 7.

¹⁸ Ibid, page 621 line 8 to page 622 line 5.

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complaints against members of the Khayelitsha FCS Unit. Some of the complaints were: failure to provide victims with a case number; failure to provide feedback about the case to victims; failure to provide case progress; failure to return victim's original birth certificate; failure to respond to a victims who wanted to point out the suspect; failure to inform the victims that the suspect had been released on bail and had returned to the place where the victims lived; failure to provide forensic crime kits required to obtain samples for forensic testing; failure to collect J88 medical certificates; failure to attend appointment with a victims.¹⁹

66.10. I furthermore testified that these kinds of problems and complaints against Khayelitsha FCS Unit members continued even to the time that I was called before the Commission.²⁰

66.11. I told the Commission that the situation was so bad that the matter was escalated to the Provincial level- to both the Head of the FCS Unit in the Western Cape Province as well as the Provincial Head of Detectives, to no avail. This was done by way of letter dated 21 May 2013, which was written on behalf of

¹⁹ Ibid, page 622 line 21 to page 643 line 1.

²⁰ Ibid, page 643 line 16 to page 644 line 16.

the Khayelitsha Thuthuzela Centre stakeholders. The contents of the letter were read into the record.²¹

66.12. There was no change in service levels or staff compliment of the Khayelitsha FCS Unit even after the complaints lodged with the Provincial Heads.²²

66.13. Further efforts by way of follow up e-mails and telephone calls to the Provincial Heads and senior officers bore no fruit.²³

66.14. The SAPS failed to equip the Khayelitsha FCS Unit members with the tools for their work. Often the detectives were without cellular phone airtime, computers and e-mail.²⁴

66.15. When complaints were lodged about shortage of detectives, more management staff were appointed to the Khayelitsha FCS Unit. This was of course unhelpful as management do not deal with the everyday cases that needed to be attended to.²⁵

66.16. Khayelitsha FCS detectives had failed to submit to the forensic laboratory Sexual Assault Evidence Kits containing samples of evidence obtained from victims of sexual assault crimes.

²¹ Ibid, page 644 line 17 to page 649 line 8.

²² Ibid, page 649 line 13 to page 650 line 21.

²³ Ibid, page 651 line 2 to page 652 line 1.

²⁴ Ibid, page 652 line 2 to page 653 line 8.

²⁵ Ibid, page 653 lines 9 to 15.

Several kits were found thrown away in a field near Delft. There was no explanation as to how police systems had failed to pick up that important DNA evidence had disappeared. The field where the thrown away samples were found is also a children's playground. Those children were exposed to serious danger if they had touched the kits. In the end the DNA evidence was destroyed and, consequently, the investigations were compromised.²⁶

66.17. A review of a sample of sexual assault cases that were withdrawn at Khayelitsha Court revealed that a significant number of cases had been withdrawn due to, *inter alia*, incomplete police investigations, outstanding DNA results and failure to bring police dockets to court.²⁷

66.18. Khayelitsha FCS Unit detectives were unable to detect the work of a serial killer even when they were alerted to it.²⁸

67. The Khayelitsha Commission also heard the evidence of Colonel Sonja Harri, Provincial Commander of the FCS Unit, which is also part

²⁶ Ibid, page 654 line 20 to page 691 line 7.

²⁷ Ibid, page 693 line 6 to page 698 line 11.

²⁸ Ibid, page 698 line 17 to page 706 line 25.

of the Khayelitsha Commission record and to which I refer in this affidavit.²⁹

68. Whilst I should like this Court to have regard to the entire evidence of Col Harri before the Commission, I wish to highlight the following aspects of her evidence:

68.1. Col Harri testified that the FCS Unit that was servicing Khayelitsha at the time was short staffed. There were not enough detectives for the work in the area.³⁰

68.2. Detectives at the Khayelitsha FCS Unit were overworked, suffered high stress levels and had a low morale.³¹

68.3. In the period up to 2010 the Khayelitsha FCS Unit was staffed by detectives who had not undergone psychometric testing, which is one of the prerequisites for a post in an FCS Unit.³²

68.4. Col Harri could not explain properly, except in general terms, the training that had been provided to Khayelitsha FCS Unit members. She acknowledged that Khayelitsha FCS detectives had poorly handled DNA kits and that there was a management

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<http://www.khayelitshacommission.org.za/images/transcripts/27%20March%202014%20pp%205764-6006.pdf>.

³⁰ Ibid, page 5780 line 9 to page 5781 line 21; page 5792 line 15 to page 5793 line 5.

³¹ Ibid, page 5793 line 6 to page 5794 line 11.

³² Ibid, page 5822 line 4 to page 5823 line 17.

failure to pick up that these kits were not accounted for in the police dockets.³³

68.5. There was a redeployment of officers away from the Khayelitsha FCS Unit, including of a detective who was performing well.³⁴

68.6. She submitted into evidence an inspection report into Khayelitsha FCS Unit.³⁵

68.7. There was a lack of interest of new detective recruits who wanted to serve at the Khayelitsha FCS.³⁶

68.8. Previous inspections of the Khayelitsha FCS Unit had revealed many serious failures by the detectives, such as a failure to inform the victim of the arrest of a suspect; failure to inform the victim of the right to request that a suspect be tested for HIV and the various implications for such a request.³⁷

68.9. Task teams of detectives would from time to time have to be sent to the Khayelitsha FCS Unit to assist the detectives there with basic aspects of their dockets like following up on

³³ Ibid, page 5824 line 12 to page 5827 line 16.

³⁴ Ibid, page 5829 line 18 to page 5830 line 18.

³⁵ Ibid, page 5781 line 22 to page 5784 line 18.

³⁶ Ibid, page 5836 lines 10 to 19.

³⁷ Ibid, page 5837 line 11 to page 5838 line 14.

prosecutor queries; tracing suspects; and conducting other very routine type of work. These kinds of interventions were frequent and unique to Khayelitsha FCS Unit.³⁸

68.10. Many Khayelitsha FCS Unit case dockets had been withdrawn in Court due to failure by the detectives to conduct any investigation and a failure by line managers to monitor and check the work of their juniors.³⁹

69. I also refer to the evidence of Ms Harmse, the Senior Public Prosecutor at Khayelitsha Magistrate's Court, who testified before the Khayelitsha Commission.⁴⁰ Part of Ms Harmse's evidence dealt with the issue relating to the capacity of Khayelitsha police to service the community as well as the courts. She testified that:

69.1. Many case-flow management meetings had been convened where the shortcomings in the work of the police were discussed.⁴¹

69.2. There was a serious failure by police, including FCS, to bring dockets to court and the devastating effects of this to the proper administration of justice.⁴²

³⁸ Ibid, page 5838 line 15 to page 5841 line 18.

³⁹ Ibid, page 5844 line 8 to page 5846 line 6.

⁴⁰

<http://www.khayelitshacommission.org.za/images/transcripts/6%20February%202014%20pp%201742-2017.pdf>.

⁴¹ Ibid, page 1816 lines 11 to 20.

