

ERP BOOKLETS IN THIS SERIES

1. **HIV/AIDS: THE RIGHTS OF LEARNERS AND EDUCATORS**
2. **SEXUAL VIOLENCE: THE RIGHTS OF LEARNERS AND EDUCATORS**
3. **THE EDUCATION RIGHTS OF REFUGEES, ASYLUM SEEKERS AND MIGRANTS**
4. **LANGUAGE RIGHTS AND SCHOOLS**
5. **RELIGION AND SCHOOLS**
6. **DISABILITY: THE RIGHTS OF LEARNERS**
7. **SCHOOL GOVERNING BODIES: RIGHTS AND RESPONSIBILITIES**
8. **THE COST OF SCHOOLING: YOUR RIGHTS**
9. **ADMISSION POLICY: YOUR RIGHTS**
10. **THE RIGHTS OF ADULT LEARNERS**
11. **CORPORAL PUNISHMENT AND BULLYING: THE RIGHTS OF LEARNERS**
12. **EARLY CHILDHOOD DEVELOPMENT AND EDUCATION RIGHTS**
13. **THE RIGHT TO EDUCATION AND PROTECTION FROM DISCRIMINATION**

These booklets are dedicated to the millions of young people who are brutalised by the structural, socio-economic and socio-cultural cruelties of life. Unfortunately, young people are also brutalised by those who are meant to provide healing in our country, at home and in school.

They are also dedicated to those educators in formal and informal institutions, and organic intellectuals in social movements and unions, who see their own knowledge as a gift of trust from the people, who see the learning process as a mutual experience, who encourage the building of self-discipline and hard work through their own example, and whose greatest happiness comes from seeing those with whom they have been exploring and changing the world around them, go on to share the process with others.

Most importantly, this booklet is dedicated to the tens of thousands of young women and girls who are raped every year in our communities and particularly to those who break the silence around sexual violence.



Tel: (011) 717-3076
Fax: (011) 717-3029
email: vallys@epu.wits.ac.za
www.erp.org.za

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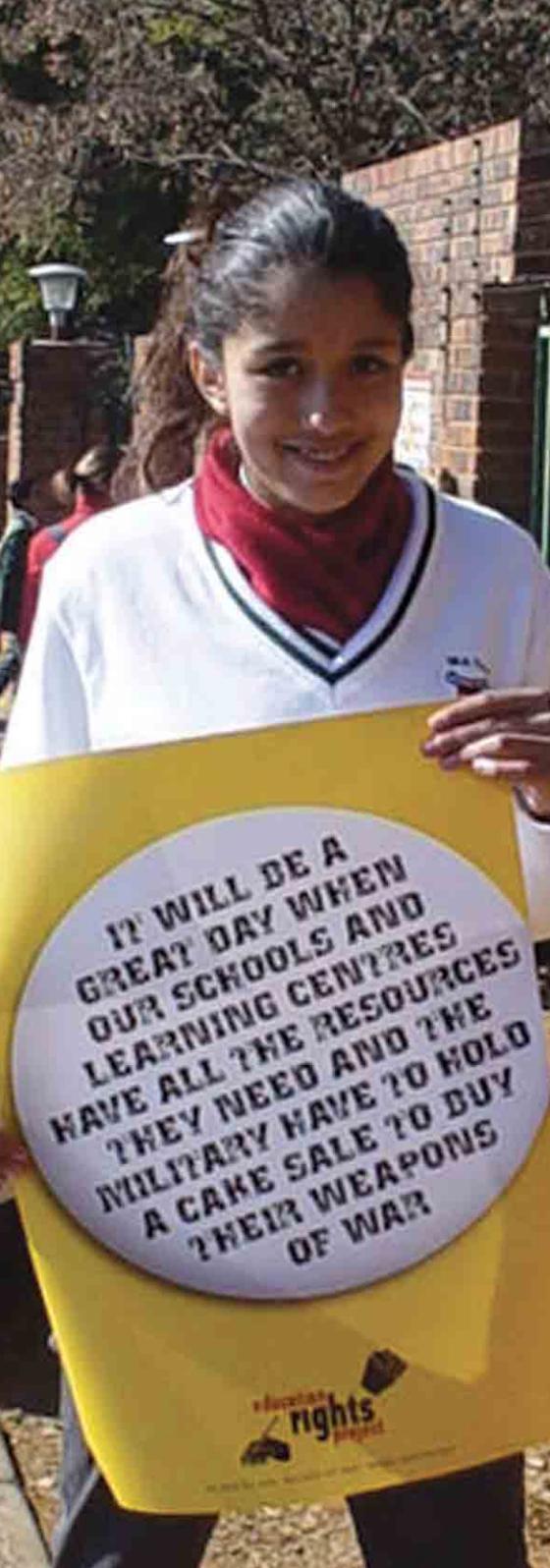
SEXUAL VIOLENCE IN SCHOOLS

