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**Austrian
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Agency**

Quick Reference Guide

for Traditional Leaders
on the Management of
Gender Based Violence and Femicide



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- Department of Cooperative Governance and Traditional Affairs (COGTA)
- Forensic Science Laboratory
- Head of the Deputy Minister's Office for Correctional Services
- House of Traditional Leaders
- South African Police Services



Abbreviations

AIDS	Acquired Immunodeficiency Syndrome
ARV	Antiretroviral
CAS	Crime Administration System
COGTA	Department of Cooperative Governance and Traditional Affairs
CSO	Civil Society Organisation
DNA	Deoxyribonucleic acid
DoE	Department of Education
DOH	Department of Health
DOJ&CD	Department of Justice and Constitutional Development
DSD	Department of Social Development
DV	Domestic Violence
EC	Emergency contraception
FCS	Family Violence, Child Abuse, and Sexual Offences
GBV	Gender-based violence
GBVF	Gender-based violence and Femicide
HIV	Human Immunodeficiency Virus
LGBTQIA+	Lesbian, Gay, Bi-sexual, Transgender, Queer, Intersex, and Asexual
NGO	Non-governmental Organisation
NPA	National Prosecution Authority
NSP on GBVF	National Strategic Plan on Gender-based Violence and Femicide
PGDP	Provincial Growth and Development Plan
QRG	Quick Reference Guide
SAPS	South African Police Service
SGB	School Governing Body
SMR	Sexual Maturity Rating
SMT	School Management Team
SOCA	Sexual Offences and Community Affairs
STI	Sexually Transmitted Infections
TCC	Thuthuzela Care Centre
UN	United Nations
UNODC	United Nations Office of Drugs and Crime

Table of Contents

1.	What is the Quick Reference Guide (QRG)?	7
2.	How to Use the Quick Reference Guide (QRG)	7
3.	Objectives of the Quick Reference Guide (QRG)	7
4.	Introduction	8
5.	Forms of GBVF	10
5.1	Victims/survivors of domestic violence (DV)	11
5.2	Intersectionality	11
5.3	Some Definitions	12
5.4	The double burden of GBV victims/survivors	13
5.5	Impact of GBV	14
5.6	Human Rights infringed by GBVF	15
6.	Legal duty to report GBV in terms of legislation	19
7.	Legal duty to report GBV in terms of legislation	22
7.1	What constitutes Domestic Violence	22
7.2	When are parties in a domestic relationship?	23
7.3	Who can apply for a Domestic Violence Protection Order?	23
7.4	How and where can a person apply for a protection order?	23
7.5	What will happen once an application for a protection order is made?	24
7.6	What if the complainant does not know who the perpetrator is /there is not a domestic relationship with the perpetrator?	25
8.	Child Abuse and Maintenance	26
8.1	Defining child abuse	26
8.2	Legislative mandates	26

8.3	Forms of child abuse	27
8.4	Who should child abuse cases be reported t	28
8.5	Where to report cases of child abuse?	28
8.6	Child Maintenance	29
9.	GBVF Prosecutions	31
9.1	Pathways of the Legal Processes	31
9.2	Protective measures for victims in criminal cases	32
9.3	Penalties in GBVF offences	32
10.	Roles of Government Stakeholders	34
10.1	South African Police Service (SAPS)	35
10.2	Department of Health (DOH)	36
10.3	Department of Social Development (DSD)	39
10.4	Department of Education (DoE)	44
10.5	Department of Justice and Constitutional Development (DOJ&CD)	46
10.6	National Prosecuting Authority (NPA)	48
10.7	Department of Cooperative Governance and Traditional Affairs (COGTA)	49
10.8	The role of Traditional Leaders	50
11.	Responding Collectively to GBVF	51
	Annexure 1	51

1. What is the Quick Reference Guide (QRG)?

The QRG provides a quick reference on the management of Gender-based Violence and Femicide (GBVF), focusing on violence against women. The QRG is useful for all service providers, including traditional leaders, Civil Society Organisations, government, religious organisations. It informs on the key main drivers of violence, gender inequality, and disempowerment of women.

The QRG is informed by the National Strategic Plan on Gender-based Violence and Femicide (NSP on GBVF), published in 2020. The NSP on GBVF¹ is a government and civil society's multi-sectoral strategic framework to realise a South Africa free from GBVF. It recognises the diverse forms of violence against women (intersectionalities) and children. The NSP is premised on the equality of all gender groupings including the Lesbian, Gay, Bi-sexual, Transgender, Queer, Intersex, and Asexual (LGBTQIA+) community, and affirms that accessing services is human rights-based. The NSP states that gender-based violence and femicide is an ill that has left no sector of society untouched. It calls upon all South Africans to be part of the implementation of this National Strategic Plan, to support it both materially and morally, and to be active forces for change in their homes and their communities. The public, the media, faith-based groups, traditional organisations, businesses and labour should all address violence collectively. Violence against women reflects and reinforces gender inequalities between men and women while putting women at risk of further vulnerabilities, and even death.

2. How to Use the Quick Reference Guide (QRG)

The QRG is structured into distinct but related parts. All stakeholders are vital in the fight against GBVF. The QRG provides the key roles and responsibilities of government sectors in responding to GBV. The QRG should not be used as a conclusive or exhaustive source but as a brief guide on pertinent referral pathways and guiding legislation responsibilities.

3. Purpose of the Quick Reference Guide (QRG)

- Inform on the definition of Gender-based Violence and Femicide (GBVF), its drivers and impact
- Inform on the multi-sectoral approach and responsibilities in preventing and addressing violence against women and children
- Inform of relevant legislation that guides the management of violence against women and children response

1 *The National Strategic Plan on Gender-based Violence and Femicide 2020-2030. DWYPD, March 2022.*

- Inform of the roles of stakeholders who respond to GBVF viz. South African Police (SAP), Department of Health (DOH), Department of Social Development (DSD), Department of Education (DoE), Department of Justice and Constitutional Development (DOJ&CD), National Prosecuting Authority (NPA), Cooperative Governance and Traditional Affairs (CoGTA), Traditional Leaders, Civil Society Organisations (CSOs) (including faith-based), in managing violence against women and children

4. Introduction

South Africa is known to be the rape capital of the world. The rate at which women are killed by intimate partners in this country is five times higher than the global average. Approximately, 1 in 4 women have been victims of severe physical violence (e.g. beating, burning, and strangling) by an intimate partner. Considering these disturbing statistics, an integrated approach involving all sectors in responding to this scourge is critical. Traditional Leaders are the backbone of communities and can be instrumental in influencing the improvement in the areas of gender equality and empowerment; (which is in line with the Constitution, Bill of Rights and NSP on GBVF) and collectively with all stakeholders, counter gender based violence, ensuring that perpetrators are held accountable.

In order to achieve a whole-of-society approach in responding to GBVF, some principles are essential that underpin the coordination and collaboration of roles and services:

- A rights-based approach
- Advancing gender equality and women’s empowerment
- Culturally and age-appropriate and sensitive
- Victim/survivor-centred approach
- Prioritising the Safety of the victim is paramount
- Perpetrator accountability

An overall framework diagram:

Principles	A rights based approach	Advanced gender equality and women’s empowerment	Culturally and age appropriate and sensitive
	Victim/survivor approach	Safety is paramount	Perpetrator accountability

It is imperative to promote the involvement and participation of all relevant sectors and other stakeholders in the implementation process and to commit adequate and sustained resources and develop monitoring mechanisms to ensure that there is effective implementation and oversight on the impact of service delivery.

This quick reference guide is an introductory document to how sectors can work together and coordinate services, however, a more structured referral pathway needs to be constructed.

5. Gender-based Violence and Femicide (GBVF)

GBVF refers to gender-based violence and femicide. **Femicide** (gender-related killing of women and girls) is a term for the crime of systematically killing women, girls, or females in general because of their gender and/or sex. Several factors contribute to the prevalence of femicide, such as discrimination, gender inequality, the presence of a culture of violence, impunity, and poverty. Most cases of femicide are committed by partners or ex-partners and involve ongoing abuse in the home, threats or intimidation, sexual violence, or situations where women have less power or fewer resources than their partners.

