Commission for Gender Equality

A society free from gender oppression and inequality

Research Report on the Victims' Charter

February 2009

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Foreword

In December 2004, Cabinet approved the South African Services Charter for Victims of Crime (referred to as the Victims' Charter), which contains seven victims' rights. These are: The right to be treated with fairness and respect for your dignity and privacy, the right to offer information, the right to receive information, the right to protection, the right to assistance, the right to compensation and the right to restitution.

The Charter was developed in line with the National Crime Prevention Strategy's victim-centered vision for the criminal justice system. The Charter is compliant with the South African Constitution and the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

One of the CGE's mandates is to monitor sector-specific roles in victim empowerment. This mandate was also given to the Commission by the interdepartmental task team which requested the Commission to monitor and evaluate the implementation of the Victims' Charter from a gender perspective.

The Commission on Gender Equality Act, No. 39 of 1996 requires the Commission to monitor and evaluate the practices of organs of state at any level, statutory bodies or functionaries, public bodies and authorities, and even private businesses, enterprises and institutions in order to promote gender equality.

The findings focus on cases in two departments, namely the Department of Justice and the South African Police Services (SAPS).

The assessment of the implementation of the national plan of the Victims' Charter reveals difficulties that victims of crime are still facing, such as lack of uniformity and knowledge about the Victims' Charter, staffing challenges, a shortage of magistrates and delays in processing court order forms, inadequate and inappropriate responses from the police, disparities between cases opened and cases sentenced, challenges in securing vehicles to transport victims to places of safety, lack of special rooms for domestic violence complaints, no anti-rape strategy in most police stations, and most police stations not having the average ages of victims and perpetrators of gender-based violence.

The Commission for Gender Equality trusts that the findings in the report will be regarded as the challenges needing to be addressed to ensure that the Victims' Charter is implemented. We hope that this assessment and research report acts as a catalyst for change and that it sensitises the Department of Justice and Constitutional Development (DoJ & CD) and the South African Police Services (SAPS) and other stakeholders to the need for institutional measures to be put in place in order to improve service delivery. Furthermore, we trust that it will serve as a helpful resource for these departments.

Mfanolzelwe Shozi
Deputy Chairperson: Commission for Gender Equality

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1. INTRODUCTION

The Commission for Gender Equality (CGE) is an independent statutory body established in terms of Section 187 of the Constitution of South Africa, Act 108 of 1996. It is hence referred to as a Chapter Nine institution.

The role of the CGE is to promote respect for, protect, develop and attain gender equality, and to make recommendations on any legislation affecting the status of women. The powers and functions of the CGE are outlined in the Commission on Gender Equality Act, No. 39 of 1996. In terms of Section 11(1)(a) of this act, the CGE must *inter alia:*

- Investigate gender-related complaints from members of the public or on its own initiative;
- Monitor and evaluate the policies and practices of state organs, state agencies, public bodies and the private sector in order to promote gender equality and the rights of women. The CGE may make recommendations regarding the protection and promotion of gender equality;
- Develop, conduct and manage education and information programmes to foster public understanding of matters pertaining to gender equality; and
- Evaluate any of the following: acts of Parliament, systems of personal and/or family law, custom and/or customary practices, and systems of indigenous or any other law.

The CGE is thus mandated to review existing legislations and establish whether such legislations are compliant with gender equality. It furthermore has to evaluate whether services rendered in terms of those particular legislations promote gender equality and the status of women. The CGE does this through its six thematic focus areas, namely: gender and poverty; gender-based violence (GBV); gender, democracy and good governance (GDGG); gender, culture and religion, and traditional practices; gender and HIV /AIDS; and the National Gender Machinery (NGM). The monitoring of the implementation of the Victims' Charter falls within the scope of the GBV thematic area.

The CGE has identified a lack of compliance with gender equality legislation and policy frameworks; poor efficacy of, and a low impact by the National Gender Machinery, with overlapping within the NGM; violence against women; and the persistence of traditions that entrench patriarchal values and contribute to unfair discrimination against women[1].

As a result of the above-mentioned challenges, the CGE developed a strategic approach that views gender equality in an integrated and holistic manner. This approach deals with the totality of human security and the dignity of the person, as denoted in the six above-mentioned thematic areas[2] . The CGE recognises that gender-based violence is an "epidemic in our society" and that South Africa is a violent society. South African women experience extremely high levels of murder (femicide), rape and other forms of physical abuse.

[1] *CGE Strategic Plan 2008 - 2013*
[2] *CGE Strategic Plan 2008 - 2013*

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Observations by the CGE through its Legal Department, which is responsible for gender-related complaints; liaising with the media; and reviews of literature produced by the CGE and other organisations have revealed that GBV cases are continuously escalating. GBV is perceived as developing new patterns, becoming more inhumane and more violent in nature. A few typical examples of the extent of such violent crimes are the following:

- A man killed his partner and then chopped her into pieces (Sowetan, 2008).
- A serial killer in Limpopo raped and killed a number of young children in a village (ibid).
- In Soweto, at Emdeni Township, a 15-year-old teenage girl was recently gang-raped by five old men in their house (Khaya FM News, January 09).
- The Victims Empowerment Centre (Free State) assisted a lady to lay a charge of rape against her abusive husband. The police failed to comply with the Domestic Violence Act by not taking action, and the victim died under suspicious circumstances.
- In the Western Cape, a minor was sexually harassed by the father. To date, the SAPS has not yet arranged for the victim to receive trauma counselling.
- A police officer in Vhembe District raped a 14-year-old girl after drinking liquor with the child's mother. The case was reported in the Limpopo Sowetan of 28 September 2008.
- A victim was severely assaulted by her ex-boyfriend and hospitalised in Limpopo.
- A complainant reported that her father sexually harasses domestic workers employed in the main household, and if they refuse to have any sexual relations with him, they are dismissed (Limpopo).

The CGE has also observed that, in cases where criminal activities such as car hijackings and house break-ins are committed, women and children often become double victims. In such instances, women are both physically and sexually abused or violated. The CGE takes a strong monitoring stance to ensure the effectiveness of key departments such as the SAPS and the DoJ & CD, who handle cases of this nature.