The Rights of Learners and Educators



Education Rights for
Learners, Parents
and Educators

book
2



Sexual Violence: The Rights of Learners and Educators

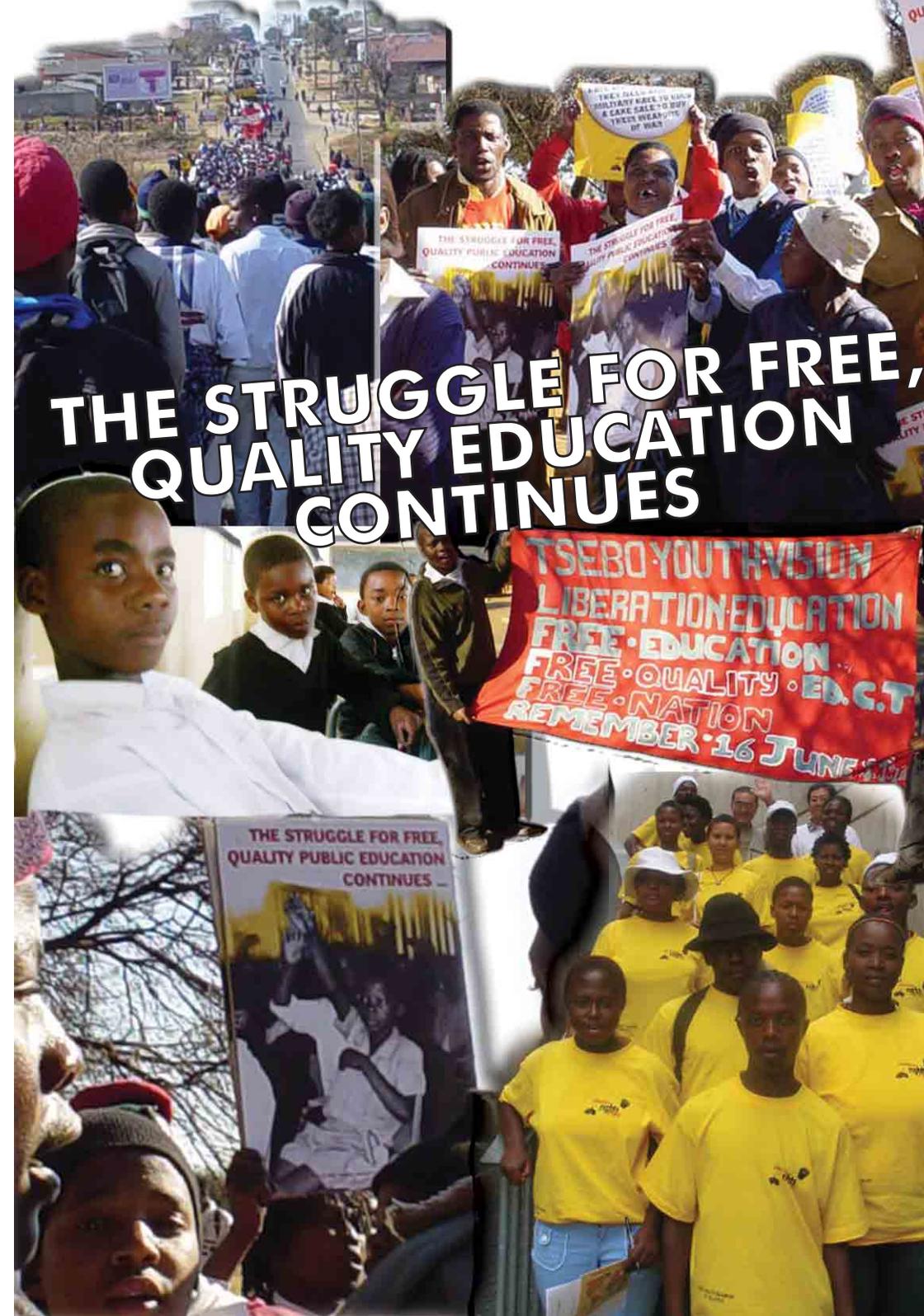
Nikki Naylor

Editors: Brian Ramadiro and Salim Vally

layout & design by Red
nicolas@red.org.za

We have attempted to ensure that the information in these booklets is accurate up to the time of publication-June 2005. Policies, laws and regulations change. Please contact the ERP for regular updates. All of these booklets are being translated into isiZulu, Sesotho and Afrikaans. The edition on migrant and refugee rights will be translated into French and Portuguese as well. Non-profit organisations are welcome to reproduce them. Suggestions for improvements are appreciated. Please acknowledge the Education Rights Project if you intend using this material.

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THE STRUGGLE FOR FREE, QUALITY EDUCATION CONTINUES

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A. INTRODUCTION

Since the late 1990's efforts have been focused on getting as many learners as possible to schools by addressing obstacles preventing learners from enjoying their right to education. Today, we realise that it is equally important to focus our attention on what happens once learners are at school, as schools can be dangerous places for young people. In January 2002 a study published in *The Lancet* found that 33% of rape survivors were girls who had been raped by members of the school community (Jewkes, 2002).

This booklet aims to *inform* learners, educators, school governing bodies, communities and social movements of their rights in terms of sexual violence and what to do when these rights have been violated. Secondly, the booklet aims to *empower* those faced with sexual violence within the education system to report incidents of sexual violence, in an effort to break the silence and hold perpetrators accountable. We acknowledge the limited and somewhat restrictive role, which the law on its own offers. We will, therefore, also discuss the limitations of present laws and procedures and encourage the involvement of many government departments and community organisations. A co-ordinated response to the problem of sexual violence in schools is necessary.