GBV is directed at, or disproportionately affects, individuals based on their biological sex or gender identity.² Often occurring in relationships, GBVF also results from normative gender role expectations coupled with unequal power relationships between genders or groups. Thus, GBVF affects not only women and girls, because men, boys, gender non-conforming individuals (from the LGBTQIA+ community), and persons with disabilities may also experience GBVF – from intimate partners, family members, peers, or other members of society.

GBVF takes many forms, including physical, sexual, verbal, psychological, emotional, technologically-facilitated, financial, or structural abuse, threats, coercion, and economic or educational deprivation. Female genital mutilation/cutting, forced marriages, child marriage, sexual exploitation, femicide and female infanticide are also seen as GBVF, as they violate the human rights of women and girls.

GBV can take place both in the private sphere (in families and intimate relationships) and in the public sphere, committed by (unknown) individuals in public spaces. GBV furthermore can take place in person or virtually, or on a continuum of both. Gender-based violence occurs through or is amplified by the use of technologies; and takes on many forms, including threats, intimidation, harassment, bullying,

² *Quick Reference Guide for the identification of Gender-based Violence in Trafficked Persons. UNODC, 2022.*

sextortion, online exploitation such as romance scams, exchange of online child sexual abuse images, revenge porn and the streaming of sexual abuse and rape.

A further category of GBVF involves accusations of witchcraft, against predominantly females. Older women, who tend to become socially isolated are particularly vulnerable and are easily accused of being the source of various problems in the community. Accusations of witchcraft are associated with issues of poverty, and Alzheimer's disease (a neurological disease resulting in a person losing her memory and other mental functions). All must be well informed about the symptoms of the disease and how one should care for such a person and be knowledgeable about Alzheimer's disease and dementia.

Violence against women is often embedded in and supported by social values, cultural patterns and practices.

5.1 Forms of GBVF

Sexual abuse ³	Sexual violence includes rape, sexual assault, and sexual exploitation by someone in a position of authority.
Physical violence	Physical violence refers to an act of violence that results in physical harm, such as assault, including causing the death of a victim, whether occurring in public or private spaces.
Verbal, emotional, and psychological violence	Emotional and psychological violence refers to the infliction of mental or emotional pain or injury. This form of violence is perpetrated in a non-physical manner, for example by threats, coercion, or by an individual exercising authority over their victim. These types of violence can be in person or online.

³ Quick Reference Guide for the identification of Gender-based Violence in Trafficked Persons, UNODC, 2022.

Socio-economic violence

Socio-economic violence is also not physical. At the interpersonal level, typical forms include taking away the earnings/pension of the victim or not allowing them to have a separate income. In the public sphere, it is perpetuated by laws, policies, and social practices that treat women and girls unequally and unfairly. For instance, arresting victims of trafficking, who are primarily women and girls, for illegal immigration and then denying them the required assistance such as access to health, legal services, and financial assistance is a form of social and economic violence.

The above forms of GBV can take place online or offline.

5.2 Intersectionality

Gender-based violence intersects with other forms of discrimination and oppression, such as race, ethnicity, socioeconomic status, sexual orientation, and disability. This intersectionality exacerbates the experiences of marginalized individuals and communities, leading to compounded barriers to accessing justice and support services. For example, women of colour or LGBTQ+ individuals may face heightened levels of violence and discrimination due to the intersection of their gender identity with other marginalized identities. Age also increases vulnerability, such as young and adolescent girls and older women. While these different identities are referenced separately, a person could hold multiple identities at once. For example, a woman who lives with a disability might also be an older refugee.⁴

Hence, it is important to understand the concept of intersectionality, namely, that a person faces different kinds of discrimination and risks due to a combination of their identities like gender, race, religion, and age.

⁴ International Rescue Committee. *What is gender-based violence – and how do we prevent it?* Aug 2022. (<https://www.rescue.org/article/what-gender-based-violence-and-how-do-we-prevent-it>)

5.3 Some Definitions

The Declaration on the Elimination of Violence against Women⁵ (1993) defines “violence against women” as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.” In article 2 of the Declaration, violence against women is explained to be understood for instance:

- Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;
- Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;
- Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa⁶ (2003), also known as the Maputo Protocol, a groundbreaking instrument in the protection of women on the African continent, defines violence against women as “all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peacetime and during situations of armed conflicts or of war.”

The Special Rapporteur on Violence against Women has defined femicide as the killing of women because of their sex and/or gender that constitutes the most extreme form of violence against women and the most violent manifestation of discrimination against women and their inequality. Femicide may be driven by stereotyped gender roles, discrimination towards women and girls, unequal power relations between women and men, or harmful practices.

5 *Declaration on the Elimination of Violence against Women (1993), Article 4 (c)*, <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-elimination-violence-against-women>

6 *Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (2003)*, <https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-rights-women-africa>

The **victims** are the persons who had a crime committed against them and are most frequently women. It is important to distinguish between the two terms '**victim**' and '**survivor**'. Both terms have their place and serve different purposes. Although '**victim**' is a legal definition necessary within the criminal justice system, '**survivor**' can be used as a term of empowerment to convey that a person has started the healing process and may have gained a sense of peace in their life.⁷

Bystanders are persons who are witnessing harm being done to someone else. Bystanders can decide to intervene in the event of a conflict or not. Some bystanders will raise the alarm or try to help the victim, other bystanders will not intervene, while some might cheer on the perpetrator or even join in the violence against the victim.

Perpetrators tend to place the blame for their unacceptable behaviour on circumstances, or the victim, thus, easing their guilt and avoiding responsibility for their actions. Many perpetrators also fail to grasp the long-term damage they cause their victims and tend to minimise the abuse and its consequences.

Femicide, the National Strategic Plan on Gender-Based Violence & Femicide specifies that “ [femicide] is defined as the killing of a female person, or perceived as a female person based on gender identity, whether committed within the domestic relationship, interpersonal relationship or by any other person, or whether perpetrated or tolerated by the State”.

5.4 The double burden of GBV victims/survivors

A woman who is a victim of GBV is not only damaged and harmed by the violence against her, but incredibly, **she often carries the burden of being blamed for what has happened to her**. Such a woman is **wary of reporting** the crime because she knows there is a good chance that society (and even her family) will point the finger at her instead of the perpetrator. In the eyes of others, she brought 'shame to her family', she was 'looking' for the violence committed against her, and she now deserves to be shunned. **It is not uncommon for women to be blamed for their rape. Where is the justice in this?** It is crucial that individuals, families, communities, and those in powerful positions in communities, should consider the unreasonableness of this viewpoint.

⁷ *Sexual Assault Kit Initiative (SAKI). Victim or Survivor: Terminology from Investigation Through Prosecution. (<https://sakitta.org/toolkit/docs/Victim-or-Survivor-Terminology-from-Investigation-Through-Prosecution.pdf>)*

Gender norms and gender inequality need to be **critically reconsidered and rectified** to ensure women are not treated as second best to men and punished for the crimes and violence committed against them. They should receive care and compassion, and the perpetrator should be pointed out and punished⁸.

Not only will a woman or a child who experienced violence be reluctant to report the abuse at the SAPS or even her family because of the shame she feels, the backlash she fears, and/or threats made of what might happen to her if she tells, but she will also be **hesitant to seek legal help, medical services, and counselling**. In some cases, reporting violence can lead to **more violence for women at the hands of police, officials, and perpetrators**. Women and children often feel that no one would believe them, usually because the perpetrator is in a more powerful position than they are. All of this inhibits women as well as children from speaking out about the injustices done to them. Victims need to be listened to, believed, and supported to get justice and care. **Their perpetrators are the ones who should be punished and shamed**, not them, otherwise, the cycle of violence will continue forever.

5.5 Impact of GBV

When a woman experiences gender-based violence, the physical, psychological, and emotional impact is long-lasting. Survivors display a variety of **trauma-induced symptoms** including sleep and eating disturbances, depression, feelings of humiliation, anger and self-blame, fear of sex, and an inability to concentrate. GBV not only impacts negatively on the victim, but also her children, family, and community.

What often happens in the case of children who grow up in violent environments, is that they live in fear of when the perpetrator will turn against them also, and/or learn that violence **is the preferred way to communicate and handle conflict**. GBV has high economic costs for governments in terms of healthcare, psychosocial care, and legal issues. The following is a table on the impact of GBV.