- 69.3. The feedback that she got directly from FCS investigating officers was that they were overworked; carried too many dockets and therefore could not get to all the work; shortage of vehicles which also impeded their work.⁴³
- 69.4. When she escalated these problems to the Provincial SAPS the feedback that she received from a Capt Swiegelaar was merely that on paper the Khayelitsha SAPS was properly resourced. It had enough detectives and enough vehicles.⁴⁴
- 69.5. The problems also extended to matters relating to applications for protection orders.⁴⁵
70. Lieutenant General Lamoer⁴⁶ admitted that the Khayelitsha FCS Unit was the worst performing unit in the province, with severe staff shortages, low morale and poor quality of investigations.
71. The Commission found that all three police stations fail to comply with the provisions of the Domestic Violence Act (“DVA”).
72. I am not aware if the RAG allocation has increased since the Commission or how many of the allocated posts have been filled, but I

⁴² Ibid, page 1816 line 23 to page 1836 line 16.

⁴³ Ibid, page 1836 line 17 to page 1839 line 3.

⁴⁴ Ibid, page 1839 line 4 to page 1840 line 3.

⁴⁵ Ibid, page 1858 lines 4 to 17.

⁴⁶ Provincial Commissioner of the Western Cape at the time of testimony.

do know that there are currently only six (6) FCS investigating officers servicing the three Khayelitsha police stations. I am aware of this because these are the only investigating officers that attend at the centre to take statements from witnesses and collect evidence. On average 41 cases are reported to the Khayelitsha, Harare and Lingeletu-West police stations every month⁴⁷. This means that in addition to the dockets that each investigating officer is already carrying, they each receive on average 9 new cases monthly. My experience is that the FCS is still short staffed and that individual detectives are carrying too many dockets.

73. I highlight the evidence of the above witnesses but there was also other evidence before the Commission which brought to light the severe capacity constraints that Khayelitsha police are experiencing.
74. I state that the situation has not improved since the Khayelitsha Commission gave its report. The FCS Unit is still unable to cope with the workload; the quality of the detective service both at the FCS Unit and in the other Khayelitsha Police Stations remains very poor; crime scene management remains poor; ineffective unit management persists; youth gangs are still a problem; telephones still go unanswered; feedback to victims of crime and their families remains poor; failure to treat members of the public with respect is still a

⁴⁷ Crime Stats SA <http://www.crimestatssa.com>

problem; FCS continues to fail to attend monthly stakeholder implementation meetings; cases continue to be withdrawn at court due to incomplete evidence or dockets not being brought to court; generally, the community remains extremely frustrated by the service rendered by the police, particularly the FCS Unit.

Implications of the evidence before the Khayelitsha Commission

75. What the evidence before the Commission demonstrates, particularly as regards the work of the FCS Unit, is that women and children are particularly exposed to and are victims of crime in Khayelitsha.

76. The inefficiencies of policing sexual violence in Khayelitsha are as a direct result of inadequate allocation of human resources to the Khayelitsha Family Violence Child Protection and Sexual Offences (FCS) Unit. This inadequate allocation amounts to discrimination on the basis of gender as it affects women disproportionately in that they are more vulnerable to violence. That vulnerability is informed by a number of factors, inter alia, structural barriers, socio-economic factors, access to resources, access to the criminal justice system, and patriarchal attitudes to women. In addition to the violence experienced by the Khayelitsha community in general, women are also subject to high levels of sexual and domestic violence.

77. The constitutional right of women to be free from all forms of violence and the corresponding positive duty upon the state to respect, promote and fulfill that right must be taken into account in the determining the allocation of human resources to police stations
78. South Africa has amongst the highest levels of gender based violence in the world. This is no different in Khayelitsha. The number of reported sexual offences to the three Khayelitsha police stations are as follows: Khayelitsha police station for 2013/2014 was 233, for 2014/2015 was 229, and for 2015/2016 was 223; the number of reported sexual offences to Lingeletu West police station for 2013/2014 was 74, for 2014/2015 was 79, and for 2015/2016 was 62; the number of reported sexual offences to Harare police station for 2013/2014 was 236, for 2014/2015 was 235, and for 2015/2016 was 211.⁴⁸
79. After the Commission there was an increase in the number of detectives in the FCS Unit. However, the current situation has once again deteriorated to having only six detectives.
80. Even with this limited capacity, the detectives are still expected to perform all the duties as I described in my testimony: take statements from survivors, testify in court (trial and bail applications), serve

⁴⁸ Crime Stats SA <http://www.crimestatssa.com>.

subpoenas, transport witnesses to court for consultation and court appearances, attending at crime scenes, collection of evidence, and further investigation in current cases. It is impossible for so few detectives to deliver all these services to the standards to which the government has committed.

81. One of the areas in which service delivery to survivors has been seriously compromised is the taking of the complainant's statement. According to the Khayelitsha Thuthuzela Care Centre Protocol, once the investigating officer who is on duty is informed of a case at the TCC, she/he is required to take the statement of the survivor at the TCC. The statement must be taken in the specially designated statement-taking room. The purpose of this practice is to provide an environment which is private, safe and supportive, and counsellors are available to assist when needed. This practice helps to achieve the objectives of reducing secondary victimization of survivors.

82. Unfortunately, in about 50% of the cases, the survivor's statement is being taken at the FCS offices at the Site B Khayelitsha police station or at the survivor's house, and not at the TCC. Whereas this practice used to be the exception, it is has now become common. I suspect that the reason for this change is due to the limited capacity of the detectives.

83. Another problem that is being experienced is the response time of the detectives to attend at the TCC to take a statement once they have been informed about a case. The waiting times are very inconsistent, and vary from 1 to 4 hours. I believe that for a survivor to wait any longer than an hour for the detective to arrive increases the chances of secondary victimization.
84. Information was placed before the Commission in 2014 about the high levels of the withdrawal of sexual offences cases, the high number of case struck from the court rolls as a result of incomplete police investigation and dockets not being at court, the low conviction rate, and that survivors are not informed about the progress of their cases. I do not know if this is still the situation, but I invite the SAPS to indicate if this situation has improved. I also invite the SAPS to indicate what the current THRR and actual allocation for the Khayelitsha FSC is, and how many of the posts are filled
85. The applicants claim that the allocation of police human resources in the Western Cape unfairly discriminates against Black and poor people on the basis of race and poverty; and secondly that the system used by the SAPS to determine the allocation of police human resources unfairly discriminates against Black and poor people on the basis of race and poverty.

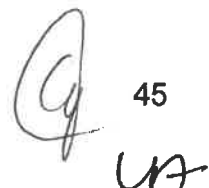
86. I am not an expert on the system (THRR and actual allocation) used by SAPS to determine the allocation of human resources to police stations. However, I do know that the system that is used to allocate resources to the FCS unit in Khayelitsha, a unit specialized in sexual offences and child abuse serving the entire Khayelitsha community, is wholly inadequate to effectively address the specific needs of this community regarding gender based violence.
87. The current system employed clearly results in insufficient resources allocated to the FCS, which in turn leads to compromised service delivery to sexual offences survivors. A new system is needed to address the shortfall in service delivery by taking into consideration the gender specific needs of the community.
88. The use of the current system discriminates against women because the women in Khayelitsha are particularly vulnerable given their living circumstances. Resources must be allocated that are concomitant with the particular and peculiar needs of policing gender based violence. The current system is not achieving the objectives and standards as contained in legislation and policy which government itself has devised. The government is not honouring its own commitments.