B. SEXUAL VIOLENCE AT SCHOOLS

"All the touching at school in class, in corridors, all day every day bothers me. Boys touch your bums, your breasts. You won't finish your work because they are pestering you all the time."

[South African school girl, aged 14,
as quoted in the Human Rights Watch Report]

Schools should be positive places of joy, growth and creativity but often in our country they are unhappy, unsafe and violent places where rights and freedoms are violated. Sexual violence prevents learners from achieving their intellectual, emotional and educational potential. Schools can, on the one hand, be respected as places to learn values in order to break the cycle of violence. On the other hand, schools have the potential to continue and strengthen the cycle of violence.

C. THE RIGHTS OF LEARNERS

Case Study

Ms. X was a 12-year-old girl at a school on the Cape Flats. She has been a star pupil from the earliest Grade. In Grade 7, she was assaulted and raped by her educator, Mr. A. She reported this to her mother and criminal action was taken. During the criminal trial the prosecutor discovered that two years before the rape, a fellow teacher reported Mr A to the principal. Mr. A had sent a letter to two school girls inviting them to have oral sex and perform sexual acts with him in exchange for money. The principal kept the letter.

The principal said that he called Mr. A in who apologised and was sent for counselling. Mr. A is convicted of rape and sentenced.

In the meantime, Ms. X no longer does well at school and fails. She drops out of school and attempts suicide after becoming involved with drugs and alcohol. She will require therapy for a long time. Ms. X wanted to be a lawyer, but is now unemployed with little prospect of employment.

[At the time of writing, the case was being heard at the Cape High Court]

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The case of Ms. X raises a number of issues, which will be discussed in this booklet. Firstly, it is clear that mere knowledge of one's right not to be raped by an educator is not enough to protect one from the actual act of violence. However, it remains important to empower learners to speak out when sexually harassed or assaulted. More importantly, the response when abuse has been reported needs to be thought out carefully and the role of the school and educators who are aware of other educators who harass learners becomes crucial. In the remaining sections of this booklet the rights of learners are discussed as well as the role of educators and schools in addressing the issue of sexual violence.

1. What Is Sexual Violence?

The term sexual violence covers rape, indecent assault and sexual harassment. It also includes all of the following:

Any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, directed against a person's sexuality using coercion/force, by any person regardless of their relationship to the victim, in any setting, including but not limited to the educational environment."

[Adapted from the World Health Organisation, 2002, *World Report on Violence and Health*, Geneva.

2. Is Sexual Violence Aimed Only at Women?

No, this is not true. Boys and men can be and are victims of sexual violence both within the educational setting and outside of it. Often men and boys are too ashamed or embarrassed to speak about it, but this does not mean that it does not occur. According to Childline, one in four girls and one in five boys under the age of 16 are raped in our country.

3. How Do We Identify Different Forms of Sexual Violence?

Some forms of sexual violence are:

(1) Child abuse

A child is defined as a person under the age of 18 in terms of the Bill of Rights. A child is sexually abused when another person, who is sexually mature, involves the child in sexual activity that the older person expects to lead to sexual arousal. Child sexual abuse often involves exploitation and the use of coercion/force in the form of rape and harassment described below.

Examples: *Verbal abuse; nudity; undressing or exposing sexual organs; covertly watching a nude child; intimate kissing; touching in a sexual way; interfering with a child in a sexual manner; forcing a child to engage in a sexual act; sexual intercourse with a child; exposing a child to pornography and/or forcing a child to pose for pornographic material.*

(2) Rape

The current legal definition of rape is “unlawful, intentional sexual intercourse with a woman without her consent.” However, this definition is currently being reconsidered by Parliament and will be re-drafted in order to recognise other forms of sexual penetration as opposed to only vaginal / penis penetration (i.e. penetration with objects such as bottles/fingers as well as being forced to perform oral / anal sex). The new definition will also recognise that men and boys can be raped and will include a broader notion of coercion or physical pressure. Coercion has been defined to be broader than physical violence and includes emotional coercion and the abuse of power. Some specific forms of rape are:

- Acquaintance/date rape: happens when a person you know (family member, educator, boyfriend) commits the rape;
- Gang rape: where more than one person commits the rape;
- Statutory rape: when an adult has sexual intercourse with a girl under the age of 16 with or without her agreement.

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(3) Sexual Harassment:

Is an unwanted or an unwelcome act of a sexual nature. The unwanted nature of sexual harassment makes it different from behaviour that is welcome and mutual. Sexual harassment may include physical, spoken/verbal or non-spoken actions. Sexual harassment may therefore be divided into two parts:

- (a) The sexual behaviour must be unwanted / unwelcome;
- (b) The behaviour must prevent your progress as a learner or must hamper your well-being.

- Physical conduct includes touching, sexual assault and rape;
- Spoken or Verbal conduct includes unwelcome suggestions, comments and advances, phone calls of a sexual nature or sex-related jokes and insults, which are unwelcome. It also includes inappropriate comments about one's sex life or a person's body.
- Non-spoken, non-verbal conduct includes unwelcome gestures (such as rude finger signs), unwelcome displays of pictures or movies involving sex, sending letters or faxes or emails containing sexually clear remarks.