As a result, the CGE was invited to participate in the Inter-Departmental Task Team responsible for the formulation of the Victims' Charter. The CGE committed itself to monitoring and evaluating the implementation of the National Plan under the Victims' Charter.

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2. LITERATURE REVIEW

2.1. Overview of GBV in South Africa

Within South Africa, gender-based violence exists in every community, in millions of households, in every form of institution and within all public spaces – in short, wherever people interact[3]. A number of research studies conducted by the Medical Research Council (MRC), audits of crime in metropolitan areas, studies of rape survivors' experiences with the criminal justice system, and studies of sexual abuse within schools indicate that women and children – both girls and boys – are experiencing very high levels of assault[4].

Theories about the current routes to masculinisation for young men, especially poor young men, suggest that their violence against women forms part of a response to increasing unemployment and loss of civil identity. It is widely accepted that gender-based violence in South Africa is high. Because of this, and because of the many different shapes particular incidents of gender-based violence take, an understanding of context becomes very important for developing strategies to combat gender-based violence.

According to the UN's *Integrated Regional Information Networks* (January 19, 2007), South Africa is a country long sickened by the frighteningly high level of sexual violence. This is one of the greatest challenges facing SA in closing the gap between the rhetoric of gender equality and the reality on the ground.

The prevalence of gender-based violence is reflected in stark statistics: between April 2004 and March 2005, 55,114 cases of rape were reported to the police. According to the MRC, it is likely that the number of actual cases was much higher, considering that only an estimated one woman in nine reports cases of sexual assault. The MRC also estimates that one woman is killed by her intimate partner every six hours[5].

South Africa has been hailed for its progressive constitution, which enshrines gender equality. The number of women in Parliament has indeed risen substantially since 1994, creating a formidable force for legislative change. But while changing laws can be a rapid process, changing the mindsets that suppress these impressive gains is another issue altogether. A culture of violence, born of years of political struggle against apartheid, has been blamed for the gloomy statistics. Women's groups also point to the **persistence of patriarchal attitudes that view women as inferior to men.** Part of the problem appears to be that many South Africans still have difficulty in defining rape. A 2004 nationwide survey of boys and girls aged between 10 and 19 found that 58 per cent did not view "forced sex with someone you know" as sexual violence; another 30 per cent of all respondents agreed that "girls do not have a right to refuse sex with their boyfriend"[6].

[3] *Gender-Based Violence in SA – Dr J Bennett, Cape Town*
[4] *Abrahams, N, Jewkes, R, and Laubsher, R, 1999. "I Do Not Believe in Democracy in the Home": Men's Relationships with and Abuse of Women. Cape Town: CERSA Women's Health, Medical Research Council*
[5] *Lisa Vetten, MRC Policy brief on female homicide, 2004*
[6] *National Youth Survey, Heidi for Ciet Africa*

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Violence against women is therefore entrenched in patterns of male dominance and female subordination. Poor women bear this burden to remain in abusive circumstances, because they are unable to support themselves or their children independently[7]. Although South Africa has seen notable increases in the State's commitment to ending gender-based violence, the main obstacle continues to be the necessary resources and enforcement. The criminal justice system was traditionally seen as not treating violence against women as a serious crime, as previously reflected in low conviction rates for rapists and abusive partners[8].

In view of the above, the South African government began making an effort to eradicate violence against women and children by committing itself to international, regional and national legal instruments for the protection of women against violence. This is realised through the ratification of the key legal instruments relevant to this project, namely the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Beijing Platform for Action (BPA) and the Protocol to the African Charter on Human and People's Rights, on the Rights of Women in Africa.

2.2. Rationale for CGE's involvement in gender-based violence work

The prevalence of gender-based violence (GBV) has been one of the major concerns of the South African Government since the country became a democracy. Newspaper clips regularly show how women are abused and killed and how children are physically assaulted and sexually abused, making South Africa one of the countries with the highest levels of violence in the world. This is corroborated by an overview of available statistics, which indicate that violent crime is common, with pervasive domestic violence, sexual assault and harassment being directed primarily against women, particularly young women[9]. GBV has become a major setback to the enjoyment of the fruits of our young democracy. This, despite the fact that considerable progress has been made towards the advancement of women's empowerment through the promotion and protection of gender equality and human rights in all spheres of life, including our homes.

Through legislations backed by the Constitution, an enabling environment has been created to deal with GBV. Intervention mechanisms have been put in place to ensure that women and children enjoy basic human rights as enshrined in Section 12 (c) of the Constitution of the Republic of South Africa, Act 108 of 1996. Central to the elimination of GBV and the proper management of all facets of GBV through the aforesaid intervention mechanisms is the recognition by the government that different stakeholders, including various government departments, should be empowered to deal with GBV efficiently. The South African Police Services (SAPS) and the Department of Justice and Constitutional Development (DoJ & CD) are two of the key departments required to spearhead the process of efficiently and effectively managing GBV. The government has indeed already delivered in part on its commitment to prevent and eradicate violence against women and children by reviewing the criminal justice system in South Africa, which led to the development and adoption of the Service Charter for Victims (DoJ & CD 2004).

[7] *S Samuel, Wilson-Milne, Perspectives on Violence Against Women : South Africa*
[8] *Ibid*
[9] *Women's Legal Centre: Reforming the Law of Sexual Offences, 2003*

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The Victims' Charter became a beacon of hope for the victims of crime, including GBV. Key departments and stakeholders concerned with the protection and promotion of gender equality and human rights committed themselves as well to ensuring that the Victims' Charter becomes a real strategy for the elimination of GBV and other crimes, and that all human beings enjoy equal rights, equality and protection before the law. These departments are the SAPS, the DoJ & CD, the National Prosecuting Authority (NPA), the Department of Health (DoH), the Department of Corrections (DCS) and the Department of Social Development (DSD). In 2005, these departments developed a working document, the National Implementation Plan (NIP), for monitoring and implementing the Victims' Charter. The CGE is a key roleplayer in the formulation of the NIP, and has committed itself to exercising a monitoring and evaluation role in fulfilling its mandate.