CONCLUSION

89. The evidence shows, compellingly, that the Khayelitsha SAPS, particularly the FCS Unit, has failed on a sustained and systemic basis, to adhere to government policy on crime prevention, crime combating as well as crime detection.
90. Furthermore, the evidence shows that Khayelitsha SAPS, particularly the FCS Unit, have failed to adhere to government policy on how to deal with and treat victims of crime.
91. This is attributable to inability to cope with the enormous workload that Khayelitsha police face.
92. I submit that the respondents have failed to take any remedial steps to address the inadequate allocation of police officers to the FCS Unit and police stations as reflected by the testimony of witnesses in the Khayelitsha Commission report. Inadequate allocation still continues which results in inefficient policing of gender based crimes.
93. SAPS failure to appreciate the recommendations in relation to policing gender based offences exacerbate the vulnerable position of women living in Khayelitsha both as the majority of residents and in relation to crimes that affect predominantly women.



GENINE JOSIAS



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UA

I certify that the above affidavit was signed and sworn to at Khayelitsha
before me on this the 06/04/2017 day of April 2017 by the deponent after she
declared that she knew and understood the contents of this affidavit, that she
had no objection to taking the prescribed oath which she regarded as binding
on her conscience, and after she uttered the words: "I swear that the contents
of this affidavit are true, so help me God".



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2010-07-26

- A. All Provincial Commissioners
SOUTH AFRICAN POLICE SERVICE
- B. All Divisional Commissioners
SOUTH AFRICAN POLICE SERVICE

FAMILY VIOLENCE, CHILD PROTECTION AND SEXUAL OFFENCES UNITS (FCS): INVESTIGATION MANDATE

- A & B 1. The re-introduction of the Family Violence, Child Protection and Sexual Offences Units and legislative changes necessitated the revision of the investigation mandate of the FCS which was approved on 28 June 1999. Head Office correspondence 3/1/5/1/96 dated 21 July 1999 is hereby withdrawn.
2. The main focus of the FCS is to provide a sensitive, professional service endearing to the victims of FCS-related crimes. The FCS is responsible for the investigation of the crimes as listed in the attached document (Annexure A).
3. This investigation mandate includes the following new aspects:
- New legislation which introduced new crimes and processes:
 - Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No 32 of 2007) (16 December 2007)
 - Children's Act, 2005 (Act No 38 of 2005) (1 April 2010);
 - Investigation of trafficking in children and mentally disabled persons for sexual purposes as stipulated in Section 70 and Section 71 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No 32 of 2007), if it is not of an organized nature; and
 - Investigation of reports of missing children under the age of 12 years.


**R. LALLA: LIEUTENANT GENERAL
DETECTIVE SERVICE**

DIVISIONAL COMMISSIONER: DETECTIVE SERVICE



**Family Violence, Child Protection and Sexual Offences Unit
Investigation Mandate**

Cases to be investigated by FCS	Comments
FAMILY VIOLENCE	
<p>Intra-familial crimes when the victim is 18 years of age and older:</p> <p>Assault with the intention to do grievous bodily harm</p> <p>Attempted murder</p> <p>Domestic Violence Act, 1998 (Act No 116 of 1998) (Applicable crimes)</p>	<p>Intra-familial refers to the "traditional family", (<i>gesin</i>) mother, father and children (married or unmarried) and NOT to the extended family as defined in the Domestic Violence Act</p> <p>Non compliance to protection orders ONLY when it forms part of the Assault GBH or Attempted Murder cases which are investigated by this Unit</p>
CHILD PROTECTION	
<p>Crimes if the victim is a child, a person under the age of 18 years, on the date the crime is reported:</p> <p>Rape</p> <p>Incest</p> <p>Indecent assault</p> <p>Attempted murder</p> <p>Assault with the intention to do grievous bodily harm</p> <p>Assault Common (intra-familial)</p> <p>Kidnapping ("Menseroof")</p> <p>Abduction ("Ontvoering")</p> <p>Domestic Violence Act, 1998 (Act No 116 of 1998) (Applicable crimes)</p>	<p>Crime committed against a person whilst she/he was under the age of 18 years</p> <p>Common Law crime committed before 16 December 2007. If the crime was committed since 16 December 2007 Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act no 32 of 2007) is applicable</p> <p>Common Law crime committed before 16 December 2007. If the crime was committed since 16 December 2007 Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act no 32 of 2007) is applicable</p> <p>Common Law crime committed before 16 December 2007. If the crime was committed since 16 December 2007 Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act no 32 of 2007) is applicable</p> <p>"Assault GBH"</p> <p>Only the intra-familial cases</p> <p>It is "the unlawfully and intentionally depriving a person of his freedom of movement and/or, if such person is a child, his custodians of their control over him"</p> <p>It is "the unlawfully and intentionally removing an unmarried minor from the control of his or her parent or guardian in order to enable someone to marry him or her or to have sexual intercourse with him/ her"</p> <p>Only if the Unit is already dealing with original criminal case (Assault GBH, Attempt murder, etc)</p>

Cases to be investigated by FCS	Comments
Sexual Offences Act, 1957 (Act No 23 of 1957) Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act no 32 of 2007) Children's Act, 2005 (Act no 38 of 2005) Films and Publication Act, 1996 (Act No 65 of 1996)	Where the child is the victim of a sexual offence Crimes committed since 16 December 2007. Where the child is a victim of a sexual offence, including trafficking for sexual purposes if it was not of an organized nature (organized - Organized Crime) If the crime was committed since 16 December 2007, Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act no 32 of 2007) is applicable
Missing Children	Crimes relating to Child Pornography
	Only when the child is under the age of 12 years
SEXUAL CRIMES	
Crimes when the victim is <u>18 years of age and older</u> : Rape Incest Indecent assault	Victim is 18 years of age and older at the time of the report of the alleged offence Crime committed before 16 December 2007. If the crime was committed since 16 December 2007 Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act no 32 of 2007) is applicable Crime committed before 16 December 2007. If the crime was committed since 16 December 2007, Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act no 32 of 2007) is applicable Crime committed before 16 December 2007. If the crime was committed since 16 December 2007, Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act no 32 of 2007) is applicable
Sexual Offences Act, 1957 (Act No 23 of 1957) Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act no 32 of 2007) Domestic Violence Act, 1998 (Act No 116 of 1998) (applicable crimes)	Where the adult is a victim of a sexual offence Crimes committed since 16 December 2007. Where the adult is a victim of a sexual offence, including trafficking for sexual purposes if it was not of an organized nature (organized - Organized Crime). If the crime was committed since 16 December 2007, Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act no 32 of 2007) is applicable Only if the Unit is already dealing with the original criminal case (sexual offence)

TCC PROTOCOL

KHAYELITSHA THUTHUZELA FORENSIC CENTRE

PROTOCOL FOR THE COMMUNITY POLICE

A report may be made to the CSS telephonically or in person:-

If a report is made telephonically:

- The officer receiving the call should put the person speaking at ease. Once the nature of the complaint has been established, no further information regarding the merits should be elicited telephonically.
- The victim should be informed of the fact that he/she should not bathe nor change clothing where such has not been done.
- A vehicle should be dispatched to the victim immediately and the victim should be informed of such. This is done to ensure that the victim is safe and that the crime scene is secured.
- The victim should be informed to not touch anything at the crime scene. If he or she is still present at the scene.
- If the victim has changed clothing the latter should be informed to keep the clothing in a safe place and to hand it to the investigating officer (and to avoid putting it into a plastic bag but rather put them in newspaper or a brown paper if available to do so).
- Where this has been done the victim should be informed to take the clothing along to the medical examination at the TCC if the clothing is available.
- The officer who takes the victim to the TCC must leave his/her contact details.
- The 1st officer on the scene must secure the scene.

- Where the suspect is at the scene, the victim and suspect should at no point in time be transported in the same vehicle, in order to avoid further victimisation of the victim.