Examples:

1. A learner who refuses to intimately kiss her educator and as a result fails in the final exam.
2. A learner is guaranteed an "A" grade provided she has sex with her educator. Even though she "agrees" to the sex she is in fact being pressured to do so by being offered a tangible / real benefit (an "A" pass). This is called *quid pro quo* harassment.
3. A learner who touches a fellow learner's breasts/buttocks in a manner that is unwelcome / unwanted will be committing an act of sexual harassment.
4. An educator brings a pornographic magazine to class and asks learners to look at it and talk about the pictures. Some learners may find it funny and not complain but this does not make what the educator is doing right, if you feel uncomfortable and do not like it – this is still sexual harassment.

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4. What Does the Law Say About Sexual Violence at Schools?

- The South African Constitution, Act 108 of 1996
 - o Everyone has the right to dignity, privacy and equality;
 - o Every child has a right to a basic education. This means that no learner's right to education shall be obstructed;
 - o All children are protected from maltreatment, neglect or abuse;
 - o Everyone has the right to be free from all forms of violence whether from public or private sources.
- The Employment of Educators Act, Act 76 of 1998
 - o An educator MUST be dismissed if he/she is found guilty of having a sexual relationship with a learner or committing an act of sexual assault on a learner, student or other employee.
- The South African Schools Act, Act 84 of 1996
 - o Every learner has the right to privacy, respect and dignity;
 - o Learners are entitled to an environment that is supportive of education. This includes an environment where there is no violence, no harassment and freedom of expression and security is respected;
 - o Where a learner has committed an act of sexual violence, as a corrective measure, such a learner may be suspended.
- The South African Council of Educators (SACE) Act, Act 31 of 2000
 - o SACE is a professional council, which aims to improve the status of the teaching profession and to promote the development of educators and their professional conduct;
 - o Ensures the implementation of the Code of Professional Ethics for Teaching Professionals;
 - o Investigates complaints against educators and takes disciplinary action.

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· The Employment Equity Act, Act 55 of 1998

- o Every employer must take steps to promote equal opportunity in the workplace by eliminating unfair discrimination in any employment policy or practice;
- o No person may unfairly discriminate, directly or indirectly, against an employee in any employment policy or practice on one or more grounds, including 'race', gender, sex, pregnancy and disability;
- o Harassment is a form of unfair discrimination on one or more of the above grounds.

· The Child Care Act, Act 74 of 1983

- o There is a duty on every dentist, medical practitioner, nurse, social worker, educator and person employed by or managing a children's home/place of care/shelter to notify the authorities if there are reasonable grounds for suspecting that a child is being abused or is "*in need of care.*"
- o A child in need of care is defined as:
 - A child that has been physically, emotionally or sexually abused or ill-treated by his/her parents or guardian or the person in whose custody he/she is; or
 - A child that lives in or is exposed to circumstances, which may seriously harm the physical, mental or social well-being of the child.

D. INFORMATION FOR LEARNERS WHO HAVE BEEN ABUSED

1. What Should Be Done When Rape Occurs?

Rape has been described by survivors to be a traumatic, life-threatening experience, which often requires long-term therapy. After being raped the emotional shock (trauma) which a survivor experiences often prevents her from taking certain important steps in terms of her immediate physical and emotional well-being. Without denying the importance of long-term emotional help and support this booklet focuses on some of the practical, medical and forensic aspects below:

Immediate physical and emotional needs: the importance of the first 72 hours

- Speak to someone (preferably an adult) whom you can trust.
- It is totally understandable that you will want to wash immediately, but it is important that you keep all clothes that you were wearing at the time and not bath / shower as evidence may be lost. Hair, blood or semen may be on your clothes or body and this will be important evidence.
- You should also not drink or eat anything or wash your mouth or take any medicine until a doctor has examined you, particularly if you have been forced to perform oral sex.
- The police have to be notified if you are less than 18 years.
- If you are over 18 you have a choice to lay criminal charges. Immediately after the rape, it is useful to report the matter in order that the necessary evidence can be collected. Since collecting medical evidence is a priority you will be taken to a District Surgeon to do a medical examination.
- The medical examination will also involve checking your pregnancy status and providing you with the morning after pill. You will also be given tablets to reduce the risk of HIV infection. The first 72 hours are important for these tablets to work. The sooner you report to a medical facility for a medical examination the better.

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- After the medical examination you will be allowed to wash and change your clothing and then make a statement to the police. You can then indicate whether you still wish to think about laying a formal charge or not. If you decide to proceed, the police will then have enough evidence. No one can force you to proceed if you are over the age of 18. (See pages 17-18 for your rights once at the South African Police Services–SAPS)
- Contact Rape Crisis/Child Line (contact numbers at the end of this booklet) if the police or the District Surgeon has not given you a number for counselling services. Someone will be able to talk to you about your feelings and provide you with the necessary counselling.