Physical	Psychosocial/mental	Sexual and reproductive
Partial or permanent disability	Anger, anxiety, fear	Sexual disorders and risky behaviours
Poor nutrition	Shame, self-hate, self-blame	Early sexual experiences (for those who are victims of childhood sexual abuse)

⁸ <https://digitalcommons.uri.edu/cgi/viewcontent.cgi?article>

Physical	Psychosocial/mental	Sexual and reproductive
Exacerbation of chronic illness	Post-traumatic stress disorder (nightmares, recurrent distressing thoughts)	Unprotected sex
Chronic pain	Depression	Abortions
Gastrointestinal problems	Sleep disorder	Bad pregnancy outcomes, low birth weight, neonatal death
Organ failure	Suicidal thoughts	Maternal death
	Substance abuse	Suicide
	Social stigma	STIs, including HIV
	Social rejection and isolation	AIDS
		Infertility
		Chronic pain

5.6 Human Rights infringed by GBVF

WGBVF is also an infringement of the basic human rights of the victims. Some of the rights in the Bill of Rights, in Chapter 2 of the Constitution, that are infringed and/or violated by GBVF include:

Human Right	Constitution, 1996
Equality	<p>Section 9 Equality</p> <p>(1) Everyone is equal before the law and has the right to equal protection and benefit of the law.</p> <p>(2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.</p>

Human Right	Constitution, 1996
Equality	<p>Section 9 Equality</p> <p>(3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.</p> <p>(4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.</p> <p>(5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.</p>
Dignity	<p>Section 10. Human dignity</p> <p>Everyone has inherent dignity and the right to have their dignity respected and protected.</p>
Life	<p>Section 11. Life</p> <p>Everyone has the right to life.</p>
Freedom and security of the person	<p>Section 12. Freedom and security of the person</p> <p>(1) Everyone has the right to freedom and security of the person, which includes the right - (a) not to be deprived of freedom arbitrarily or without just cause; (b) not to be detained without trial;</p> <p>(c) to be free from all forms of violence from either public or private sources;</p> <p>(d) not to be tortured in any way; and</p> <p>(e) not to be treated or punished in a cruel, inhuman or degrading way.</p> <p>(2) Everyone has the right to bodily and psychological integrity, which includes the right –</p> <p>(a) to make decisions concerning reproduction;</p> <p>(b) to security in and control over their body; and</p> <p>(c) not to be subjected to medical or scientific experiments without their informed consent.</p>

Human Right	Constitution, 1996
Freedom from slavery, servitude and forced labour	Section 13. Slavery, servitude and forced labour No one may be subjected to slavery, servitude or forced labour
Children	Section 28. Children (1) Every child has the right – (a) to a name and a nationality from birth; (b) to family care or parental care, or to appropriate alternative care when removed; (c) to basic nutrition, shelter, basic health care services and social services; (d) to be protected from maltreatment, neglect, abuse or degradation; (e) to be protected from exploitative labour practices; (f) not to be required or permitted to perform work or provide services that – (i) are inappropriate for a person of that child's age; or (ii) place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development; (g) not to be detained except as a measure of last resort, and detained for only the shortest appropriate period of time; (2) A child's best interests are of paramount importance in every matter (3) A "child" means a person under the age of 18 years.

The Promotion of Equality and Prevention of Unfair Discrimination Act, 2002 (Act 4 of 2002), enacted as mandated in section 9(4) of the Constitution, specifically prohibits unfair discrimination on the ground of gender.

Section 8. Prohibition of unfair discrimination on the grounds of gender

Subject to [section 6](#), no person may unfairly discriminate against any person on the grounds of gender, including-

- (a) gender-based violence; (b) female genital mutilation;
- (c) the system of preventing women from inheriting family property;
- (d) any practice, including traditional, customary or religious practice, which impairs the dignity of women and undermines equality between women and men, including the undermining of the dignity and well-being of the girl child;
- (e) any policy or conduct that unfairly limits access of women to land rights, finance, and other;
- (f) discrimination on the grounds of pregnancy;
- (g) limiting women's access to social services or benefits, eg. health, education, social security;
- (h) the denial of access to opportunities, including access to services or opportunities for rendering services, or failing to take steps to reasonably accommodate the needs of such persons;
- (i) systemic inequality of access to opportunities by women due to the sexual division of labour.

South Africa has ratified various international and regional human rights instruments, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the African Charter on People's and Human Rights. CEDAW provides the basis for realizing equality between women and men. States parties who have ratified CEDAW agree to take all appropriate measures, including legislation and temporary special measures, so that women can enjoy all their human rights and fundamental freedoms.

The Convention is the only human rights treaty which affirms the reproductive rights of women and targets culture and tradition as influential forces shaping gender roles and family relations. It affirms women's rights to acquire, change or retain their nationality and the nationality of their children. States parties also agree to take appropriate measures against all forms of traffic in women and exploitation of women.

Countries that have ratified or acceded to the Convention are legally bound to put its provisions into practice. They are also committed to submit national reports, at least every four years, on measures they have taken to comply with their treaty obligations.

The African Charter on People's and Human Rights contains not only basic human rights, but also the duties of people in exercising their rights and freedoms. GBVF therefore not only violates basic human rights, but it is also a contravention of the duties placed on all individuals in this regard. In committing GBVF, the perpetrator therefore not only violates the basic human rights of the victim, but also disregards his duties not only towards the victim, but also towards her family and community.

African Charter on People's and Human Rights Chapter 11: Duties

Article 27 provides that -

- “(1) Every individual shall have duties towards his family and society, the State, other legally recognised communities and the international communities.
(2) The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest.”

Article 28

“Every individual shall have the duty to respect and consider his fellow human beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.”

In Article 29(1) it is also stated that an individual shall also have the duty to – “preserve the harmonious development of the family, and to work for the cohesion and respect of the family...”

6. Legal duty to report GBV in terms of legislation

GBV thrives when persons who know or suspect that GBV is being perpetrated against a victim prefer to ‘not get involved’ and to ‘turn a blind eye’ or to keep it ‘secret’ within the family. To break the cycle of violence and to ensure that victims, who often are too afraid to speak out, can be assisted, and that perpetrators are brought to justice; various legislative pieces, place a legal duty to report certain types of GBV on adults and/or certain functionaries and the failure to do so constitutes an offence.

Act and section	Who must report	When to report	How & to whom to report
Domestic Violence Act (Act 116 of 1998) Section 2A	All Functionaries to report Functionaries include – (medical practitioner, health care personnel, social worker, public health practitioner, educator, a caregiver, traditional leader)	When a person obtains information while performing duties/functions, which, after evaluation by them, causes them to believe or suspect domestic violence	A person must without delay complete a report on the prescribed form (available on DoJ&CD website) and submit it to a Social worker or member of the SAPS

NOTE: A functionary who makes the report in good faith, is not liable to civil, criminal or disciplinary action on the basis of the report, despite any law, policy or code of conduct prohibiting the disclosure of personal information. Is entitled to have their **identity kept confidential**, unless the interests of justice require otherwise

Domestic Violence Act (Act 116 of 1998) section 2B NOTE section 2B(4) <i>A person who fails to report GBV is guilty of an Offence</i>	Any adult	If they know, or believe or suspect that an act of domestic violence has been committed against a child, disabled person, older person	Must report such knowledge, belief or suspicion as soon as possible, to a social worker or the South African Police Service
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Act and section	Who must report	When to report	How & to whom to report
Children's Act (Act 38 of 2005) Section 110(1)	Any person	Who on reasonable grounds concludes that a child has been abused in a manner causing physical injury, sexually abused or deliberately neglected	Must report on the prescribed form to a child protection organisation; provincial department of social development, or police official.
Children's Act (Act 38 of 2005) Section 110(2)	Any person	Who on reasonable grounds believes that a child is in need of care and protection	May report that belief to -the provincial department of social development, child protection organisation or police official.
Criminal Law (sexual Offences and Related Matters) Amendment Act (Act 32 of 2007)	Any person	Who has knowledge, reasonable belief or suspicion that a sexual offence has been committed against a person who is vulnerable (S40)	Must report such knowledge, reasonable belief or suspicion immediately to -a police official

NOTE - A person who fails to report such knowledge, reasonable belief or suspicion, is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

NOTE - A person who in good faith reports such reasonable belief or suspicion shall not be liable to any civil or criminal proceedings by reason of making such report

Older Persons Act (Act 13 of 2006) Section 25(1),(2); S26	Any person	Who suspects, concludes that the older person is in need of care and protection	Must report such conclusion to the social worker
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7. Legal duty to report GBV in terms of legislation

7.1 What constitutes Domestic Violence

Domestic violence (which includes intimate partner violence) can be defined as behaviour in any kind of domestic relationship that is used to gain or maintain power and control over the complainant who is or was in a domestic relationship with the perpetrator.