If a report is received in person:

- Once the nature of the complaint has been received, the details of the case should not be discussed with the victim.
- The victim should be taken to a comfort room (trauma room) and be informed of the procedures that are going to follow.
- The victim must be informed to not eat or drink anything at this stage.
- The victim must be transported to the TCC immediately.
- Where it is apparent that an emergency medical vehicle should be dispatched the SC/VAO should be informed.
- An ambulance must be despatched in an emergency situation because it is not SAPS responsibility to transport an injured victim in a police vehicle in emergency situations, because this could result in further injuries.
- An FCS officer will take the victim's statement after the crisis intervention has been completed. Such intervention includes containment counselling, medical examination, bathing, etc where required.
- No victim may be turned away simply because the alleged offence took place a long time ago or was allegedly committed in the station area of another police station.

PROTOCOL FOR FCS OFFICERS

1. The FCS officer serving the area who is on standby will be informed by the TCC staff of the reported case.
2. Where the CSC personnel are not involved and the victim has reported directly at FCS, the FCS officer will assist the victim by transporting her/him to the TCC. The J88 and the SAECK are kept at the Khayelitsha TCC.

3. The FCS member must ensure that the SAPS 308 is/was completed before the medical examination is conducted.
4. The victim must be asked whether he/she wants to apply for the alleged offender, once arrested or located, to be tested for HIV at state expense. This request should be a written application in terms of the prescribed forms, done within 90 days from the date of the alleged offence.
5. Once the examination is complete the FCS officer should then take receipt of all of the sealed SAECK and/or evidence bags and J88 along with the section 212(4) statements and the SAP 308 from the HCP who had completed the medical examination.
6. The FCS investigating officer will only take the victim's statement after the crisis intervention counselling, the medical examination has been completed and the victim has been given an opportunity to bathe and change clothing.
7. The FCS officer must leave the following copies at the TCC to be kept in the TCC folder before the folder is scanned: (1) the J88, (2) the SAECK form, (3) Sec. 212 and (4) A1 Statement.
8. In some cases, such as where the doctor is not immediately available or the case is unclear, the Investigating Officer may take the statement before a medical examination is conducted.
9. The statement taking room must be conducive to the victim's needs with, drinking water, tissues, anatomically correct dolls, etc.
10. As far as possible the FCS member should not be given access to the medical folder before taking the victim's statement so that the medical examination does not influence the direction of the statement taking process.
11. Where the victim has bathed and /or changed clothing before coming to the TCC and the clothing was not brought to the TCC the FCS investigating officer should establish from the victim where such clothing is and ensure that it, as well as any other applicable exhibits, is collected at the first opportunity.
12. A counsellor, SC, VAO or social worker may be present at the interview should the victim request it, but they must not interfere with the taking of the statement.

13. The FCS investigating officer should contact LCRC to visit the crime scene to collect evidence that may be present at the scene of the crime where applicable.
14. If there is a query or guidance is required the FCS investigating officer should first contact the local FCS head or the TCC case manager or prosecutor, if necessary.
15. Where the need arises, the FCS officer should be able to immediately contact and obtain the guidance and/or assistance from a social worker. The names and contact details of the above should be kept at the TCC.
16. If the suspect must still be identified by the victim, or if the crime scene must still be pointed out by the victim or evidence pointed, the FCS officer should transport the victim in order to identify the suspect and follow up on the investigation as mentioned above. Thereafter, the victim should be transported home or to a place of safety where applicable.
17. Where a placement will be required the social worker/SAPS (Victim VEP/VAO) should make the necessary arrangements for the placement of the survivor. The VAO should follow relevant protocols in this regard i.e. make the necessary phone call and complete referral form for the crisis centre. The FCS/SAPS VEP must accompany the survivor to the place of safety.
18. Where applicable, witness protection should be made available to the victim.
19. The original docket and sealed SAECK is taken to the station for registration on the relevant administration system, and where evidence is collected it should immediately be recorded in the appropriate registers, correctly.
20. The suspect should as far as reasonably possible be arrested within 48 hours.
21. All outstanding statements must be taken within reasonable time.
22. Once an arrest is made, the complete docket must be prepared for court in terms of the SAPS docket screening process.
23. Relevant bail information will be communicated by the investigating officer in the investigation diary in the docket. If the prosecutor is unclear on any aspect relating to the bail information, then the Prosecutor should contact the I/O directly before the issue of bail is communicated to the court.

24. The CM should be contacted to arrange a consultation between the victim and the prosecutor as soon as possible after the accused's first appearance in court.
25. The FCS officer is responsible for contacting the victim to make arrangements for the consultation.
26. As the investigation continues, the FCS officer shall adhere to the 'brought forward' dates entered into the investigating diary in the docket by the SAPS screening officer, in order to ensure that the docket is properly screened and monitored in terms of SAPS screening policy and to ensure effective case flow.
27. All dockets on the court roll should be at court on the brought forward dates / 3 days before court appearance as applicable
28. The FCS officer must see to it that all DNA samples are sent to the Forensic Science laboratory within 7 days of being collected.

WALK-INS (where victims present directly at the TCC)

1. The process will follow as above (if victim wishes to open a case
2. *It must be suggested to the victim that even if she does not intend opening a case immediately, the medical examination can still take place in case she changes her mind at a later stage.*
3. The FCS officer on standby will be contacted and informed of the case by the site coordinator/VAO/counsellor or admin clerk immediately.
4. The rest is as above and the registration on the CAS system will take place once the FCS officer goes back to his/her office.
5. The FCS Officers must leave copies of the J88, A1 Statement, SAP 308 at the TCC and supply the CAs number to the SC/TCC as soon as it is obtained.

NON-ARREST DOCKETS

1. Information on cases reported at the TCC is relayed by the site coordinator / VAO to the CM on a daily basis.
2. The CM will also check the decision docket register at court where some cases may have gone to prosecutors via this system in order to record all of the non arrest matters.
3. The CM follows up within 48 hours to enquire if an arrest has been effected and if not the reasons therefore.
4. Where no arrest has been made the information is entered into the database.
5. The CM must follow up on the case until there is an arrest.
6. The non arrest database must be checked regularly in order to accurately record which of those cases have resulted in an arrest.
7. If there is no arrest within 3 weeks of the report then the IO must be instructed to take the docket to the prosecutor for a decision.
8. Where a case has been closed (Nolle prosequi), then the VAO must be informed so that the victim can be informed.

ARREST DOCKETS

1. The arresting officer must inform the FCS detective of the arrest if the arrest was not executed by the FCS IO and give an arresting officer's statement.
2. Once the suspect has been arrested the suspect must be processed for evidence collection immediately.
3. The suspect must appear in court on the first working day within 48 hours after being arrested (*except for weekends and public holidays*).
4. The screening prosecutor based at court will screen the docket and make a recommendation regarding bail.
5. The docket is then taken to court and dealt with accordingly - as set out in this protocol.
6. Once the CM receives the docket back from court the relevant information must be entered onto the electronic database.
7. The CM must provide information regarding an arrest to SC/VAO who will in turn inform the complainant.