Reporting the matter at the school:

- Report the matter to an adult whom you can trust. This may either be a parent, family member, friend, another educator or the principal.
- The school will have to report the matter to the Department of Education who will then investigate.
- The South African Council for Educators (SACE) will be informed and will investigate and make recommendations.
- Even if you do not wish to report the matter to the police, you should inform the principal and the Department of Education as the law states that an educator who is found guilty of raping a learner MUST be dismissed. The “guilty” finding is not dependent on the criminal trial, which often takes years to conclude. It depends on the results of the investigation by the Department of Education.
- The school can also support you once you report the incident by arranging to suspend the educator concerned and giving you time off school until you feel strong enough to return. You may also wish to be moved to another class.

Case Study

A 15-YEAR OLD SCHOOLGIRL'S STORY

“In November 2003 a fifteen year old girl at a Training Centre in Belhar was raped by her educator. The educator was arrested, appeared in Court and was released on bail. The Education Department in terms of the Employment of Educators Act convened a disciplinary enquiry and dismissed him from his job.

The educator challenged the dismissal at Court and won a case of wrongful dismissal. The educator was then told that he could resume his duties. The educator returned to the school in January 2004 and the young girl broke down several times when seeing him back at the school. The criminal case is still pending.”

[Cape Argus, 3 February 2004]

COMMENT

This case study shows how the system has failed the learner. Since dismissal may only take place AFTER an investigation into the matter, the holding of an enquiry and a finding of guilt means that where the educator is found “not guilty,” no dismissal follows and the educator will return to the school. However, even where he/she is found guilty, this guilty finding may be challenged, as the educator has a right of appeal. This means that the educator may be re-instated on legal technicalities if the correct procedure was not followed. The educator may also challenge the fairness of his/her dismissal at the CCMA, Labour Court and Labour Appeal Court.

A further difficulty is that the complainant, in this case a learner, is not a party to the disciplinary proceedings and is only a witness in the case. This means that the learner has no right to appeal a finding of not guilty of the alleged perpetrator. The disciplinary action is taken by the school governing body on behalf of the Department of Education and it is the Department which can authorise any appeal.

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While it is important that the law protects both the rights of learners and educators, it can be very traumatic for the learner concerned when a complaint is dismissed because the school did not follow correct procedures. It is clear that the Department of Education needs to seriously think about the holding of enquiries at school level including the necessary training and support to ensure that guilty findings are not reversed due to not following correct procedure.

2. What Should Be Done When an Educator Harasses a Learner?

The law states that every educator must promote gender equality and must not have any form of sexual relationship with learners. Even verbal forms of sexual harrassment are improper and unbecoming of an educator.

You need to notify the educator that his behaviour is unwanted and unacceptable. A learner gave members of the ERP the following statement: " My teacher keeps touching me in a way that makes me feel uncomfortable and keeps suggesting that we see a movie together. He says that if I know what's good for me I will go with him and leave him to touch me." If afraid to confront the harasser directly, speak to another educator or the principal or your parents. If the sexual harassment continues over a period of time you should tell the principal/another educator or your parents that you wish for action to be taken. You will then be interviewed and asked about what happened and how you would like the matter resolved. This could be informal or formal and your needs will be considered as well as the rights of all learners to be protected from an educator who is a threat to their safety.

3. Do Schools Have a Duty to Help You?

Yes, the school has a duty to help you to ensure your physical, mental and emotional well-being and safety. All reasonable steps need to be taken by the school in order to investigate the complaint. The school will have to investigate the matter before deciding on the suitable course of action and this may take a few days/weeks. Temporary steps to protect your safety and well-being must be taken. This may include suspending the educator or transferring you to another class. Once the school has investigated the matter they will take steps to deal with the complaint either formally or informally.

4. Are Sexual Relations with an Educator Allowed?

An educator must not have ANY form of sexual relationship with learners. A learner told the ERP “ I have fallen in love with my teacher and agreed to have sexual relations with him. I am sixteen years old. Does the school have the right to interfere in this relationship?” The school MUST in terms of the Employment of Educators Act, *dismiss* any educator found guilty of having a sexual relationship with a learner, regardless of the willingness of the learner or the age of the learner. Therefore, the fact that you have agreed to the relationship or have fallen in love will be of no relevance. An educator has a primary duty not to get involved with his/her pupils. Some learners do become attracted to their educators. You have to remember that sometimes educators, because of their positions of authority, can abuse this attraction.

5. What Should Be Done if a School Ignores a Complaint?

If the school refuses to help you, chooses to disbelieve you or victimises you after you have reported a complaint, this will amount to victimisation and possibly discrimination. You have the right to report the matter to the school governing body and/or the Department of Education and to possibly sue the Department for damages for not protecting your rights.

Case Study

A 14 YEAR OLD SCHOOLGIRL'S STORY:

"I was in the class and the educator was looking at me when this guy grabbed my butt. The educator saw it happen. I slapped the guy and told him not to do that. My educator didn't say anything and looked away and went on with the lesson as if nothing had happened.

It really confused me because I knew guys were not supposed to do that, but the educator didn't do anything. I felt like the educator betrayed me and thought I was making a big deal out of nothing. Now... I think of it as just one of those things I have to put up with."

Case Study

A 12 YEAR OLD GIRL'S STORY:

"There were two or three boys touching me. And I'd tell them to stop but they wouldn't! This went on for about six months until...all of them...backed me into a corner and started touching me all over. So I went running out of the room and the educator yelled at me and I was punished.