2.3. The Victims' Charter

The Service Charter for Victims of Crime in South Africa ('the Victims' Charter') is an important instrument for promoting justice for all. The Victims' Charter is compliant with the spirit of the South African Constitution, 1996, Act 108 of 1996, and the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985 (GA/RES/40/34). The Victims' Charter is consonant with the provisions of Section 234 of the Constitution.

Since 1994, in keeping with the cultivation of a human rights culture, the focus has been gradually shifting from an adversarial and retributive justice criminal justice system to a restorative one. There has been a shift in the approach to crime towards viewing it as something that is not only an offence to the state, but an injury or wrong to another person. The Victims' Charter was accordingly developed in line with the National Crime Prevention Strategy's victim-centered vision for the criminal justice system. The ultimate goal is victim empowerment through meeting victims' needs, be they material or emotional.

The Victims' Charter resorts under the Victim Empowerment Programme (VEP), which aims to provide services to victims that will enable them to deal with the trauma of crime. While the VEP clearly articulates the legal framework within which victims can assert their rights under the criminal justice system, the Victims' Charter seeks to provide a comprehensive and integrated response to victims of crime. Its aims are to:

- Eliminate secondary victimisation in the criminal justice process.
- Clarify the service standards that can be expected by, and are accorded to, victims whenever they come into contact with the criminal justice system.
- Provide recourse to victims when standards are not met.
- Ensure that victims remain central to the criminal justice process[10].

[10] *DoJ & CD : Victims' Charter, 2007*

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The CGE formed part of the inter-departmental task team that was responsible for the formulation of the Victims' Charter. The CGE, through its constitutional mandate, then committed itself to monitoring the implementation of the Victims' Charter. This entails developing, where necessary, effective gender monitoring mechanisms for public and private institutions to ensure the appropriate implementation of gender-sensitive strategies, policies and programmes. The CGE's monitoring of the implementation of the Victims' Charter extends to the following areas:

- The policy and legislative framework and access to justice
- Government and public sector programmes and service delivery
- Civil society effectiveness
- Identification and removal of discriminatory practices, customs and beliefs
- Gender awareness and the empowerment of women

The following government departments will be monitored in terms of their commitments under the five-year implementation plan:

- Department of Justice and Constitutional Development
- National Prosecuting Authority
- South African Police Service
- Department of Correctional Services
- Department of Social Development
- Department of Health

Each government department will be monitored over a period of five years by means of a set of qualitative and quantitative indicators relating to the input and output of its interventions, as well as the outcome and impact thereof. Specific indicators will be developed in respect of each of the following areas of monitoring:

- Institutional arrangements, policies and plans to mainstream gender-responsive victim support
- Targets for increasing gender-responsiveness in victim support
- Budget for mainstreaming gender in the implementation of the five-year plan
- Human resources and skills to facilitate implementation of gender-responsive victim support
- Gender awareness in the training of officials and service providers
- The involvement of civil society and the gender sector in implementation

Each government department will be engaged on gender responsiveness in each of the following areas of the Victims' Charter Implementation Plan:

- Commitments made in Preamble of the Victims' Charter
- Rights as a victim of crime
- Right to offer and to receive information
- Right to protection
- Right to assistance
- Right to compensation
- Right to restitution
- Complaints

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The current study focuses on only two departments, monitored over a six-month period between July and December 2008:

- **Department of Justice and Constitutional Development (DoJ & CD)**
  The main task of this department is to coordinate the development and management of the implementation, monitoring and evaluation of the impact of the Victims' Charter, as well as focus on the Sexual Offences Courts, which fall within the ambit of the National Prosecuting Authority (NPA).
- **South African Police Services (SAPS)**
  The SAPS should ensure that victims of crime are treated with respect and dignity. It should furthermore ensure that they are provided with information, protection and assistance and are given the opportunity to offer information. The SAPS has been tasked to establish victim-friendly facilities in a bid to ensure privacy for the victims of intimate violence, and is expected to continuously train its personnel on victim empowerment, amongst other things.

2.4. GENDER ANALYSIS OF THE LEGISLATIVE FRAMEWORK INFORMING THE Victims' Charter

South Africa has ratified a number of international instruments that impact on gender. The most significant international gender mechanisms are the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) of 1979; and the Beijing Platform of Action of 1995.

2.4.1. International obligations

United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

CEDAW was ground-breaking in that it created an International Bill of Rights for Women and established the principle of equality through civil and political rights, including sexual and reproductive rights and rights affected by cultural factors (EGM 200 5:7).

CEDAW defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination[11].

Upon ratifying CEDAW in 1995, the South African Government committed itself to eradicating, and protecting women against, violence. This includes sexual violence, abuses in the family and sexual harassment in the workplace. Avenues for doing so include the creation of an enabling legislation for the elimination of all forms of discrimination, and providing support services to women who are the victims of aggression or abuses (Article 16). CEDAW recommends that state parties should take effective measures to overcome all forms of GBV, whether public or private. State parties should also ensure that adequate protection is given to all women and that appropriate support services are provided to victims[12].

[11] *CEDAW document*
[12] *Women's human rights resource book : 2006*

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CEDAW defines GBV as "any act ... 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 deprivations of liberty, whether occurring in private or public life ... violence against women shall be understood to encompass, but not be limited to, physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence, violence related to exploitation, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women, forced prostitution, and violence against women perpetrated and condoned by the state'.

The Beijing Platform for Action

The Beijing Platform for Action (BPA) complements CEDAW. The platform addresses 12 critical areas of action for women's development, with violence against women being one.

Other significant steps have been the Millennium Declaration and the adoption the Millennium Development Goals (MDG) in 2000. In the Millennium Declaration, 191 governments resolved to promote gender equality and the empowerment of women as "effective ways to combat poverty, hunger, and disease, and to stimulate development that is sustainable; combat all forms of violence against women; and implement CEDAW".