8. The police can only arrest a child if it is a specific scheduled offence for a schedule 1 offence but will hand form SAPS 583 (b) to the young offender and his parent/guardian they will have to appear for the preliminary inquiry. The police will inform the probation officer within 24 hours after handing the form SAPS 583(b) written notice to the child and his parent/guardian

DUTY TO REPORT

1. In terms of Section 54 (1) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, all sexual offences relating to minors and mentally disabled persons, as they are defined in the SOA, must be reported to SAPS. The Act places a legal duty on all citizens to report such knowledge to SAPS.
2. If a person reports such knowledge or his/her reasonable belief or suspicion to a SAPS official such a person may not be turned away.
3. Should such information come to the attention of functionary within the criminal justice system (e.g. HCP, social worker, etc) the FCS member on standby shall be contacted by the functionary to report such knowledge *ito* of his/her legal duty to do so. The functionary shall provide a statement to the FCS member concerning the allegation. Upon receipt of that affidavit the FCS member on standby shall open and register a docket on the CAS system. That docket must be taken to the CM / prosecutor within 48 hours of the report to screen the case. The normal investigation process will then be followed.
4. The above will equally apply to reports *ito* Sec. 54 (1) made by the ordinary members of the public with the exception that the statement will be taken from the person reporting his/her knowledge by the FCS investigating officer.

PROTOCOL FOR MEDICAL PERSONNEL

(This area of operation is the key to the success of the TCC & sets the tone for the investigation to follow.)

A Health Care Professional (HCP) refers to a medical doctor or a Sexual Assault Nurse Examiner (SANE)

1. The TCC is based at the clinical forensic unit at the hospital. Medical examinations and trauma containment counselling, for domestic violence victims, is also done at the centre. The medical personnel also draw blood for examination and perform other examinations on various criminal offenders as required/ordered by the courts.
2. No victim may be turned away from the TCC or referred elsewhere for the purposes of rendering services that the TCC are expected to provide.
3. During office hours SAPS will bring the victim to the TCC and the receptionist SC/VAO/nurse/counsellor will meet the victim.
4. Unopened SAECK and docket containing SAP 308 are provided by SAPS on request by the SC, and they are kept at the TCC. The supply is topped regularly.
5. The SC/Counsellor will explain the procedures that will follow ; e.g. containment counselling, voluntary counselling and testing, medical examination and evidence collection and statement taking (*if this has not happened yet*). The TCC admin clerk will open a hospital folder in the TCC.
6. All victims irrespective of them being male or female or of whatever age will be examined at the TCC.
7. Containment counselling will be managed by the counsellor, thereafter the victim is handed over to the HCP for examination.
8. A1 Statement will be taken at TCC after the medical examination has been completed or prior to the medical examination depending on the case at hand.
9. The victim will receive pre and post HIV counselling and testing from the trained Mosaic VCT counsellor at the TCC.

10. The HCP will be responsible for pregnancy testing and other tests; as required by national and provincial guidelines.
11. Where an HCP is not on duty or physically at the centre, the receptionist (*during office hours*) or nurse (*after hours*) will call the doctor on call to inform him/her that a victim has arrived.
12. The victim must not wait for longer than an hour or a reasonable period of time for a medical examination to be conducted.
13. The HCP will complete a 'Rape Protocol' which is supplementary to the J88 and file it in the hospital medical folder.
14. The HCP will explain the process of the medical examination to the victim in a sensitive and informative manner and the necessary consent (SAO 308) should be obtained before the examination can commence.
15. The HCP must ensure that the victim voluntarily consents and that he/she understands what they are consenting to e.g. examination and the collection of evidence to be used in the investigation and possible prosecution of the case.
16. The HCP will examine the victim according to established medical protocols and complete the J88 along with the section 212 (4) Statement of Act 51/77. The examination and collection of evidence must be done in the presence of a counsellor if the victim does not have a chaperone.
17. The HCP will inform the counsellor/admin clerk once the examination is completed so that FCS can be informed to come to the TCC to take a statement and/ or take the victim home; if not informed already. After the medical examination is completed, the VAO must discuss follow up medical and psychological appointments with the victim.
18. Dates for follow-up appointments must be written by the HCP, counsellor, VAO or HCP on the appointment card and be noted in the follow up register.
19. The HCP must hand all necessary documentation, completed J88 and SAP 308 as well as sealed crime kits and any other evidence or exhibits to the I/O or SAPS official.
20. To ensure the integrity of the evidence collection kit, no used crime kit may be handed to anyone other than a SAPS official, and all crime kits and chain evidence will be recorded and signed for in the J88 form. Where clients are

undecided about opening a case. *Crime kits will kept at centre for no longer than 3 months after which they will be given to FCS for disposal.*

21. All victims will be examined immediately regardless of when the offence took place. If a victim that was raped within 72 hours from report, and another victim that was raped more than 72 hours prior to reporting, the fresher case will receive preference.
22. A medical examination must take place even though there is no Cas number at the time the victim presents at the TCC. The medical examination cannot be refused because there is no Cas number.
23. All subpoenas for the relevant HCP's will be received by the SC/admin clerk.
24. The police/SC/admin clerk is responsible for arranging the relevant HCP for the court date stipulated on the subpoena and to make arrangements with the court accordingly. Where an HCP is not available the CM/court must be informed immediately and an alternative date must be arranged by the CM.

PROTOCOL FOR EVIDENCE COLLECTION KITS

1. The SC will call FCS to order crime kits as needed.
2. FCS will provide crime kits to the TCC and the TCC shall be responsible for their safe keeping.
3. The SC will contacts the FCS unit when crime kits supply is low.
4. Only the HCP should break the seal of the crime kit.
5. HCP must ensure crime kit particulars are entered into patient register and that receipt thereof has been signed by SAPS member thus ensuring chain of evidence is complete.
6. Upon completion of the medical examination the HCP shall seal the crime kit as prescribed and hand it over immediately to the SAPS official together with necessary documentation.

7. If HCP is unable to hand crime kit over to SAPS official immediately, it shall be kept in a safe place until such time it is handed over to SAPS official. At all times, cognisance should be taken of the integrity of chain of evidence.

PROTOCOL FOR COUNSELLORS / SOCIAL WORKERS

1. Mosaic shall render containment counselling services to all victims of sexual violence and domestic violence who present at the TCC.
2. There will be two counsellors (Cnslr) per shift during the day (*normal office hours*). A counsellor is available at the centre for 24 hours a day
3. The counsellors will be managed by Mosaic, but must inform the SC if there are any changes to schedules/rosters or if any counsellor is late for work.
4. The monthly duty roster for this service shall be made available by the Mosaic counsellor / manager to the SC.
5. A counsellor will provide counselling before a medical examination takes place and may be present in the examination room when a HCP examines a survivor, where necessary.
6. A trained VCT counsellor will provide pre- and post HIV counselling and testing and confirm with the doctor if there is a discrepancy in the results.
7. The counsellor must establish the victim's psychological and physical safety concerns so that a safety plan can be developed for the victim by the VAO/counsellor if necessary.
8. The VAO/Cnslr will be responsible for developing a safety plan and will facilitate the placement of the victim at a place of safety/shelter; in collaboration with a DSD social worker where required.

9. The Cnslr in consultation with a Social Worker, will facilitate a safety plan and make arrangement for a place of safety where a victim of Domestic Violence is in need thereof.
10. The Cnslr shall assess the need for, and make arrangements for referrals for Protection Orders, etc, as well as refer for long term counselling for Domestic Violence victims. This information will be followed and monitored by the Mosaic counsellors.
11. All sexual offences referrals and follow ups will be monitored by the TCC VAO.