But after class I told the principal and him and the boys had a little talk. And after the talk was up, the boys came out laughing 'cause they got no punishment."

[Quoted in Bloch M. et al:
Women & Education in Sub-
Saharan Africa: Power,
Opportunities and Constraints
(1998)]

COMMENT

In both these cases the school has failed to protect the girls concerned. In the first case, the girl has not gone to the principal and has resigned herself to live with the harassment. The second girl took up the case but remains disillusioned. Often learners report incidents and nothing happens, except that they feel victimised. In such situations the learner should approach his/her parents or a trusted adult in order to report the matter to the School Governing Body and/or the provincial Department of Education. However, this does not guarantee that anything will be done and even where something is done, it takes a long time to

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finalise. These procedures are also based on the assumption that learners have the ability to “take on” school governing bodies and the Department of Education in order to protect themselves. The resource (financial) constraints most South Africans face means that litigating and suing Departments and schools is not within the reach of the majority of citizens.

Despite these difficulties, we should not give up. Through our organisations, we should put pressure on those schools and state officials who don't take these issues seriously. There are public interest law groups who could assist (see the list at the end of this booklet).

6. Issues of Confidentiality

Your identity must be protected and you can ask that this be kept a secret within the school. The school must respect your right to privacy and confidentiality. Even though the school has a legal duty to report the matter to the Department of Education (and if you are under the age of 18 to the SAPS) your privacy will be protected at the school. If you find that people are talking/gossiping about it and have heard about what has happened, you should inform your parents/school educator/principal immediately in order for the necessary steps to be taken to protect your privacy.

7. Can You Be Asked to Leave the School or Attend the Same Class?

You are entitled to an education and this right to education is not to be restricted or impeded in any way. This means that you can continue attending school and no one can ask you to leave the school or expel you if you have been subjected to any form of sexual violence. You may be embarrassed and fearful of facing the perpetrator. In this case you should tell your parents or the principal or educator so that steps can be taken to ensure that you are not expected to face the perpetrator. The school must also ensure that as little time as possible is lost in terms of your school work.

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The school needs to take steps to ensure that you are not intimidated or further traumatised by the educator and this may mean that you need to be transferred to another class. In serious cases, however, the educator may be suspended from work and you will be allowed to continue at school with as little disruption as possible. You may in any event still wish to be placed in another class or you may even wish to leave the school and attend another school. This is your choice and you should remember that no one can force you to leave the school.

8. What if the Abuser is at Home?

Members of the ERP were asked the following question: “My father has been sexually abusing me since my mother died. I have no-one to turn to at home. Can I ask for help at school even though the abuser is not a teacher?” Yes, even if the sexual violence is happening at home and you report it at school, there is a legal duty on educators and principals to take steps to protect you. This will involve contacting a social worker and the Child Protection Unit (see contact numbers at the end of this booklet) in order to find an alternative place of safety so that you do not need to return home. Court proceedings will then be held at a special court called the Children’s Court. A criminal case will also be investigated. You can expect help and support from the school and no-one may expel or victimise you after you have told your educator. Even though your educator has a duty to call the Child Protection Unit, s/he also has to protect your identity and may not tell anyone whom you do not feel comfortable with.

9. What Is the Difference Between a Criminal Case and a Civil Case?

Where you have been raped or assaulted or sexually harassed you may report the matter to the police and lay a criminal charge. The law says that when a crime is committed this does not only harm the victim of that crime but also the whole society. Therefore, a criminal case is brought by the State against an accused person. In a criminal case the matter is therefore

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between the State and the accused and not between you, the survivor, and the accused. You are only a witness in the case. This means that you do not have to have a lawyer of your own or pay any legal fees. The State Prosecutor will prosecute the case and make decisions about the case and does not need to take your needs into consideration. Even if you wish to withdraw a charge, the final decision lies with the Prosecutor. In a criminal case, the result will be either a suspended sentence or a prison sentence or fine.

In a civil case you are an official party to the proceedings and will instruct a lawyer to act on your behalf. In a civil case you will sue the perpetrator of the rape or sexual harassment for damages (money) for pain and suffering and for your past and future medical expenses. Here you will have control over the handling of the case and when to withdraw or continue with the case. However, if the perpetrator is unlikely to have the money to pay you, it may not be useful to continue as a civil case. You may also sue the school or the Department of Education on the basis of their duty to protect you from violence whilst at school if it can be proved that they failed in their duty.

If you are under 18:
the educator / principal / social worker has a legal duty and MUST report the matter to the SAPS and the Child Protection Unit will then launch an investigation.

If you are over 18:
you have a choice whether to lay a criminal charge. No-one can force you to continue with a criminal charge or with a criminal case if you are over the age of 18. In these cases you may report the matter to the SAPS and complete an incident report and sign a sworn statement indicating that you do not wish to continue with a criminal charge at that stage.

Giving a statement does NOT amount to a criminal charge being laid. This gives you the time to think about whether you wish to continue with a criminal case or not.

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After a sexual violation it is often not easy to think clearly and decide. However, the sooner the incident is reported and evidence collected the stronger the case will ultimately be. If you are uncertain, it is therefore better to report the matter and complete an incident report. This gives you time to lay criminal charges later without the fear of losing evidence. In cases of rape the State will prosecute rape cases for as long as 30 years after the incident. Remember though that the chances of success may be less or diminished by a lengthy delay and where no evidence has been collected and statements taken soon after the rape.