Other international instruments with gender as a cross-cutting concern include the resolutions of the International Conference on Population and Development of 1994, the Copenhagen Consensus on Social Development of 1995, the Rome Statute of the International Criminal Court of 1998, the UN Convention Against Organised Crime of 2000, and the International Convention on the Protection of the Rights of All Migrant Workers and members of their Families of 1990. The Dakar and Beijing Platforms for Action have been widely adopted by African states.

The AU Women's Protocol contains articles on the eradication of discrimination against women; women's right to dignity; women's right to life and the integrity and security of the person; the elimination of harmful practices; women's equal rights in marriages, separation, and divorce; and women's access to justice and equal protection before the law.

2.4.2. Regional obligations

Most African states have adopted the Dakar and Beijing Platforms for Action and have embarked upon a regional process of creating mechanisms for eradicating gender discrimination.

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Protocol to the African Charter on Human and People's Rights

Article 3 of the African Protocol emphasises the right to dignity, while Article 4 emphasises the right to life and to the integrity and security of the person, binding state parties to ensuring that measures are in place to protect women from all forms of violence, particularly sexual and verbal violence. State parties are to enact and enforce laws to prohibit all forms of violence against women, including unwanted or forced sex.

The AU African Women's Protocol contains articles on the eradication of discrimination against women; women's right to dignity; women's rights to life and the integrity and security of the person; the elimination of harmful practices; women's equal rights in marriage, separation and divorce; and women's access to justice and equal protection before the law.

The New Partnership for Africa's Development (NEPAD) also stresses gender equality, and may enhance women's human rights through the African Peer Review Mechanism's social development indicators.

2.4.3. National obligations

The South African Constitution, Act 108 of 1996

The South African Constitution guarantees individuals the right to both gender equality and the freedom and security of the person (Section 12 (1) (c)). To support the Constitution in ensuring that gender equality and the freedom and security of the person are realised, the following key pieces of legislation were enacted.

Labour Relations Act, No. 66 of 1995

Under the provisions of this act, an employer can be charged with unfair labour practice if the employer sexually harasses an employee.

The Domestic Violence Act, No. 116 of 1998

The Domestic Violence Act gives recourse to the multitude of women who find themselves trapped in a destructive and abusive relationship. This act gives much more recognition to the far-reaching scope of domestic violence, compared to its predecessor, the Prevention of Family Violence Act, No. 133 of 1993. The purpose of the act, as stipulated in its preamble, is to:

> *Afford the complainants of domestic violence the maximum protection from domestic abuse that the law can provide, and to introduce measures which seek to ensure that the relevant organs of state give full effect to the provisions of this Act and thereby to convey that the state is committed to the elimination of domestic violence.*

Failure by the police to uphold the provisions of this act may lead to their being reported to the Independent Complaints Directorate (ICD), upon which the SAPS Commissioner is legally bound to act against defiant officers.

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The Witness Protection Act, No. 112 of 1998

The purpose of this act is to provide for the establishment of an office for the protection of witnesses; to regulate the powers, functions and duties of the Director: Office for Witness Protection; to provide for temporary protection, pending placement under protection; to provide for the placement of witnesses and related persons under protection; to provide for services related to the protection of witnesses and related persons; to amend the Criminal Procedure Act, 1977, so as to make provision for witness services at courts; and to provide for incidental matters.

Employment Equity Act, No. 55 of 1998

The purpose of this act is to address and implement measures to remedy unfair discrimination. Section 5 places a duty on the employer to enunciate a plan that addresses discrimination or harassment if it occurs. Section 6 prohibits unfair discrimination on any grounds, including sex, gender, pregnancy, marital status and sexual orientation. Section 6 (3) defines sexual harassment as a type of discrimination.

The Promotion of Administrative Justice Act, 2000 (PAJA)

The provisions of the Promotion of Administrative Justice Act of 2000 (hereinafter referred to as the PAJA) complement the principles of Batho Pele (discussed below) and can be interpreted as building blocks for a more efficient service delivery system. In principle, the act is aimed at "encouraging fair, rational and lawful decision-making and discouraging maladministration by setting out a minimum set of procedures relating to the making of decisions and requires the provision of reasons for certain decisions" (Currie and Klaaren, 2001). The PAJA thus sets a guideline against which the quality of services provided by the DoJ & CD and the SAPS may be assessed.

The Promotion of Equality and Prevention of Unfair Discrimination Act, No. 4 of 2000 (PEPUDA)

This act is intended to give full effect to the right to equality, as contemplated in the Constitution. It consequently deals with the prevention and prohibition of unfair discrimination and prohibits hate speech. The act seeks to facilitate the transition to a democratic society, united in its diversity and marked by human relations that are caring and compassionate, and guided by the principles of equality, fairness, equity, social progress, justice, human dignity and freedom. The act provides a comprehensive legal framework for the prevention and prohibition of discrimination, redress for discrimination and the promotion of equality. The Act also makes provision for enforcement mechanisms, which serves as a distinguishing feature of this Act.

The Code of Good Practice on the Handling of Sexual Harassment, 1998, Updated 2004

This code provides support to the Labour Relations Act and the Employment Equity Act, giving a clear definition of sexual harassment along with guidelines on how to handle such occurrences. The code recommends guiding principles for employers to follow when harassment occurs.

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Criminal Law (Sexual Offences and Related Matters) Act, No. 32 of 2007

This act also seeks to protect complainants of sexual offences and promote effective service delivery (including all the principles of Batho Pele, discussed below) in relation to investigations and prosecutions and the provision of other services aimed at minimising the risk of HIV infection.

The act ensures that complainants of sexual offences get the maximum and least traumatic protection that the law can provide, introducing measures which seek to enable the relevant organs of the state to give full effect to the provisions of the act in order to combat and ultimately eradicate the relatively high incidence of sexual offences in the Republic. Under the provisions of this act, an employer can be charged with unfair labour practice if the employer sexually harasses an employee.

Batho Pele Principles

Batho Pele is an attempt to get public servants to be service-orientated, to strive for excellence in service delivery and to commit to continuous service delivery improvement.