VICTIM IMPACT REPORTS

- DSD will avail trained social workers to perform this duty.
- A report shall be compiled by the social worker after receiving a written request to do so – from the prosecutor/CM at the court.
- The report will be requested at the earliest opportunity affording DSD a due date within 4-6 weeks.
- Should a report not be available at the due date the official responsible for compiling the report shall communicate the reasons for non-compliance in writing to the prosecutor/CM in order to facilitate case flow.
- VAO will assist social worker on request & as is possible to contact victims for the purposes of compiling victim reports.
- Urgent matters arising on exceptional basis might require a shorter due date & DSD will endeavour to provide the report in such shortened time period.

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REFERRALS FOR PSYCHO-SOCIAL

Referral Process for Children

1. Child Under 16 survivors of rape brought in by a parent

- All child survivors of rape will be counselled by a Mosaic containment counsellor and referred to a forensic examiner for medico-legal services.
- All child survivors of rape under the age of 16 will be referred to FCS *until the Teddy Bear case matter is finalised by the courts.*
- Where necessary, children will be referred to a DSD Social Worker for assessment and intervention, i.e. the removal and/or placement of child in safe care.
- At the same time a referral will be made to an NGO for long term counselling e.g. Nonceba or Rape Crisis

2. Child under 16 years who are identified in schools

- All children who disclose being raped to their educators will immediately be referred to a School Social Worker working in the area.
- The school social worker will bring the child to the KTFC and will be responsible for all the signatures needed for the child to go through the service process in the centre, if the parent is not available.
- If a Social Worker working in the area is not available immediately, the child will be brought into the Centre by the school educator and a Social Worker from Khayelitsha DSD will be called in to the KTFC to attend to the child and sign on behalf of the child, if the parent is unavailable.

3. Survivors of rape 16 years and older

- All survivors of rape will be counselled by a counsellor and referred to a forensic examiner for medico-legal services.
- All survivors of rape wanting to open a case will be referred to FCS.
- All survivors of rape will be referred to NGOs for long term counselling e.g. Rape Crisis.
- All survivors of rape (aged 16-18 years only) needing social services such as assessment, removal and placement to safe care will be referred to DSD.

4. Survivors of rape 16 years and older identified in schools

- All survivor of rape (16-18years) identified in schools will immediately be referred to a School Social worker working in the area.
- The School Social Worker will bring the survivor to the KTFC.
- The survivor can give consent to all post rape care processes offered at the Centre.
- If a School Social worker working in the area is not available immediately, the child may be brought into the KTFC by an educator and a Social worker from Khayelitsha DSD will be called in to the Thuthuzela to attend to the survivor.
- All survivors of rape identified in schools (18 years and older) will be brought/referred to the KTFC.

5. Child Attempted Rape Cases (under 16 years)

- All children presenting with attempted rape cases at the KTFC will be attended to by a HCP who will complete a J88.
- The matter will be reported to FCS who will come to the KTFC to take an A1 statement as well as follow the procedure followed to open a criminal case.
- Children will be referred to a DSD intake Social worker for assessment/ removal and placement if needed.
- A list of intake Social Workers per area is available at the KTFC.
- All children will be referred to NGOs for long term counselling at Nonceba or Rape Crisis.

6. Child Suspected Rape Cases (under 16 years)

- All children presenting with suspected rape and confirmed by the doctor will follow the process mentioned in point clause 1 above
- All suspected rape children presenting at the KTFC and rape has not been confirmed may be referred to an intake Social Worker or Nonceba counselling services for further intervention.
- Referrals will be made to NGOs for long term counselling.

7. Feedback of children referred to DSD

- The Department of Social Development (DSD) will submit an update on the children referred to them by the KTFC.
- Such a list will contain the name of the child, the date of referral, the Social Worker allocated the case and the action plan proposed.
- This report will be filed at the KTFC by the SC/admin clerk in the child's TCC/ hospital file
- DSD will give feedback on the status of the children referred to them from the KTFC at the monthly implementation meetings.
- VAO will follow up with DSD on these cases.

For the purposes of the above counselling services the following agencies commit to providing the following services, subject to organisation specific protocols:

- MOSAIC service areas: Harare, Site C, Site B, Khayelitsha
Services rendered: Individual, couple and family counselling
- Rape Crisis Cape Town service areas: Khayelitsha, Athlone, Observatory
Services rendered: Counselling of victims 14years and up (family, friends and court support services for adults at Wynberg, Parow and Cape Town
Organization specific requirements : client must call in to make an appointment.
- Nonceba service areas: Khayelitsha
Services rendered: long term counselling to children 0-13 years, DV counselling, shelter for 3 months duration
Organization specific requirements : referral for counselling done by TCC and by social worker for placement in a shelter.

DEPARTMENT OF JUSTICE

- DOJ ensures that there is a private waiting area available for victims on trial dates.
- DOJ ensures that there is an interpreter available to the witness in the language of her choice both for trial as well as for consultation.
- The relevant public prosecutor must inform the CM when an interpreter is required for consultation.
- The CM will communicate with the court manager or chief interpreter to make an interpreter available for the consultation.
- A foreign interpreter must be arranged more than one week prior to the consultation date in order for the appropriate interpreter to be available on that consultation date.
- Ensures that a trained intermediary is available in applicable cases.
- Provision of witness fees to all witness fees including experts. When an expert witness is required, prior consultation is needed for witnesses from afar. At least 21days notice is required in order to arrange for that witness to be available on the court date. There is a circular that discusses the issue of payment of witness fees and arranging of witnesses or expert witnesses.

TCC SITE COORDINATOR (SC)

- If a victim arrives at TCC during office hours, depending on the circumstances, the admin clerk informs the SC/Cnslr who will make the initial assessment of the case and explain the services available at the TCC as well as the process to be followed. The victim then goes to the admin clerk who will open a hospital file.

- The victim is then handed over to the counsellor for containment counselling.
- SC/ cnslr/ admin clerk determines from SAPS official or Social worker accompanying victim which services, if any, had been rendered to victim at that stage. This information is noted in the file of the victim.
- Upon completion of medical examination by HCP, all relevant exhibits and SAECK are handed over to SAPS.
- After medical examination is completed the victim may take a shower or a bath and be provided with refreshments. The SC must manage all victim comfort packages that are provided by NGOs.
- Facilitates and manages referral system at the TCC
- Compiles and submit monthly stats to the CM and NPA
- Provide CM with client information seen at the TCC on a daily basis.
- Coordinates and chairs the TCC implementation meetings.

PROTOCOL FOR THE VICTIM ASSISTANT OFFICER (VAO)

- Must communicate information on cases reported to CM on a daily basis.
- Record victim information comprehensively in the TCC file.
- Establish early contact with a victim and make a follow through within a week of reporting.
- VAO must create a system with the CM whereby a victim is kept notified of the case progress after every court appearance.
- VAO must ensure that the victim can provide information about concerns regarding the legal process which in turn must be given to the CM
- VAO must assess and respond to the victim's needs to enhance her/his/her participation in court process.
- Do necessary referrals to relevant organisations & follow-up on such referrals.

- Note follow-up appointment dates made by HCP & contact victims to ensure compliance with these follow-up appointment dates.
- VAO must provide court support where needed and refer victim for court preparation where necessary.
- VAO must file all notes and actions taken on TCC file.
- Assist victim with preparation and development of a personal safety plan, where necessary.