10. What Will Happen at the Police Station? What are Your Rights?

- a. You have the right to make a statement and to request that a criminal charge be laid and a docket opened.
- b. You have the right to lay a charge. However, the decision whether the charges will be prosecuted or not is made by the prosecutor and depends on the prospects of success and availability of evidence. After the investigation a decision will be made in relation to prosecuting the case.
- c. You have the right to request that a female police officer take your statement.
- d. After the initial statement, a medical examination will follow. Within 24-48 hours you may return to make a more detailed statement if you have remembered other details. Often when in shock one is unable to clearly remember all the details.
- e. You have the right to have someone present with you, such as a friend, counsellor or parent during questioning and the medical examination.
- f. You have the right to check the statement, which the police officer will write out as you speak. You can re-read it and make changes if it is incorrect. However, once you sign it, no changes are possible.
- g. You have the right to be told who the investigating officer will be – if this cannot be done immediately they should provide you with this information within a day or two.

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- h. You have the right to be given a case number for easy reference purposes when you call to ask about the case.
- i. You have a right to a copy of your statement.
- j. You have the right not to be victimised or discriminated against in the process.
- k. If you need medical attention the police have to ensure that you are taken to a medical facility where you can receive medical and other treatment.

11. What Should You Do if the Police or the Law Treats You Badly?

The name and rank of the police officer concerned should be noted. The incident should then be reported to the Station Commander and failing any action on the Station Commander's part, the incident can be reported to the Independent Complaints Directorate (contact details can be found at the end of this booklet) or the Provincial Commissioner of SAPS.

You have a right to request reasons and may approach the Senior Prosecutor at the Court concerned or the relevant *Regional Director of Public Prosecutions* to investigate the matter. It is advisable for complaints to be in writing. (Contact details can be found at the end of this booklet).

Case Study

The Constitutional Court in an unanimous judgement found the minister of Safety and Security liable for the gang-rape of a woman by three on-duty police officers. The raped woman won the case after a six-year long battle for justice in which she was supported by the Women's Legal Centre.

The judgement handed down by Justice Kate O'Regan said that the High Court and the Supreme Court of

Appeal had failed to consider the importance of the police's constitutional duty to protect vulnerable citizens, especially women. The case was referred back to the High Court for it to assess the amount of compensation owed to the rape survivor.

Legal experts and gender activists welcomed the court's ruling. The decision will force the police to recognise their responsibilities and to act against other policemen who break the law, they said.

E. INFORMATION FOR EDUCATORS

“Schools find sexual abuse embarrassing and often will attempt to sweep it under the carpet. The survivor is left to sink or swim, there are no support systems designed to assist. The victim runs the risk of not being believed.”

[Retired School Principal, as quoted in
Human Rights Watch Report]

Educators are often reluctant to admit that sexual violence and harassment are problems at schools. In most cases educators are aware of the problem and are unhappy about it. However, the number of educators that actually object and act against sexual violence and harassment is small. Like learners, educators feel powerless to tackle the issue and prefer to ignore it, especially where the perpetrator is a colleague or the principal. It is important for educators to know the role that they are expected to play in cases of sexual violence and the duty they have to end sexual violence at schools. It is important to acknowledge that educators are themselves victims of sexual violence.

1. Recognising Signs of Harassment, Abuse and Rape

Sexual violence or harassment is extremely threatening to a student's physical safety and emotional or psychological well-being, both immediately and in the longer term. Psychological effects include loss of self-esteem, depression, fear for personal safety, anger, hostility towards the perpetrator and an increased risk of suicide. As a result of sexual harassment a learner may avoid class or school, not want to talk in class or have difficulty concentrating, lose trust in school officials, become isolated and have lower academic results. The impact is often worse for an individual when, as is often the case, no action is taken and a person has to meet the perpetrator on a regular basis at their school / institution.

2. Duties of an Educator

The best interests of the learner are foremost in every case of suspected abuse. The Child Care Act requires you to report any suspected abuse to the Child Protection Unit where the learner is under the age of 18. This is a legal duty. You should immediately report your suspicions to the principal. Local welfare organisations or social workers should be contacted and necessary arrangements should be made for counselling.

If a learner confides in you, it is important to balance the needs of the learner and the need for confidentiality with your legal duty to report the matter. Prevent further pain by making a detailed summary of the account, as this will prevent the learner having to repeat the details. It is important that you do not interrogate or disbelieve the learner, rather show empathy, warmth and make sure the needs of the learner are respected.

Explain what steps the school and/or the Department will be taking, as well as the police, so that the learner is fully informed. Do not speak to other staff members about the matter and do not investigate and interview witnesses until the school has decided on what to do and the SAPS have started their investigation. Where a learner over the age of 18 does not wish to lay criminal charges or involve the SAPS, respect that learner's wishes but make sure that s/he is not being intimidated.

In cases of learners under the age of 18 you should explain that the Child Protection Unit would have to be informed. Do not confront the parents yourself if they are suspected of abusing the child. In cases of rape where there is a risk of pregnancy, sexually transmitted infections or HIV, make sure that the learner is given all medical information about the morning-after pill, and if it is too late to take the morning after pill, advise the learner of her right to an abortion. She should also be referred to counselling in respect of all of her options and her HIV status.