In terms of the Domestic Violence Act, 1998 (Act 116 of 1998) (as amended by the **Domestic Violence Amendment Act, 14 of 2021**) the following behaviours are regarded as domestic violence:

Domestic Violence	
Physical abuse	Sexual abuse
Emotional, verbal, or psychological abuse	Economic abuse
Intimidation	Harassment
Sexual harassment	Related person abuse
Spiritual abuse	Elder abuse
Coercive and/or controlling behaviour	Exposing a child to domestic violence

7.2 When are parties in a domestic relationship?

Parties is in a Domestic Relationship

Where the complainant (victim) and the respondent -

Are or were married to each other, including marriage according to any law, custom or religion; or

They (whether they are of the same or the opposite sex) live or lived together in a relationship in the nature of marriage, although they are not, or were not, married to each other, or are not able to be married to each other; or

They are the parents of a child or are persons who have or had parental responsibility for that child (whether or not at the same time); or

They are family members related by consanguinity, affinity or adoption; or

They are or were in an engagement, dating or customary relationship, including an actual or perceived romantic, intimate or sexual relationship of any duration; or

They are persons in a close relationship that share or shared the same residence;

7.3 Who can apply for a Domestic Violence Protection Order?

- Any person who has been in a **domestic relationship** with someone who has subjected them to an **act of domestic violence**.
- Other persons can apply on behalf of the abused person if they are **functionaries** (e.g. social workers, healthcare professionals, educators, etc.).
- A **concerned person** interested in the abused person's well-being (e.g. a family member).
- With the application, the complainant or person applying on behalf of the complainant can also submit affidavits of any witnesses, medical reports, as well as other evidence such as photos of injuries/damage to property, videos of the incident/s, copies/screenshots of any text messages, emails, or other communications on any social media, etc.

7.4 How and where can a person apply for a protection order?

- A person can apply for a protection order in person at the Magistrates' Court, closest to where the complainant or the respondent works or stays (even if it is temporarily). It can also be submitted electronically.
- The prescribed application form and the email addresses of the courts for the submission of applications for DV protection orders is available on the

website of the Department of Justice and Constitutional Development and can be downloaded from https://www.justice.gov.za/forms/form_dva.htm

- There is also a list of accessible shelters and public health services on the website above.
- The complainant can also at the same time than applying for a protection order, apply for a safety monitoring order where SAPS will monitor her safety for up to 10 days.
- If the domestic violence is of such a nature that it also constitutes a criminal offence, a case should be opened at the nearest police station.
- If there is a Thuthuzela Care Centre (TCC) nearby, the complainant can also go to the TCC where a criminal case can be opened, and she can be assisted with the application for a protection order and safety monitoring notice. Other services such as medical and counselling services are also available at TCCs.
- A complainant can apply for a protection order as well as open a criminal case against the perpetrator.
- If the perpetrator is arrested for a crime where the victim is in a domestic relationship with the perpetrator, bail can only be granted by the court. If there is no protection order already granted, the court must also grant a protection order if bail is granted.

7.5 What will happen once an application for a protection order is made?

- If the court decides that there is sufficient evidence, an interim protection order will be granted which will then be served on the respondent. The complainant will also get a warrant of arrest, which she must take to the police together with the protection order if the protection order is contravened by the respondent.
- The protection order will be in force once it is served on the respondent.
- A safety monitoring notice can also be granted where the police for a period of 10 days will be in contact with the victim and monitor whether she is safe.
- If there is a need to determine who had sent for example threatening text messages or social media posts, the court can issue an order to the Electronic Service Provider to provide the information regarding the account holder to the court. The court can also make an order for the police to investigate if necessary.
- A return date to appear for the hearing where the court will decide whether to grant a final protection order will also be given to both the complainant and respondent. Both the complainant and respondent will be given the opportunity to present evidence to the court as to whether the protection order must be made final.

- Once a final protection order has been granted, it will remain in force. If necessary, an application to vary any of the conditions of the protection order can be made at any time thereafter.
- If an interim protection order is not granted, a date for the hearing to decide whether a protection order should be granted will be set and given to both the complainant and respondent for both to appear in court.
- If it will be costly or inconvenient for either party or any witness to be in person in court, or if the complainant is fearful to be at court, an application can be made to the court by either party to appear and give evidence through an audio-visual link if the facilities can be obtained or made available at the court. The court manager or the clerk of the court dealing with DV cases can be contacted to arrange it.
- If it appears to that court that the proceedings would expose a witness that is a child, a person with a mental age under 18 years, an older person or a person who suffers from a physical, psychological, mental or emotional condition to undue psychological, mental or emotional stress, trauma or suffering if he or she testifies at such proceedings, the court can order that the witness testify through a suitably qualified intermediary, in order for her to be able to fully participate in the hearing.
- All courts can assist with interpreting services during court cases.

7.6 What if the complainant does not know who the perpetrator is/there is not a domestic relationship with the perpetrator?

If the complainant is subjected to harassment but is not in a domestic relationship with the perpetrator, or does not know who the perpetrator is, she can apply for a protection order in terms of the **Protection from Harassment Act, 2011 (Act 17 of 2011)**.

Harassment is when a person directly or indirectly engages in conduct he knows or ought to know-

- causes harm (mental, psychological, physical or economic) or inspires the reasonable belief that harm may be caused to the complainant or a related person by unreasonably-
- following, watching, pursuing or accosting of the complainant or a related person, or loitering outside of or near the building or place where the complainant or a related person resides, works, carries on business, studies or happens to be;
- engaging in verbal, electronic or any other communication aimed at the

complainant or a related person, by any means, whether or not conversation ensues; or

- sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects to the complainant or a related person or leaving them where they will be found by, given to, or brought to the attention of, the complainant or a related person; or
- amounts to sexual harassment of the complainant or a related person;

The complainant can apply for a protection order, and if the perpetrator is not known, the court an order that the Electronic Service Provider provide the details of the account holder and/or that the police investigate to find the perpetrator.

The court process is similar to that of DV protection orders, and the same clerk of court usually deals with both DV and Harassment protection orders. The court can also grant an interim protection and give a return date for the hearing when both parties can provide evidence to the court for the court to decide whether to grant a final protection order. The court can also order that any humiliating posts for example be taken down as well.

The application form is available on the website of the Department of Justice and Constitutional Development - https://www.justice.gov.za/forms/form_pha.html

The complainant can apply for a protection order as well as open a criminal case where the conduct is also a criminal offence.

8. Child Abuse and Maintenance

8.1 Defining child abuse

Child abuse is defined as any form of harm or ill-treatment deliberately inflicted on a child, and includes, assaulting a child or inflicting any other form of deliberate injury to a child, sexually abusing a child or allowing a child to be sexually abused, bullying by another child, a labour practice that exploits a child or exposing a child to behaviour that may harm the child physically or emotionally.

8.2 Legislative mandates

The Constitution of the Republic of South Africa specifically states that every child has the right to be protected from maltreatment, neglect, abuse, or degradation.

In addition to the Constitution, the following are legislative mandates, which guide programmes rendered in terms of the care and protection of children.

Mandate	Description
International Instruments	<ul style="list-style-type: none"> • UN Convention on the Rights of the Child, 1989 • African Charter on the Rights and Welfare of the Child, 1999
National Instruments	<ul style="list-style-type: none"> • Children’s Act no 38 of 2005 • The Child Justice Act no 75 of 2008 • The Sexual Offences and Related Matters Amendment Act no 32 of 2007 • Social Assistance Act no 13 of 2004 • White Paper on Social Welfare Services, 1997 • National Development Policy • National Integrated Early Childhood Development Policy
Provincial Mandates	<ul style="list-style-type: none"> • Provincial Growth and Development Plan (PGDP)

8.3 Forms of child abuse

Type of child abuse	Description
Sexual abuse	Sexual Abuse in relation to a child, means sexually molesting or assaulting a child or allowing a child to be sexually molested or assaulted; encouraging, inducing or forcing a child to be used for the sexual gratification of another person; using a child in or deliberately exposing a child to sexual activities or pornography; or procuring or allowing a child to be procured for commercial sexual exploitation* or in any way participating or assisting in the commercial sexual exploitation of a child.
Physical abuse	Physical Abuse can be defined as any non-accidental infliction of physical injury upon a child by another person. It can be diagnosed on the basis of observed injuries resulting from an act of commission or omission with the deliberate intent to cause harm.