The eight principles of Batho Pele include consultation; setting service standards; increasing access; ensuring courtesy; providing information; openness and transparency; redress; and value for money. A fundamental question is, to what extent do ordinary citizens, including complainants of GBV, actually experience Batho Pele in practice?

Institutional Framework

The South African government, through its Constitution, established independent constitutional bodies, firstly to ensure that the country reaches its set targets for achieving gender equality and eradicating GBV, and secondly to ensure that the laws, policies and programmes that have been developed are implemented, protected and promoted. Known as the National Gender Machinery, or NGM, these constitutional bodies include structures in Government, the legislature, Parliament, statutory bodies such as the CGE and civil society[13].

Overall, the NGM acts as a vehicle through which South Africa can meet its constitutional and international commitments to gender equality, human rights and social justice. However, to complement each other in achieving this, each separate structure within the machinery has a different mandate. That of the CGE is to take responsibility for monitoring and evaluating progress towards the attainment of the targets set for achieving gender equality, and to advise Parliament accordingly. Through this study, therefore, the CGE is fulfilling one of its core functions, which is "monitoring and evaluating the policies and practices of Government, the private sector, and other organisations to ensure that they promote and protect gender equality"[14]. The CGE does this by, inter alia, regularly reviewing policies, identifying gaps and making appropriate recommendations.

The intention of this study is to establish the extent to which these good intentions and lofty declarations, as embodied in the Victims' Charter, have assisted the victims of crime in South Africa. It should be noted, however, that while women's empowerment will not be promoted by policies and protocols alone, such instruments do form the basis of any efforts to remove gender inequality.

[13] *Source: Adapted from Office on the Status of Women (2000). South Africa's National Policy Framework for Women's Empowerment and Gender Equality. Pp. vii*
[14] *http://www.cge.org.za/backup/*

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3. METHODOLOGY

3.1. AIM

The aim of this project is to assess whether police stations and the courts possess the necessary legal and administrative structures conducive to the realisation of the rights of victims as specified in the Victims' Charter. Though the study is informed by the principles of the Victims' Charter, its scope is narrower in that it focuses on how the police and the courts realise the rights of victims of a particular type of violence, that is, gender-based violence.

3.2. METHODOLOGY AND METHODS USED

The study utilised a combination of qualitative and quantitative research methodologies and their subsequent data collection methods. Interviews were conducted with officials from police stations and magistrate courts. In some provinces, officials from the Department of Justice and Constitutional Development (DoJ & CD) and the National Prosecuting Authority (NPA) were interviewed too. Researchers were also required to observe the conditions of facilities in courts and police stations. Furthermore, statistical information pertaining to reported cases of victims of sexual assault and domestic violence was required from all the police stations and courts participating in the study.

The study focused on a selected number of police stations and courts from the nine provinces of South Africa. The study ultimately involved four police stations from the North-West Province; four police stations from the Eastern Cape; four police stations from the Free State; five police stations and two courts from the Western Cape; six police stations and five courts from KwaZulu-Natal; four police stations and four courts from Limpopo; four police stations and three courts from the Northern Cape; and two police stations from Mpumalanga. Furthermore, interviews were conducted with 1) the NPA in Mpumalanga; 2) the DoJ in the Eastern Cape; and 3) Thuthuzela Centre employees in KwaZulu-Natal and Limpopo. The organisations that participated in the study have been listed in Appendix 1.

3.3. LIMITATIONS

The following limitations emerged as the study unfolded:

i) A major limitation of the study is that it was not sufficiently victim-centered. Though it is concerned with issues of gender-based violence and the experience of victims, victims themselves do not feature in the study as participants. Though the study sought to explore the position of victims in relation to the police and the courts, the National Prosecuting Authority (NPA) expressed serious reservations about victims participating in the study as informers on the basis that the researchers were not adequately prepared to interview them. As the study unfolded, the researchers experienced a lot of frustration when they were referred to officials in the above department, only to be further referred elsewhere in some instances when they thought they had secured appointments with the right people. This, to some extent, has affected the quality of the data that have emerged from this study.

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ii) Another limitation of the study was the lack of availability of statistics relevant to domestic violence and sexual assault cases. Attempts to acquire data from the police stations and the courts were unsuccessful, as the officers in these institutions felt they had no delegated authority to provide the information. Some officers stated that only the Police Commissioner could provide the required data.

iii) Where available, the data provided were not always in the form required. For example, whilst the study required information distinguishing cases of domestic violence and sexual assault, some of the data provided did not make this distinction and placed the victims of these types of violence in the same category. This negatively affected the potential of the study to make comparisons and generalisations.

iv) The study was conducted with the police stations and courts on the basis of consent. Access to these institutions was thus only possible on the basis of consent. This had an effect on the number of police stations and courts participating in the study and resulted in an uneven number of police stations and courts being visited across the provinces. Police stations constitute the bulk of institutions that participated in the study, as there are more police stations in the country than courts. The negotiated nature of institutional access for purposes of this research meant that the researchers' potential to find alternative courts in the event of failure to secure access to particular courts was very limited. This has resulted in a very limited number of courts participating in this study.

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4. RESEARCH FINDINGS

4.1 Training in Victims' Charter

Data received from provincial reports suggest that the incidences of training received on the Victims' Charter vary across different police stations. It seems that while a significant number of personnel from some police stations have received training on the Victims' Charter, personnel from other police stations have received none at all. For example, a report from Mpumalanga states that "one of the challenges faced by the SAPS is lack of training in dealing with sexual offences". A report from KwaZulu-Natal, on the other hand, states that "about 80% of SAPS personnel have been trained on the Victims' Charter". The reports from most police stations highlight a lack of uniformity in the training of personnel. This situation is captured by a comment in a report from the Western Cape, which states: "There seems to be no uniformity in the training of officials in police stations. This was evident in the first visits to police stations to negotiate access to data. Officials knew nothing about the Victims' Charter, yet others were familiar [to] it." A few police stations, as outlined in Appendix 2, supplied statistical data on the number of personnel trained on the Victims' Charter.