PROTOCOL FOR CASE MANAGER

- CM will receive information from SC/VAO regarding matters that were reported at the TCC.
- CM will keep a separate database for arrest and non-arrest dockets respectively.
- Arrest dockets received at court will be captured on the relevant database.
- CM has to check the arrest dockets against non-arrest database to ascertain whether of the non arrest dockets have resulted in subsequent arrests.
- *CM is responsible for arranging the consultation with the complainant and the prosecutor liaising with the investigating officer. This consultation to be arranged preferably within 21 days after matter was placed on the roll – SPP please indicate if this can be complied with by CM within Khayelitsha set-up*
- CM receives docket after first appearance and captures all details on data system.
- CM responsible for following up on investigation requested by the prosecutor.
- CM forwards case updates & outcomes of proceedings to VAO/SC.
- CM will ensure that all reports requested by the court are requested and submitted timeously; e.g. victim impact reports, DNA analysis prioritisation letters, etc.
- All postponement dates as well as information regarding case must be captured on database.

- CM must liaise with FCS regarding outstanding investigation to facilitate case flow.
- CM will be available telephonically to assist FCS members with queries and guidance regarding investigation of matters.
- CM will receive dockets from SAPS screening officer stationed at court before court dates to ensure that outstanding investigation has been complied with.
- CM must ensure matters are trial ready before case is set down for trial.
- CM makes recommendations to prosecutor with regard to continued prosecution or withdrawal of cases.

PROTOCOL FOR PROSECUTORS

- Prosecutor identifies victims for court preparation to CM.
- Prosecutor makes entries in the investigation dairy guiding investigation.
- Prosecutors liaise with CM with regard to urgent matters where immediate follow up is required.
- Prosecutors will be available for guidance to FCS where the need arises.
- Prosecutor will consult with complainant upon receipt of a 'withdrawal statement' and indicate such on the docket. Reasons noted on dockets indicating reasons for withdrawal. SPP will indicate procedure to be followed.

Updated in October 2014

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**COMMISSION OF INQUIRY INTO ALLEGATIONS OF POLICE INEFFICIENCY
IN KHAYELITSHA AND A BREAKDOWN IN RELATIONS BETWEEN THE
COMMUNITY AND THE POLICE IN KHAYELITSHA**

AFFIDAVIT

I, the undersigned, **Dr Genine Josias**, an adult female, work address:
Khayelitsha Hospital, Steve Biko Drive, Khayelitsha, contact details- work no:
(021) 360 4570 ,

do hereby state under oath in English that:

- I am a medical doctor with qualifications; MBChB (UCT) (1988), M Fam Med (USB) (2008), Diploma in Clinical Forensic Medicine (CMSA) (2010). I have worked as Medical Officer at Hlabisa Hospital (KZN), doctor for Medical Benefit Fund of Food and Allied Workers Union, Senior Medical Officer- Site B Community Health Centre, Chief Medical Officer- Cape Clothing Industry Health Care Fund, Principal Medical Officer- Cape Metro District Health Service, Medical Coordinator- Medecins Sans Frontieres ("MSF") and Principal Medical Officer- Khayelitsha Thuthuzela Forensic Centre, previously known as the Simelela Centre ("the Centre"). I have been in my current role at since 2004.

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2. Thuthuzela, a Xhosa word meaning comfort, represents a radical approach to rape care management. The Thuthuzela model works in such a manner that survivors of sexual assault in its various forms receive specialised care from police officers who record their statements, collect exhibits, and follow up on initial investigation leads; clinical forensic examiners (comprising of medical doctors and nurses) who provide immediate medical care and collect samples for forensic analysis; social workers who assess the family and other circumstances of the survivor and see to the survivor's immediate social needs; counsellors who provide immediate containment counselling.

3. The aim of the Centre is to provide survivors of sexual assault ("the clients") with immediate medical care, reduce secondary trauma for the survivor, improve perpetrator conviction rates and reduce turnaround time for finalising cases. It is important to stress that the model can work well if there is full and complete commitment and participation by all stakeholders.

4. It is on this basis that the Centre has worked closely with government departments like Health, Social Development, City of Cape Town Health Department, SAPS and non-governmental organisations such as Rape

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Crisis, Nonceba Family Counselling, Mosaic, MSF, etc (“the stakeholders”).

5. These are all the vital stakeholders in the work of the Centre without the active involvement of whom the functions of the Centre can be undermined and the interests of the community can be jeopardised.
6. Our experience of SAPS over the years has been varied. The Centre works closely with the Khayelitsha Family Violence, Child Protection and Sexual Offences Unit (“the FCS Unit”) which is supposed to assign members who are dedicated to the Centre and who are on call at any time a case is reported.

Lack of professionalism

7. My first observation of the FCS Unit is that it is poorly managed. This often leads to frustration of individual members in the unit which has been palpable from time to time.
8. The FCS Unit is clearly understaffed. Furthermore, insufficient psychological support is provided to its members. It is seldom that its

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members undergo debriefing and counselling sessions. All of this manifests in a lack of professionalism among its members.

9. We have often witnessed FCS members speak openly and in front of the Centre staff, clients and their families about their work frustrations (like insufficient vehicles, some members not having drivers licenses), personal frustrations and fatigue.

10. For the Centre to operate optimally we need to hold regular stakeholder meetings. SAPS agreed to participate in these meetings and send a representative. Too often the SAPS representative does not attend scheduled meetings and fails to provide timeous and acceptable apologies. We have from time to time been given the excuse of excessive workload. We would be happy to accept this excuse as valid if we could actually see that work is being done but, unfortunately, the contrary is evident.

Poor response-times

11. In the period between 2007 and 2009 I was involved in the disciplinary hearing of one of the investigating officers assigned to the Centre. He was on call and had taken more than six hours to attend to a rape survivor.

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12. During those six hours we telephoned him and his supervisor many times to ascertain what was causing the delay. He kept on telling us that he was at the gate of the Centre. He was of course not there and the security officers at the gate were keeping watch.
13. At the disciplinary hearing, where he was represented by a shop-steward, we were accused of unfairly singling him out. It was said that other investigating officers also often delay in responding but were not reported. We agreed with the allegation that poor response to our calls is endemic among the Khayelitsha SAPS generally and among the officers on call at the FCS Unit, however, we pointed out that this particular detective was notorious for not responding to calls. We also testified at this hearing that this particular officer had attended to some of the calls while his breath reeked of alcohol. We also mentioned that this particular member had once attended to a call at the Centre during the night in the company of his girlfriend. He went on to take the statement from the client in the presence of his girlfriend.

Simelela Partner Query

14. In May 2010 we decided to record complaints that we received from the rape survivors and the general public about any of the Centre stakeholders. We created a blank form titled "SIMELELA PARTNER QUERY" – so as

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to record any problems/queries we had with any of the Simelela partners as far as services to the patient were concerned. Between May 2010 and July 2011 we recorded twenty four (24) complaints. All of them related to the FCS unit. I attach copies of these complaints hereto, marked **Annexure A.**

15. We gave copies of these complaints and queries to the management of the FCS Unit on a regular basis as and when they came. We were told that the issues raised were addressed with the officers during morning parades but I do not know what concrete measures were put in place to address the issues beyond that.

Samples for forensic analysis

16. The kind of cases with which we deal are often solved and successfully prosecuted through the use of forensic evidence. Clinical forensic examiners ordinarily collect DNA samples during the medical examination of survivors of sexual assault; pack the samples into specialised sample kits ("the kits"); and hand the kits to SAPS investigating officers- FCS Unit- responsible for that particular case.