Type of child abuse	Description
Neglect	Neglect in relation to a child, means a failure in the exercise of parental responsibilities to provide for the child's basic physical, intellectual, emotional or social needs
Exploitation	Exploitation in relation to a child, includes all forms of slavery or practices similar to slavery, including debt bondage or forced marriage; sexual exploitation etc.
Emotional abuse	Emotional abuse comprises actions or lack thereof, that results in significant harm to the child's' intellectual, emotional or social development or functioning.
Abandoned	Abandoned in relation to a child, means a child who has obviously been deserted by the parent, Guardian or care-giver or who has, for no apparent reason, had no contact with the parent, guardian, or care-giver for a period of at least three months.
Child labour	Child labour is the employment of a child under the age of 15 years.

8.4 Who should child abuse cases be reported to

- **Any person** (member of society, neighbour, concerned citizen) who on reasonable grounds believes that a child needs care and protection is obligated to report that belief to the provincial department of social development, designated child protection organisation or a police official.'
- A report can be made in person, by telephone, facsimile, in writing, or electronically and should be immediately attended to.
- A designated social worker will be appointed to investigate the matter through a thorough Safety and risk assessment procedure, where after the appropriate steps will be taken to ensure the safety and well-being of the child.

8.5 Where to report cases of child abuse?

- Nearest South African Police Service(SAPS)
- Nearest Department of Social Development Service Office
- Nearest Designated Child Protection Organization(DCPO)
- Health Practitioner (Doctor/ Nurse)
- Parents or caregiver or sibling(s) or family member you are comfortable with
- School principal/class teacher or any teacher you are comfortable with
- Member of the Community you are comfortable with

8.6 Child Maintenance

Maintenance is the right of every child and the responsibility of every parent. To maintain a person means that you are required to provide that person with housing, food, clothing, education and medical care. Where children are not properly maintained, this affects their living conditions and inevitably results in children resorting to other means of obtaining financial support. **Most importantly to note applying for maintenance is free of charge!** The application form can be downloaded from the website https://www.justice.gov.za/forms/form_mnt.htm

Who has a duty to provide maintenance?

1. Both biological parents towards their child/ children.
2. Both maternal and paternal grandparents towards their grandchildren.
3. Siblings including half-siblings towards their brother and sister.
4. Adoptive parents towards their adopted child/ children.
5. Spouses towards each other.

What information is required in court to make an application?

- Identity document of the parent applying for maintenance
- Birth certificate of the child/children
- Divorce order or settlement agreement if any
- Proof of residence/affidavit
- Proof of income and expenditure, e.g. clothing account receipts, grocery receipts,
- A copy of 3 months' bank statements of the parent applying
- Personal details of the person responsible for paying maintenance

What is required for a maintenance order to be granted?

- a) The person who is required to contribute must have the income/ money
- b) The person for which maintenance must be paid must not be in a position to maintain him/herself, eg when a child is studying.
- c) There must be a relationship recognised in law which compels a person to support another, eg where there is a blood relationship (father to child; mother to child)

In which court can one make the application?

- The Magistrate Court where the child resides
- The Magistrate Court where the caregiver resides, is employed or has a business

What will happen when you get to court?

The Maintenance Clerk will assist the applicant to complete the forms and hand the completed forms to the Maintenance Officer. The Maintenance Officer will issue a directive calling the parties to meet in court so that she/he can investigate the claim.

What to expect at the enquiry

The Maintenance Officer will informally mediate the matter with both parties to reach an agreement. If the parties agree, the consent can be made an order of court.

If mediation is not successful, the matter will be referred to the Magistrate for a formal enquiry. The Magistrate will decide on the amount to be paid.

What happens if the respondent does not comply with the maintenance order

If the Respondent does not punctually contribute and/or 10 days have passed since the maintenance became due, the aggrieved party can pursue civil or criminal action by reporting the matter to the maintenance offices by completing a J470 complaint form. The Court may order an:

- Emolument attachment order (garnishee)
- Attachment of debt
- Warrant of execution of movable or immovable property

The Respondent may also be prosecuted for non-payment of maintenance.

When does the duty to support a child abuse case end?

When the child is fully self-supporting and not when the child reaches the age of majority / turns 18

9. GBVF Prosecutions

9.1 Pathways of the Legal Processes

1

- A charge is laid, and a docket is opened at a police station.
- The police official takes down a statement.
- If the requirements are met, the perpetrator is arrested and brought to court.
- The prosecutor decides if the matter has a reasonable prospect of success in court.
- If yes, the matter goes to court and a trial is conducted.

2

- The trial commences with the Prosecutor putting the charges to the accused.
- The accused then pleads guilty or not guilty.
- After the accused has pleaded the State calls its witnesses.
- The Defence Attorney will then have an opportunity to cross-examine the state witness.
- The purpose of cross-examination is to test evidence.
- The witness is allowed to explain answers.
- The witness may ask that a question be repeated.

3

- Once the State has led all its witnesses, it will close its case.

4

- The Defence then begins by calling its witnesses which could include the accused.
- The Prosecutor cross-examines these witnesses.
- The Defence then closes its case

5

- Both the State and the Defence will address the Court on the merits of the case.
- The State will usually point out why the accused should be found guilty.
- The Defence will usually point out why the accused should be found not guilty.

6

- After hearing the argument from legal counsel, the presiding officer will then deliver judgment.
- If the accused is found guilty, he/she is then sentenced accordingly.
- Both the Defence and the State will be allowed to present evidence.

9.2 Protective measures for victims in criminal cases

Several measures are in place to protect victims (refer to the relevant legislation)

9.3 Penalties in GBVF offences

GBVF offences are regarded as serious offences by the legislature and for some GBVF offences, minimum sentences are prescribed. When a minimum sentence applies, the court cannot deviate from the minimum sentence unless substantial and compelling reasons are found by the court to deviate.

Victims have the right to have their voices heard in the sentencing proceedings and they/family members on behalf of the victim can testify as to the impact of the crime on the victim and family, the victim can write a Victim Statement that can be read out in court at sentencing (usually by the prosecutor) and the court can obtain a victim impact report from a social worker.

The victim also has the right when the offender qualifies for parole, to give their input to the parole board whether the offender should be released on parole. It is important to ensure that the investigating officer/correctional services have contact details of the victim/family to be informed of any parole hearings so that they can exercise their right to be heard.

The following are examples of GBVF offences that carry minimum sentences:

GBVF Offence	Minimum sentence
Murder / attempted murder where - <ul style="list-style-type: none">• Accused and victim were in a domestic relationship and death was caused by physical or sexual violence• Death caused when the victim was raped• Death resulted from accusations of witchcraft• Victim was a child	Life imprisonment (if not under circumstances falling under life imprisonment, then the minimum sentence starts as 15 years for a first offender)

<p>Rape – including where the victim was under the age of 18 years; in a domestic relationship with Accused; a person with a mental disability, vulnerable due to a disability</p>	<p>Life imprisonment (if not under circumstances falling under life imprisonment, then the minimum sentence starts as 15 years for a first offender)</p>
<p>Sexual exploitation of a child or sexual exploitation of a person who is mentally disabled or using a child for child pornography or using a person who is mentally disabled for pornographic Purposes</p>	<p>Minimum sentences starting at 15 years for a first offender</p>
<p>Assault with intent to do grievous bodily harm on - a child under the age of 16 years years - A child 16 but under 18 and Accused 4 years or more older than victim - where the victim is or was in a domestic relationship</p>	<p>Minimum sentence starting at 10 years imprisonment for a first offender</p>

10. Roles of Government Stakeholders

Efforts to prevent violence against women, children and other vulnerable groups require a whole-of-government and whole-of-society approach. Effective interventions by accountable, multi-sectoral stakeholders, at multiple levels should take place. In this Quick Reference Guide (QRG), the SAPS, DOH, DSD, DOE, DOJ&CD, and COGTA are considered.