In the Western Cape, train-the-trainer methodology is used. The same method is used in the Eastern Cape criminal justice cluster, and according to the report, the use of this method is meant to "ensure that those who are trained cascade the training to their colleagues". The Eastern Cape report indicates that training on the Victims' Charter is "linked to Batho Pele principles" and "includes Batho Pele principles as an introduction to all the training the staff members attend". It further highlights that "Batho Pele principles have been added to officials' job descriptions so that performance can be measured against it".

Information provided on court personnel's knowledge of the Victims' Charter suggests ignorance of the Charter. A researcher from the Northern Cape reported that "the two magistrates [he interviewed], who are at regional court level of the sexual offences court, did not know what the Victims' Charter was".

A respondent from the DoJ in the Northern Cape explains the situation in the following words: "What has happened is that there have been briefings and not necessarily with domestic violence personnel, but with personnel in general from all sections in the court; obviously briefings are not enough."

Information emanating from interviews conducted with the National Prosecuting Authority (NPA) in Mpumalanga highlights that "the NPA has not conducted any training needs audits on the Service Charter for Victims, and only a general skills audit was conducted in 2007". It also states that "the Justice College has not conducted any training on the Service Charter for Victims for prosecutors and magistrates. The current module for prosecutors does not include a specific module on the Service Charter for Victims."

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4.2. Cases opened vis-à-vis cases prosecuted

The data from Gauteng, the Northern Cape and the Free State, as outlined in Appendix 2, reveal huge disparities between cases opened and cases sentenced. However, no hard comparison can be drawn between police stations on this particular subject. For not only is the CGE reliant on information provided by the police stations, which does not necessarily correspond with information requested; but the time-frames we use for the cases also vary across the different police stations. For example, information from Hillbrow represented cases opened and sentenced from July to December 2008, whilst information from the Northern Cape was for cases opened and sentenced for the entire year of 2008. Despite this variance in our data, a general trend emerging from all provinces is that of substantial disparities between cases opened and cases sentenced.

If a 'soft' comparison is to be made, as opposed to a 'hard' comparison (for the reasons provided above), a police station in the Free State (Thabong), with only 1 case sentenced from the 216 cases opened, would reveal the widest gap between cases opened and cases sentenced. With 33 cases sentenced out of 125 cases opened, another police station in the same province would provide the smallest gap among police stations that provided data on the subject.

4.3. Main factors contributing to GBV

The data from provinces reveal that GBV is an effect of multiple factors. These include culture, women's dependency on men, poverty, unemployment, alcohol abuse and general substance abuse. Other factors include the breakdown of family values, clubbing, drugs, and transactional sexual relationships.

Information from Gauteng identifies culture as one of the major factors contributing to domestic violence. It provides evidence that point to culture as reinforcing patriarchal societal views which justify violence against women. A report from the Eastern Cape adds a further nuance to the role of culture in gender-based violence by pointing to the 'manipulation' of culture, rather than culture itself, being a problem in addressing GBV.

Women's dependency on men for their livelihood is highlighted by a number of reports as being one of the major contributing factors to GBV. A report from the Eastern Cape indicates that "all the police stations pointed to the issue of socio-economic factors and the dependency of women on their partners as still playing a role, especially on young women who sleep around with taxi drivers who abuse them". A similar position is echoed in the report from Mpumalanga, that states that "women are more vulnerable to GBV for the mere fact of relying on men for household provisions".

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Data from provinces further reveal that women's dependency on men impacts on their potential to fully exercise their rights when in an abusive relationship. Women are unable to exercise their freedom of expression and choice when in abusive relationships if exercising this freedom negatively impacts on their means of livelihood. A report from the Eastern Cape captures this situation in the following words: "Young women sleep around with taxi drivers who abuse them, yet these young women keep coming for more, because they depend on their partners for provision." Thus it appears from the data that a substantial number of women are reluctant to report incidents of violence committed against them where such a move would affect the support they receive from perpetrators. The study, therefore, revealed a close link between culture, poverty and women's dependency, and GBV.

4.4. Main localities and times of GBV

Shebeens, taverns and clubs are frequently associated with GBV. Data reveal that perpetrators often commit GBV while under the influence of alcohol, with a significant number of victims also experiencing GBV while under the influence of alcohol. Shebeens are open until very late, when it is dark. Victims are often attacked at a time when they are most vulnerable, in dark areas on their way home from shebeens, as highlighted in a report from Limpopo: "GBV cases normally take place as a result of shebeens closing late and on their way home, victims get robbed and raped." It appears that while GBV, under these circumstances, is sometimes committed by strangers, it may also be committed by people known to the victims. A report from Sunnyside (Gauteng) reports a situation "where the perpetrator was a close friend", and further states that this type of crime "usually occurs after a night of clubbing". An analysis of the data, therefore, reveals a close link between shebeens, alcohol abuse and GBV.

The GBV related to shebeens and alcohol use and abuse seems to happen, more often than not, during weekends. A report from the North-West highlights that "most cases are reported over the weekends as a result of alcohol abuse". The link between shebeens, alcohol consumption and the weekend period also finds support in a report from the Free State that states: "In cases where adults are involved, alcohol abuse was the common factor. Most cases were reported on weekends and some of the parties were related to each other."

4.5. Emerging new trends

GBV is often reported as something that is committed by men and suffered by women and children. There are, however, emerging data from Gauteng that reveal cases where men are victims of GBV perpetrated by women and other men. A police station in Alberton (Gauteng) has recorded cases of two male victims of sexual assault, aged 19 and 28. The Mamelodi (Gauteng) police station has recorded three cases of rape suffered by males in an 8 – 20 age range. The Sunnyside police station (Gauteng) has recorded a case where a man was raped by five women.

Another trend picked up by the SAPS in the Eastern Cape is the raping of children by other children between the ages of 6 and 12.

Community involvement is often cited as a factor that contributes to addressing GBV. Data from the Eastern Cape have, however, revealed instances of community members reporting cases of community leaders committing GBV.