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17. It is the responsibility of the investigating officer who received the kit from the doctor to immediately take that kit to the relevant police station, enter it into the designated registers and occurrence books and cause for it to be promptly dispatched to the Forensic Science Laboratory for analysis. This is established practice. Furthermore, I believe there are established protocols in the SAPS for the handling of these kits.
18. We have always trusted the police to do their job properly with these kits and believed them to treat these kits with the necessary care.
19. During the course of 2011 it was brought to my attention that the police had dumped boxes (Sexual Assault Evidence Collection Boxes) containing kits some of which bore the name of the Centre. It was reported that these dumped kits were found on a field in Delft. Soon after receiving this information I was contacted by a journalist from Die Son newspaper regarding the same issue. I attach hereto marked Annexures B and C copies of Die Son newspaper which carried the story.
20. Subsequent information confirmed that there was indeed a discovery of such boxes most of which contained kits which reflected the name of our Centre. This was very disturbing, disappointing and shocking to us. What it meant was that all the work that had been put into collecting that

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Handwritten signatures and initials, including a large 'A' and 'U'.

forensic evidence, the meticulous methods used, the resources and skills employed to do so and precious time spent by all concerned went to waste.

21. In my view there can be no plausible explanation for this deed. Indeed our trust and faith in the work of the police in Khayelitsha FCS Unit was shaken considerably.
22. Although it was rumoured later that the kits had been stored away at the home of an investigating officer who had fallen ill and later passed away, there could be no excuse for this. In my view the service should continue even if one staff member is incapacitated. It showed to me that there was a serious weakness in the system where no tracking was done with regards to the chain of evidence of clients. To my mind the various checking officers, work inspectors, docket inspectors, Detective Branch Commanders and the FCS Unit Head had miserably failed in their respective duties of discipline, control and management.
23. As far as I know a Provincial task team was established to investigate the matter. To my knowledge the SAPS have never given feedback on the outcome of the investigation to the stakeholders.

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24. In any event I deem this incident as a major failure of policing in Khayelitsha and as one of those incidents which profoundly undermine the relationship between the community of Khayelitsha and the police.

Gross incompetence

25. During the course of 2010 the Centre attended to four or five cases of rape of little girls, unrelated to one another, and had taken place over a period of time. What was notable about these rapes was that they were all accompanied by serious assault. All the girls reported that they had been raped by an adult male. The Centre referred all these cases to the Red Cross Children's Hospital as emergency patients as the girls presented the following similar symptoms- severe bleeding and deep genital tears which required specialised medical examination and repair under anaesthesia.
26. These girls were raped in a similar manner; they had been individually lured away into a bushy area in the Endlovini informal settlement. To me, even as someone who has never received training in police investigation, it was apparent that the *modus operandi* in the perpetration of these rapes was similar. They all presented similar facts. It seemed to me that we were dealing with the case of a serial rapist. The investigating officers from the

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specialised FCS Unit working on these cases had however not picked this up.

27. I gathered all the relevant information on these cases and duly advised the Head of the FCS Unit, who holds the senior rank of Superintendent (“the Superintendent”), of my suspicions. I then called a meeting of all the Centre’s stakeholders and requested that the Superintendent also attend for a discussion on these cases. He could not attend but instead sent one of the Captains (“the Captain”) in his Unit to attend. The Superintendent never made a follow up on the meeting.

28. At the meeting the Captain called into question my strong suspicions about the serial rapist. The outcome of the meeting was very disappointing as the Captain refused to take me seriously and refused to even investigate the possibility of the work of a serial rapist. Quite frankly, we had expected some guidance and leadership from the Captain of the FCS Unit but instead found someone who was obdurate and who declined to engage in any form of constructive thinking.

29. I then decided to escalate the matter to the Provincial Commissioner. I telephoned the Provincial Commissioner personally and spoke to him directly on his cellular-phone. I told him about my suspicions and that if

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"these were white little girls, all stops would have been pulled out". I also said that I will approach the media if the police did not act. The Provincial Commissioner thanked me for reporting the matter to him and said he would send a high level delegation to my house (as I was on study leave the next day). The next day, one of the Deputy Provincial Commissioners as well as senior members of the FCS Unit came to my house. I think they were three officers. The outcome of that meeting was that a task team was set up to investigate these particular cases. Officers M..., M... and N... served on this task team.

30. Since that day we worked closely with this task team and we even had their direct cellular-phone numbers. We would call them for new cases where, for instance, we saw a survivor of a sexual assault who presented with a similar history as the first five cases we had recorded. These task team members attended at the Centre at any time of the day or night if we phoned them for a suspected new case, and they assisted the families and even took some of the survivors and family members straight to Red Cross Hospital if the ambulance took too long to arrive. Inspector M... kept me up to date and from time to time we discussed the issue of the serial rapist.
31. It took a period of about eighteen months for the perpetrator to be arrested. By that time twenty one rapes and a murder had taken place.

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32. I am aware that the perpetrator was linked by way of DNA evidence to most of these incidents. The case was held in the Western Cape High Court where the perpetrator pleaded guilty to the charges.
33. What was so devastating to me was the manner in which Khayelitsha police (FCS Unit in this instance) dismissed us outright and never wanted to entertain the fact that a serial rapist could be responsible. I believe that the police could have solved the crimes earlier and faster with the result of preventing the rape of many young girls if they had listened to us and done their job properly when I first approached them.
34. The police of Khayelitsha in this instance failed to engage with the community where it was vital to do so. They did not apply their mind to an important case and the consequences of their inaction were severe and dire. Their failure to listen and engage was reckless and went against the call of their duty.
35. I had to speak to the Provincial Commissioner directly and 'threaten' to report the police to the media before I was taken seriously and for the police to take action. This is unacceptable.

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36. For me, although the task team solved the cases in the end and arrested the serial rapist, there was a travesty of justice in the manner that Khayelitsha police handled this matter. This is another instance which caused a breakdown in the relationship between the community of Khayelitsha and the police.

Other factors contributing to crime

37. It is clear to me that it is not only the role of the police that plays a part in ineffective policing in Khayelitsha. The case of the serial rapist has again highlighted other contributing factors to the high crime rate in that the rapes took place in a bushy area which should have been cleared by the authorities when it became apparent that it was a dangerous area.

38. Extra security was required and adequate visible police patrols should have been employed in the area. Surveillance cameras could have been used to monitor the area before this serial rapist could inflict so much damage on those little girls and their families.

39. It is clear to me that the City of Cape Town, local councillors, Provincial authorities and the Member of Parliament who represents the constituency

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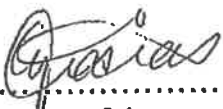
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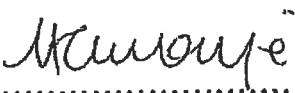
of Khayelitsha failed in their respective duties. It is astonishing that it took up to twenty one rapes and one murder before the perpetrator could be apprehended.

"I swear/truly affirm that the contents of this statement are true so ~~help me~~ God."

I know and understand the contents of this statement.
I have no objection to taking the prescribed oath.
I consider the prescribed oath as binding on my conscience.


.....
Signature of deponent

I certify that the abovementioned was taken by me in English/..... and immediately translated into English, and that the deponent has acknowledged that he/she knows and understands the contents of this statement. I certify that regulations contained in GN R1258 have been complied with. This statement was sworn/affirmed before me and the deponent's signature was placed thereon in my presence on 6/11/2017 (date) at Khayelitsha (place)


.....
Commissioner of oaths
HERMIONE THEKESA CRONJE
PRACTISING ADVOCATE OF
THE HIGH COURT
c/o Adv. G. LESLIE
6th FLOOR, 56 Keerdom Rd.
CAPE TOWN


UFA