The stakeholders and their key roles are depicted in the diagram below:



10.1 South African Police Service (SAPS)

Usually, cases of GBV and DV are reported at the police stations where a charge is laid, a docket is opened, and the police official takes down a statement. Victims/survivors are escorted to a health facility by a SAPS official. However, nothing prevents an injured person from reporting directly to a health facility, with the healthcare worker then facilitating the reporting to the nearest police station. It is important to note that reporting to SAPS is not mandatory for accessing healthcare. It is the choice of the patient whether she/he wants to open a case, except in the instance of a child or a mentally challenged individual when it is mandatory to report.

The police will fill out the SAPS 308 Form, which serves as a consent form for the medico-legal examination and will provide brief details to the attending medical practitioner of the case. The Family Violence, Child Abuse, and Sexual Offences (FCS) Unit of SAPS is a specialised unit dealing with amongst other things, sexual offences, for example, rape, sexual assault, assault, child pornography, etc.

Nationally, 176 FCS units are servicing police stations. There is also the serial and electronic crime investigation unit in all nine provinces, meaning, there are 185 FCS units in total. FCS members are on standby attending to all newly reported cases. Provincial FCS is responsible for conducting investigations, arresting suspects of sexual offences, and conveying victims to medical facilities for examination. The FCS units fight against sexual offences against children, person-directed crimes (where the family is involved), illegal removal of children under the age of 12 and crime facilitated through electronic media/cybercrime.

FCS comprises of two sub-components:

- Forensic Social Workers (FSW) – responsible for assisting in interviewing and obtaining statements from child victims and supporting them in court proceedings, etc., and
- Serials and Electronic Crime Investigation (SECI) – responsible for the investigation of electronic sexual offences crimes, for example, child pornography and DNA linkages.

Reporting is vital as the case needs to be registered and a case number or computer-generated Crime Administration System (CAS) number be allocated to a case as the first step in the Criminal Justice process.

10.2 Department of Health (DOH)

The DOH strives to have optimal health for all persons and to develop and implement a sustainable, coordinated, integrated, and comprehensive health system at all levels.

One of the mantras of health care has always been, '**Prevention is better than cure**' meaning it is easier to stop something happening in the first place than to repair the damage after it has happened. And it is often less costly as well. This applies equally to issues regarding gender-based violence, particularly child sexual abuse, and where children have their first sexual encounter early and become sexually active at a young age.

10.2.1 The health sector has three major functions after a sexual assault case is reported:

- Medical care
- Psychosocial counselling
- Medico-legal practices

Medical care	
Injuries	<ul style="list-style-type: none">• All patients must have a rapid assessment and if needed, be stabilised first.• If they have sustained serious injury this must be attended to as a matter of urgency and only thereafter, a medico-legal examination may be conducted.• Minor injuries may be treated by the examining doctor.
Sexually Transmitted Infections (STIs) other than HIV	<ul style="list-style-type: none">• The way this is managed depends on the timing of the examination.• If the patient is seen early, within 72 hours, a cocktail of 3 different broad-spectrum antibiotics is administered to cover most of the commonly occurring STIs.

Medical care

HIV

- HIV is a special type of STI and given the severity of the infection, it is treated separately with a combination of three different anti-retroviral drugs prescribed to prevent HIV transmission if the patient presents within 72 hours and tests negative for HIV.
- All patients will undergo pre-test counselling and post-test counselling, and if the patient tests negative then anti-retroviral drugs (ARVs) are offered to the patient.
- All patients will be offered a pregnancy test if at Tanner Stage 3, or a higher stage. If negative, they will be offered pregnancy prophylaxis and if positive, will be counselled on their options.
- (Tanner stages refer to the visible stages of puberty, also called, sexual maturity ratings (SMRs). They serve as a general guide to physical development, although each person has a different puberty timetable. In Stage 3, physical changes are becoming more obvious for both males and females, and usually start after the age of 12 years.)

Psychosocial counselling

Assessment and counselling

- All patients will be assessed and referred to a social worker for counselling, and if need be, the patient may be referred to a psychologist for more intensive therapy.
- Initial counselling will involve trauma containment. Most patients will carry the burden of a sexual assault with them for the rest of their lives. The purpose of counselling is to help them cope with the trauma. Long-term counselling will involve on average, six sessions.

Medico-legal practices

Medical examination for legal purposes

- The term medico-legal applies to both medicine and law. It refers to the study and application of medical and scientific methods as evidence in a legal case, e.g. rape and cause of death, etc. It entails a medical examination by a doctor to collect forensic evidence from the body of the victim, and sometimes the body of the perpetrator. The J88 Form is used to document the findings of the medico-legal examination. This aspect of the work exists to support the court processes.
- After the examination, the patient will have an opportunity to take a shower/bath. This will be followed up with appointment dates to check blood results and visit the social worker.

10.2.2 What to do immediately after a sexual assault/rape

For a successful prosecution and conviction of the perpetrator, it is important to link the perpetrator to the sexual offence/rape. This is done by **obtaining the perpetrator's DNA** (deoxyribonucleic acid) at the crime scene, on the victim's body, or on the clothing of the victim. The DNA may come from the perpetrator's **bodily fluids** including blood, semen, and saliva. The purpose of the forensic examination by the doctor is to collect this DNA and send it to the laboratory so that it can be typed/profiled and compared/matched to an alleged perpetrator/suspect.

10.2.3 To preserve the DNA from the perpetrator it is important that the survivor:

- Do not bath, wash, or shower until the medical examination by a doctor at a health facility takes place
- Do not wash the relevant clothing, and bring it along to the health facility
- Make every effort to come to the health facility as soon as possible after the rape because the window of opportunity **to collect forensic evidence lies only within 72 hours**. DNA is a biological material and therefore degrades with time, and activities such as bathing, washing, and douching that the patient may engage in wash the DNA away.

10.2.4 Forensic Evidence Collection from victims and perpetrators

Forensic evidence in the form of biological DNA material is collected from the bodies of both victims and perpetrators, their clothing, and the scene of the rape.

For this purpose, various **evidence collection kits** are provided by the FCS Unit of SAPS. The SAPS unit which deals with sexual offences is the Family Violence, Child Abuse, and Sexual Offences (FCS) Unit and uses various forensic kits to gather evidence.

10.2.5 Pregnancy Prevention: Emergency Contraception (EC)

In South Africa, **two methods of emergency contraception (EC)** are available. The doctor or nurse will discuss whether you may need this and advise you on which method is the most appropriate. A pregnancy test may be suggested before you are given any EC. It is important to tell the doctor or nurse if you are taking any other medicines, in case these may interfere with the effectiveness of emergency contraception.

10.2.6 Advice and support

People's responses to sexual assault differ. Some want to share as little as possible, while others feel better if they talk about what has happened. Although families and friends may lend an ear, a **trained counsellor**, such as a social worker at the **Thuthuzela Care Centres (TCCs)** or the Crisis Care Centres, would be invaluable. The Victim Assistance Officer at the TCCs could also assist.

All these services are provided free of charge and the confidentiality of the patient is maintained.

10.3 Department of Social Development (DSD)

10.3.1 Referrals and Intake

A person who has been exposed to GBV could be referred to the Department of Social Development or a non-governmental organisation (NGO) for services. A social worker will assess the victim during an initial interview.

10.3.2 Assessing the needs of the victim/survivor:

Several aspects will be assessed to support the victim/survivor. This includes the following:

- The immediate and future safety needs of the victim
- Whether the victim requires placement at a shelter
- The pattern and history of the abuse
- The victim's current access to family and other support systems
- Whether the abuse has been reported to the SAPS

- Whether the victim wants to obtain a protection order.

A personalised, concise **Safety Plan** will be compiled with the victim consisting of protective steps to escape unharmed from a possible further violent attack.

10.3.3 Crisis intervention and trauma counselling provided by the DSD:

- The initial stages of trauma support will focus on containment and physical safety and care. More in-depth trauma counselling will only take place at a later stage once the person is stabilised.
- Normalisation and empowerment of the victim will assist victims in getting power, safety, and control to learn why the event happened so that they can try and avoid it in future.
- The trauma support offered by the DSD aims to help victims feel more secure and contained about their feelings. Trauma counselling aims to help victims make sense of the event.

10.3.4 Psychosocial services provided:

- Counselling, Debriefing, Re-unification and aftercare, Assessments, Therapy
- Strengthening of inter-personal relationships
- Referral to a shelter and court support services.