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4.6. Ages of victims and perpetrators

Most police stations could not provide data on the average age of victims and perpetrators of GBV. Only police stations in Mpumalanga, the Free State and Gauteng were able to provide the relevant information. The youngest victim was six years old and the oldest, 35. The youngest perpetrator was 17 years old and the oldest perpetrator, 45. It emerged from the information that the victims were, on average, slightly younger than the perpetrators (Appendix 2).

4.7. Police stations and places of safety

Most police stations reported that victims of domestic violence and sexual assault are accompanied by police officers to places of safety. A report from Gauteng, however, highlights that it is a challenge securing vehicles to transport victims to places of safety in order to ensure expert intervention. The report further indicates that safe houses are not always convenient for victims of domestic violence and sexual assault, as they are sometimes not accommodating in terms of age and gender. A report from the Eastern Cape highlights that there are only a few places of safety, and they are unable to meet the high demand for them. Victims who do not find accommodation in places of safety are taken to a Victim Support Centre (VSC). A report from Mpumalanga reveals that the Dientjie police station does not have a place of safety at all, and temporary accommodation arrangements have to be made with relatives to ensure the safety of victims, pending the arrest of the perpetrator. A report from Limpopo indicates that the Thohoyandou police station's vehicles are not suitable for transporting victims. In the words of an official from Thohoyandou, "I cannot even risk and tell a member to use that vehicle, because I will be risking his life. For myself, I am personally demotivated, to be honest. I am no longer interested in working under these conditions; there are a lot of problems."

4.8. The use of a rape kit

Reports on the use of rape kits indicate that the kit, supplied by the Family Violence, Child Protection and Sexual Offences Unit (FCS), is a necessary device for rape victims. However, it seems there are problems with the distribution of the kits. In Gauteng, a worn-out rape kit resulted in a victim having to be sent to a private hospital located far from the police station. A police station in Mthatha (Eastern Cape) reports that it does not have a rape kit, with officers claiming that they only came across the kit in Cape Town when receiving their training.

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4.9. Police stations, communities and civil society

The data provide evidence of successful partnerships between police stations and the broader civil society. A report from the Western Cape provides the following account: "SAPS in this area works in collaboration with different community forums and civil society organisations. NGOs partner with SAPS in the areas of their specialties; for example, MOSAIC and FAMSA deal with issues of domestic violence, while SANCA intervenes in drug-related issues. Volunteers from civil society also help with referrals to relevant NGOs." A report from Gauteng states that "One positive thing that has emerged in the fight against gender-based violence and domestic abuse is stakeholder buy-in from religious organisations who provide counselling to victims, NGOs that train volunteer counselors, community forums that help in crime prevention, and private sector organisations that sponsor victim empowerment centers with equipment and maintenance." A report from KwaZulu-Natal articulates the involvement of a police station thus: "There are specific weeks planned aside by all departments that are dedicated to teaching communities on the rights of victims."

4. 10. Reasons for dropping charges

Reports from provinces provided various reasons why victims drop charges of domestic violence and sexual assault. A report from the Free State points out that "Most cases which are being withdrawn are the ones which took place during weekends, especially at the end of the month, whereby the victim and the perpetrator are found to have been under the influence of alcohol." A report from Mpumalanga provides the following account: "The problem why cases of sexual abuse of children are not prosecuted is because parents have a tendency of influencing children not to testify, or influencing them to give false statements, but also an unwillingness on the part of victims to provide information when the perpetrator is either a family member or a relative." A report from the Sunnyside police station states that "The rape cases handled at Sunnyside are mostly reported by prostitutes who do not usually agree with the perpetrator on price, but once the dust starts settling down they withdraw the case."

4.11. Legal and logistical challenges facing courts

Interviews with court officials revealed little information on legal and logistical challenges pertaining to domestic violence and rape. Interviews conducted with officials from three courts in the Northern Cape suggest that these courts do not have any legal challenges of significance when it comes to dealing with matters relating to domestic violence and rape.

However, a magistrate from one of the sexual offences courts from the Northern Cape expressed dissatisfaction with the compulsory competency test for rape victims under the age of 18. The magistrate explained that the competency test is meant to assess whether the child understands the meaning of an oath and is able to differentiate between a truth and a lie. The magistrate highlighted the weakness of the system by indicating that "If, for example, the child does not understand an oath and cannot differentiate between the truth and a lie, he is then regarded as incompetent and cannot, therefore, testify."

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When asked whether they thought the Department of Justice was adequately capacitated to carry out the Victims' Charter's objectives, the court officials interviewed in the Northern Cape said that they believed that justice was adequately capacitated. The report states that "Most court officials interviewed did not express problems with court facilities. However, one magistrate identified a lack of special rooms for people with domestic violence complaints as the biggest problem regarding the court he serves in. Three of the four courts visited had separate rooms where victims testify under CCTV."

A report from Gauteng highlights that "Staffing challenges, especially in regard to the shortage of magistrates, result in delays in processing court order forms, and this means that applicants have to visit the stations more than once; and this has resource implications." The same magistrate handles both domestic violence cases and the general criminal law cases, and this impacts on the speed with which he is able to process the number of domestic violence complaints he receives. The clerk interviewed complained about the physical structures available for them to do their work, by stating: "The container we operate in is too congested and small, which makes it not conducive to private conversation between complainants and the clerk. This undermines victims' right to privacy and dignity. The design of the container is also not user-friendly for older persons, who have to climb up to get inside, and since I have started working here, three to four old people trip weekly."

A report from the Eastern Cape points out that "The courts are struggling with the help desks, there are not enough personnel. Personnel are shifted around to close gaps where they emerge, but this only creates other gaps and it does not help the situation in the long term."

4.12 Other findings and challenges

The following findings also surfaced in many provincial reports:

1) The literature review revealed that the Department of Justice and Constitutional Development (DoJ & CO) is the leading department with regard to the Victims' Charter. However, CGE researchers received mixed reactions when collecting data from the DoJ & CO. Some researchers did not receive the attendant and requisite support from officials, whereas other officials were very helpful and were able to assist in the identification of other elite respondents. The role of the CGE in relation to the Victims' Charter is therefore questionable, in that it was given a clear monitoring and evaluation function from a gender perspective as part of the Interdepartmental Task Team, that culminated in the formation of the Five-Year Plan. Yet its role on the ground is perceived as a 'policing' exercise more than as a measure to sensitise officials about the efficacy and efficiency of the programme.