10.3.5 Psychosocial support services at shelters for victims/survivors of GBV

Support is offered to the victim/survivor whilst at the shelter in the following manner:

- Building a trusting relationship
- Opening the door for future support
- Trauma debriefing, containment, and counselling
- Psycho-education about the cycle of violence
- Exploring options without judgment

- Developing safety plans
- Legal support and information
- Skills development and income generation
- Referral to other helping resources

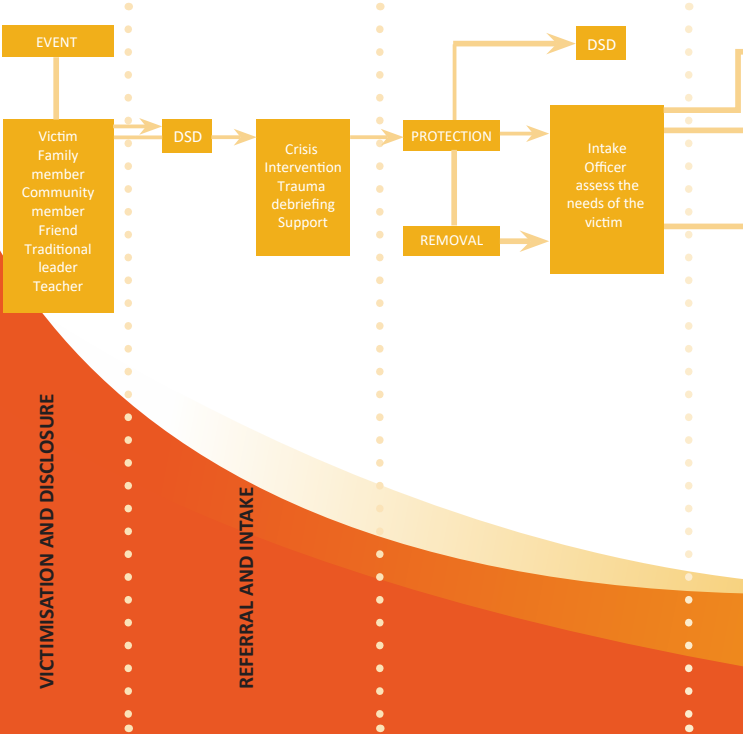
10.3.6 Role of a Social Worker in child abuse cases

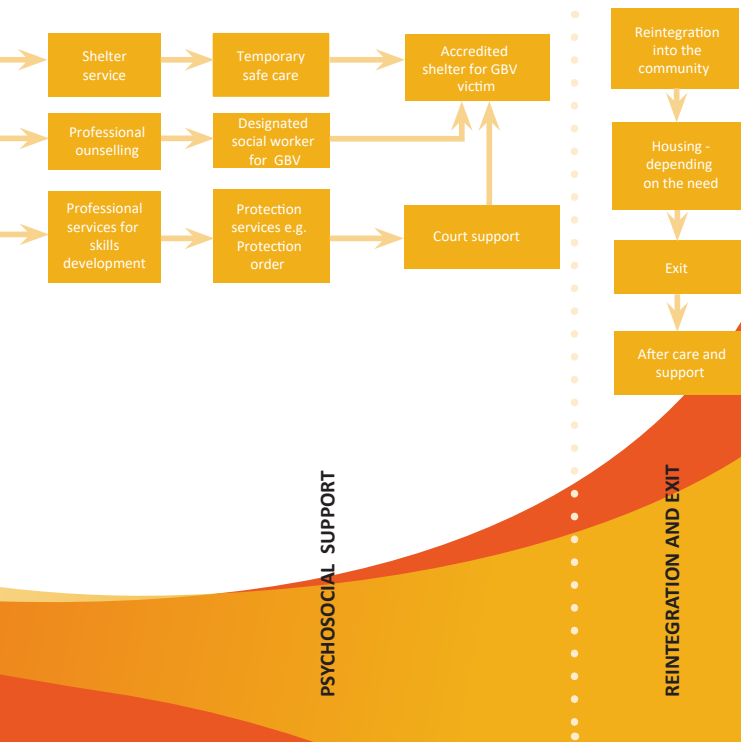
- Coordinate, establish and execute prevention programmes
- Be alert, detect and recognise abuse, neglect and exploitation
- Screen cases in order to determine first referral to relevant disciplines
- Assist the victims through the process of disclosure
- Accompany the child to make a statement to the SAPS (where necessary)
- Evaluate the safety of the child and arrange safety placement (if necessary)
- De-traumatise and provide counselling to the victim and family members and, if necessary, refer to relevant disciplines
- Report to the National Child Protection Register (Department of Social Development – Form 22). To register the case as soon as abuse is confirmed (case notification – Form 23).
- Coordinate services and refer to other role players who are part of the Child Protection System team.
- Arrange multi-disciplinary case conferences in order to formulate the plan of action
- Follow up on referrals to Child Protection System team members
- Prepare the victim for criminal court and/or children’s court
- Conduct a proper investigation with evidential proof of information gathered.

The worker’s duty would not be to find the alleged perpetrator guilty but to present to the court whether the child is in need of care and protection.

The Process Map, below, depicts available services by DSD within the context of GBV victims/survivors.

PROCESS MAP FOR RENDERING SERVICES WITHIN THE CONTEXT OF GBV (VICTIM EMPOWERMENT)





10.4 Department of Education (DoE)

Department of Education (DoE) has adopted a zero-tolerance approach in dealing with the scourge of Gender Based Violence (GBV) based on a holistic methodology which addresses GBV within our schools. This includes Sexual abuse, sexual harassment and all forms of bullying.

Documents informing the DoE in addressing GBV and related bullying in schools:

- The Protocol for the Management and Reporting of Sexual Abuse and Harassment in Schools (“Protocol”).
- The National School Safety Framework.
- Manuals to address bullying in schools.
- Guidelines for the Management of Child Abuse, Neglect & Exploitation for Public Schools in KwaZulu-Natal.
- HRM Circular No.63 of 2020.
- HRM Circular No.37 of 2021.

10.4.1 Management of sexual harassment/abuse

The school must act immediately upon becoming aware of a learner being sexually harassed or abused no matter where such harassment or abuse took place. It is the responsibility of educators to take care of the learners as if they are the parents of the learners.

10.4.2 Role and responsibility of the different parties

Principal

- Immediately inform the parent if the learner is a victim of the sexual harassment/abuse or if the learner is the alleged perpetrator.
- Report any incident or suspicion of sexual abuse and harassment to the South African Police (SAPS) within 24 hours. This also includes any observation of sexual abuse/harassment or bullying which may occurred outside the school.
- Ensure that the victim gets psycho-social support if required.
- Provide ongoing feedback to the parents of the victim on the progress of the matter.
- Ensure that all educators, non-educators and learners are familiar with the Protocol for the management and reporting of sexual abuse and harassment in schools.

School Governing Body (SGB)

- The SGB must ensure that employees are vetted before they are appointed.
- They must ensure that the parents are aware of the Protocol, School’s Code of

Conduct and all Department policies that deal with GBV and related bullying which includes Cyber bullying.

School Management Team (SMT)

- The SMT must refer learners who have been sexually abused / harassed by referring them to the Department's Psycho-Social Services or any other organisation that is recognized by the Department. This would apply in circumstances where the Principal is the offender.
- Observe the learner and provide extra support if their schoolwork is required.
- Assume the responsibilities of the principal if the principal is the offender.
- Ensure that the Circuit Manager is made aware of the incident if the principal is the offender.

Educators

- Educators must provide a safe and private environment for the learner to confide in the educator or any other person about what transpired.
- Ensure that information that the learner shares is kept confidential.
- Report any incident or suspected incident of sexual abuse / harassment to the principal.
- Report the incident to a member of the SMT if the principal is the alleged offender.
- Observe the learner's behaviour subsequent to making the report. Should the learner behave differently or contrary to the usual behaviour, the educator must report this to the principal or the SMT if the principal is the alleged offender.

Parents and Guardians

- Report any incident or suspected incident of sexual abuse or harassment or related bullying to the principal, Grade Head, member of the SMT, educator, Circuit Manager, Department of Social Development, Department of Health and/or the SAPS.
- Be present during all interviews with members of the School Community, the SAPS or any other person if their child is a victim or an alleged offender.

Learners

- Report any incident or suspected incident of sexual abuse or harassment to the principal, Grade Head, member of SMT, educator, Circuit Manager or any other person they feel comfortable with. This also includes incidents that occurred outside of the school.
- If the learner is not the victim or alleged offender, he or she must only talk about the incident to others with the permission of the victim.

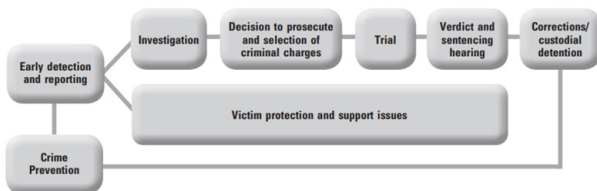
10.5 Department of Justice and Constitutional Development (DOJ&CD)

The DOJ&CD is striving to ensure an accessible justice system in a vibrant and evolving constitutional democracy. DOJ&CD is the custodian of the various pieces of legislation relating to GBVF and the chair of the provincial intersectoral fora that are mandated by legislation. DOJ&CD therefore has a role in respect of implementation and monitoring of GBVF legislation

The focus of the DOJ&CD concerning GBV is:

- To ensure that all GBVF survivors can access an efficient and sensitised criminal justice system that is quick, accessible, responsive, and gender-inclusive by effective implementation of the legislation
- Ensure that all the Courts have trained personnel to offer effective and efficient justice services in the courts
- Strengthen capacity within the criminal justice system and stakeholder co-ordination to address all impunities, effectively respond to femicide, and facilitate justice for GBVF survivors
- Monitor and guide implementation of the legislation by the various stakeholders as the custodian of the various pieces of legislation
- Amend legislation related to GBVF when required
- Create awareness of the role of DOJ&CD and the protection offered by the legislation through outreach and community events on the services offered by the department
- Have complaints mechanisms in place to address challenges experienced by court users in respect of justice services.

Victims require support across the full criminal justice process.



10.6 National Prosecuting Authority (NPA)

10.6.1 NPA mandate and structure

The NPA derives its mandate from Section 179 of the Constitution. Section 179(2) expressly empowers the prosecuting authority to institute criminal proceedings on behalf of the state. Legislation requires the National Prosecuting Authority to exercise its mandate without fear, favour, or prejudice. Their vision is justice in society so that people can live in freedom and security.

The **Sexual Offences and Community Affairs (SOCA) unit** lies within the National Prosecuting Authority which focuses mainly on the prosecution of cases involving the victimisation of women and children. Other areas of responsibility include sexual offences, human trafficking, domestic violence, the management of young offenders, and the enforcement of child maintenance orders.

In addressing the scourge of sexual and gender-based violence against women, men, and children, the South African government proclaimed the establishment of rape crisis centres in South Africa, namely, **Thuthuzela Care Centres**. Thuthuzela Care Centres (TCCs) are one-stop facilities that have been introduced as a critical part of South Africa's anti-rape strategy, aiming to reduce secondary victimisation, improve conviction rates, and reduce the cycle time for the finalisation of cases. SAPS provides statement-taking officers who are stationed at TCCs

10.6.2 NPA role

SOCA's role is to formulate and manage action plans with the objectives of:

- Working in conjunction with partners to enable the prevention of crimes against women and children
- Prioritising gender equality in the justice system
- Creating safe spaces for victims
- Creating an integrated case management system that increases the conviction rates of perpetrators of gender-based violence
- Develop effective monitoring and evaluation systems that support and empower victims, and rehabilitate perpetrators
- Improving treatment and care services to gender-based violence survivors.

10.7 Department of Cooperative Governance and Traditional Affairs (COGTA)

- Oversee all cultural practices that have the potential to cause harm to children.
- Promote democratic governance and the values of an open and democratic society.

- Progressively advance gender equality within the institutions of traditional leadership.
- Promote freedom, human dignity, and the achievement of equality and non-sexism.
- Strive to enhance tradition and culture.
- Promote nation-building, harmony, and peace among people.
- Promote the principles of cooperative governance in their interaction with all spheres of government and organs of state.
- Ensure that traditional courts are instruments for building social cohesion, unity, and peace, whilst the formal courts primarily punish offenders, and if necessary, remove them from society.
- Promote the protection of the vulnerable, including children, the elderly, and people with disabilities.

10.8 The role of Traditional Leaders

Traditional Leaders can facilitate the **creation of protective cultural environments** in their communities. They have significant influence and can promote positive and **culturally sensitive behaviour change** and address sociocultural norms and beliefs that drive violence against women and children. They have the authority to confront violence against women in all its forms, including rape and those cultural norms, beliefs, and practices that increase the risk of HIV infection such as child marriages, widow inheritance, marital rape, and sexual cleansing. Traditional leaders are also able to enforce customary law in traditional courts. In addition to this, they have a wide reach in their communities through various traditional forums. Such opportunities can be used to inform community members of the adverse impact of violence against women and children.⁹

Their influence should be used to encourage protective practices, advocate for women's rights and address violence against women, children, and other vulnerable groups. Traditional Leaders are a gateway to communities for **bringing about social norm change**. To address the intricate issues of culture, violence against women and HIV, Traditional Leaders must be engaged to bring about meaningful changes in the fight against GBVF.

Traditional Leaders, as custodians of culture and tradition, must use aspects of identified cultural practices that many of their people believe in, **to bring about gender equality**. To show their objectivity and commitment, Traditional Leaders

⁹ *Traditional Leaders on the Frontline: Addressing Harmful Cultural Practices to Reduce Gender-based Violence and HIV in Southern Africa. SafAIDS, 2021. (https://prevention-collaborative.org/wp-content/uploads/2021/08/SafAIDS_Addressing_Harmful_Cultural_Practices.pdf)*

must be courageous in confronting harmful cultural practices that hamper rather than support efforts to fight the ‘war against women.’ Traditional Leaders, bearing in mind that culture is dynamic rather than static, and that **culture that kills is not culture**, should encourage their people to **engage in debates** about the need to modify these practices or adapt them to current circumstances, and where necessary eliminate those cultural practices considered harmful.

Traditional Leaders **should embrace ubuntu**, the African concept that refers to humanity in the broadest sense. Its principles involve everything and anything positive and good: unconditional love for the next person, understanding and catering for the next person’s needs, celebrating with the next person when he/she is happy and feeling his/her pain when they are hurt. The Xitsonga expression ‘*Xa mina i xa wena, xa wena i xa mina*’ (yours is mine and mine is yours) succinctly sums up this concept. The *ubuntu* approach should be promoted in communities to build respect for all – especially women.

11. Responding Collectively to GBVF

The multifaceted nature of violence against women and children necessitates different strategies to respond to the diverse manifestations of violence and the various settings in which it occurs, both in private and in public life, whether committed in the home, the workplace, educational and training institutions, the community or society, in custody or situations of natural disaster. A whole of society is necessary, in adopting a systematic, comprehensive, coordinated, multisectoral and sustained approach to fighting violence against women. The public, traditional leaders, media, community-based organisations, and religious organisations, must be in sync to work towards a society and country free of violence.

The international obligation to exercise due diligence requires South Africa to establish effective measures to prevent, investigate and prosecute cases of violence against women and children. This includes effective means to respond to each case of violence, as well as address the structural causes and consequences of the violence, by ensuring comprehensive legal and policy frameworks, gender-sensitive justice systems and police, available health and social services, awareness raising activities, joint cooperation from traditional leaders, civil society, religious sectors (all sectors) in ensuring the quality of all measures.

ANNEXURE 1

CONTACT DETAILS OF EMERGENCY AND SUPPORT SERVICES

Police Services: Crime Stop Tip-off	0860 010 111
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LIST OF SERVICE PROVIDERS FOR DV AND GBV

Police emergency number	10111
Human Trafficking	0800 222 777
Salvation Army	0800 073 728
Lifeline South Africa	0800 150 150
ChildLine South Africa	0800 055 555
Gender-based Violence Command Centre	0800 428 428 or send a 'Please Call Me':*120*7867# Skype: @Helpmegbv SMS: 31531

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health

Department:
Health
REPUBLIC OF SOUTH AFRICA



social development

Department:
Social Development
REPUBLIC OF SOUTH AFRICA



**cooperative governance
& traditional affairs**

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Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA



correction services

Department:
Correctional Services
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basic education

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Basic Education
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