2) From a methodological point of view, the CGE researchers were given guidance on how to do sampling in both police stations and courts, with four police stations and two courts being targeted per province and socio-economic differences being used as a unit of analysis. However, the majority did not adhere to these guidelines, hence the data for the study are skewed (see Appendix 1). The information emerging from a provincial report does not always speak to the sample provided. This makes it difficult to make generalisations about the study.

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3) The collection of statistical data from the various police stations was a source of frustration and contestation for the CGE researchers. Many stations stated that those who have supplied the information should have it recalled, because only the Police Commissioner is responsible for the release of any statistical data. This downplays the monitoring role that the CGE has to play in this study.
4) In some provinces, such as the Western Cape, the launch of the Victims' Charter was used as an excuse for not supplying data, while in others, such as Limpopo, it was acknowledged that systems for the implementation of the Victims' Charter programme have long been put in place.
5) Despite our limited data, there is evidence that in previous years some officials have been trained on the Victims' Charter. However, staff movement has meant that some officials who have been trained have moved to better positions, making it difficult to follow trends on staff training. However, the Implementation Plan indicates that training should be a continuous process until 2011.
6) There is also evidence of a lack of materials on the Victims' Charter at some sites, for example, Gauteng. The well-equipped safety centres at some police stations were those that received external funding, indicating that the role of external partners in any programme should not be undermined.
7) Most police stations do not have an anti-rape strategy – a document that needs to be thoroughly thought through.

4.13 Recommendations

1) For the CGE to continue fulfilling its mandate as stipulated in the Implementation Plan, it is recommended that the six departments should work closely with their monitoring and evaluation (M&E) departments or units to sensitise officials about the value of monitoring and evaluation programmes.
2) The CGE should tighten its methodological approach in relation to the monitoring and evaluation of the remaining four departments.
3) Statistical data are used as a measure to quantify the extent to which the system has improved. Since this was perceived as a political issue, it is proposed that the CGE should use its commissioners to enlist the requisite support from the departments.
4) The contradictions emerging from the data are a source of concern in that they support the notion that provinces are unique and have their own peculiar socio-economic contexts. It would be ideal to see victims in a remote rural town in the Northern Cape receive the same treatment as victims in Gauteng and the Western Cape in terms of funding allocations; but data reveal that facilities in both remote areas and well resourced provinces still leave much to be desired.
5) Staff mobility affects every institution; however, continuous staff training is crucial to the sustainability of the programme and its effective implementation. It is recommended that police stations be equipped with an anti-rape strategy.
6) The role played by external partners such as NGOs should not be undermined, but rather enhanced, because they are able to render services to victims that go beyond the capacity of departmental officials.

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APPENDIX 1

The table below represents a list of all the structures that participated in the study.

Province	Police stations	Courts	DoJ	NPA
North-West	Atamelang Wolmaranstad Potchefstroom Klerksdorp			
Eastern Cape	Mthatha Central Mdantsane Fleet Street Cambridge		DoJ in Chiselhurt	
Free State	Mangaung Thabong Senekal Koffiefontein			
Western Cape	Lingelethu Strand Hermanus Worcestor Bishop Lavis	Bellville Cape town		
KwaZulu-Natal	Durban Central Cato Manor Ndwedwe Broad Street Amaoti Kwa-Mashu	Durban Stanger Ntuzuma Umlazi Verulum		
Gauteng	Sunnyside Mamelodi West Alberton Hillbrow	Vereeniging Mamelodi West		
Limpopo	Mankweng Thohoyandou Gilliad Malamulela	Mankweng Thohoyandou Mokerong Malamulela		
Northern Cape	Warrenton De Aar Upington Kimberley			
Mpumalanga	Kanyamazane Dientjie			NPA Mpumalanga

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APPENDIX 2

1. Number of officials that received training

A. Free State

Police station	Trained officials
Mangaung	8
Thabong	106
Senekal	18
Koffiefontein	25

B. Northern Cape

Upington court	Trained officials
Domestic violence	2
Sexual offences	0

Warrenton police station	Trained officials
Victim empowerment	1
Domestic violence	8
Sexual offences	2

Upington police station	Trained Officials
Domestic violence	33
Sexual offences	11

2. Cases opened vis-à-vis cases prosecuted

A. Free State (July – October 2008)

Community	Files opened (GBV cases)	Cases that led to sentencing
Mangaung	196	43
Thabong	216	1
Koffiefontein	125	33

B. Gauteng (Period: July – November)

Community	GBV cases	Files opened	Cases that led to sentencing
Mamelodi West	Sexual assault	43	No information
	Domestic violence	161	No information
Sunnyside	Sexual assault	18	4
Hillbrow	Sexual assault	342	75
	Domestic violence	47	

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C. Northern Cape (January – December 2008)

Community	GBV cases	Files opened	Cases that led to sentencing
Domestic violence	Sexual offences	433	23
Domestic violence	Domestic violence	290	No information

3. Average ages of victims and perpetrators

A. Mpumalanga

Police station	GBV	Age of victim
Dientjie	Victims	7 – 25
	Perpetrators	20 – 35

B. Free State

Police station	Age of victim
Mangaung	13 – 40
Thabong	17 – 32
Koffiefontein	20 – 40

C. Northern Cape

Police station	Domestic violence	Age range
Mangaung	Victims	25 – 40
	Perpetrators	25 – 40
Thabong	Victims	20 – 40
	Perpetrators	20 – 45
Koffiefontein	Victims	19 – 42
	Perpetrators	23 – 40

D. Gauteng

Police station	Domestic violence	Age range
Alberton	Victims	18 – 30
	Perpetrators	18 – 30
Mamelodi West	Victims	6 – 35
	Perpetrators	17 – 40
Sunnyside	Victims	17 – 25
	Perpetrators	25 – 40

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