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Make sure that action is taken swiftly and involves all role-players in the process. Explain to the learner what steps will be taken and the plan of action to be followed.

3. When Educators are Harassed

You should register a complaint with the school principal or if the school principal is the perpetrator, the governing body of the school and the Provincial Department of Education. The matter will then be investigated by SACE and a decision will be made as to whether or not to continue formally / informally in terms of your grievance/complaint. As a result of the complaint you have made the Department may decide to formally charge the educator / principal with misconduct and a disciplinary enquiry will then be held.

You will have to testify. Should the perpetrator be found guilty he/she may be dismissed depending on the severity and circumstances surrounding the incident(s). The perpetrator has a right to appeal the decision and may challenge the proceedings at the CCMA (Centre for Conciliation, Mediation and Arbitration) or the Labour Court. You may also proceed to the CCMA or Labour Court should you not be satisfied with the manner in which the matter is dealt with. An employer has a duty in terms of the Employment Equity Act to investigate and take all reasonable steps to end sexual discrimination in the workplace. Where an employer (the Department) fails to take any steps or acts unreasonably when an employee raises a complaint of sexual harassment, the employer may be held responsible for the acts of sexual harassment perpetrated. You may lay criminal charges as well.

4. Preventing Sexual Violence

The culture of the school, the way the school is organised and the role models it offers learners all play a part in breaking the cycle of violence. It should also be acknowledged that the authoritarian nature of schools often allow gender violence to flourish by

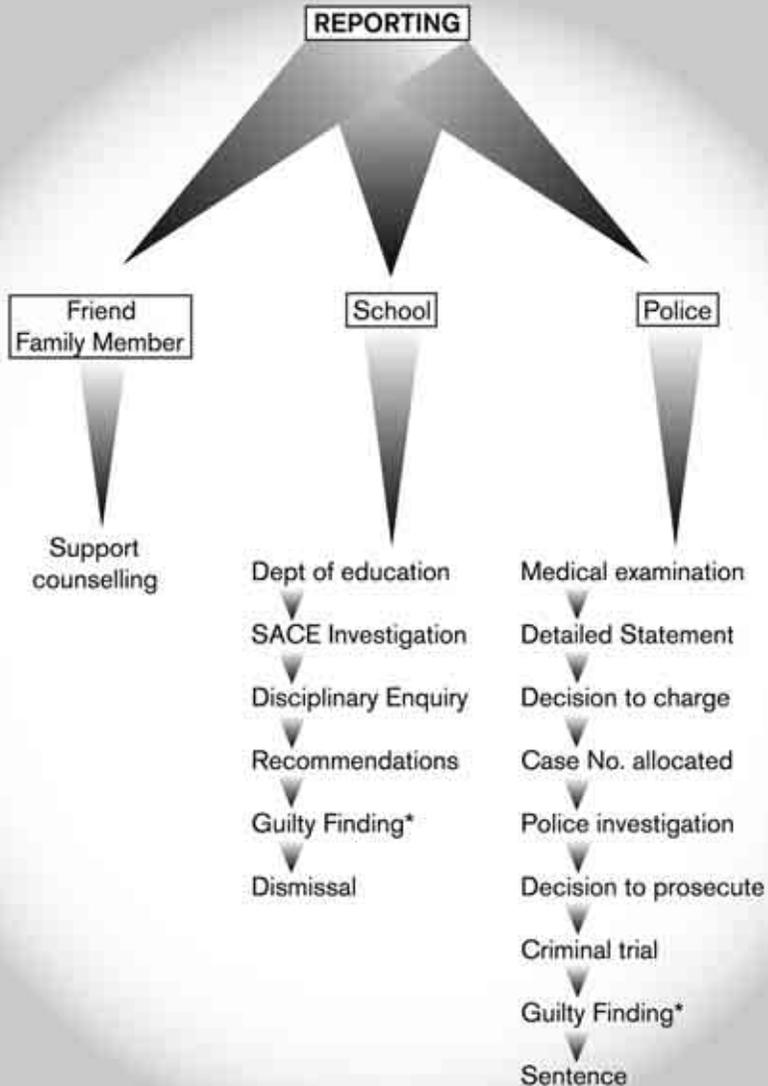
Sexual Violence in Schools

teaching learners that the educator is a figure of authority never to be questioned, even in instances where sexual violence is being committed.

These ideas and practices need to be challenged at a broader level and thus the curriculum and the way it is presented to learners should address the issue of sexual violence. It should also go further and tackle issues of gender roles and sexuality. Workshops and regular discussions on the issue of sexuality and gender stereotyping should be held within the school. Awareness-raising programmes should focus on building a constructive engagement with learners and developing a deeper understanding of adolescent sexual identity. Guidelines or policies should also be developed for schools in order to ensure a fair and coherent approach to these issues. Schools should focus on training school governing bodies, educators and learners on how to prevent and deal with sexual violence in schools, if it occurs.

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STEP-BY-STEP GUIDE FOR LEARNERS WHO HAVE BEEN SEXUALLY ASSAULTED



*A not guilty finding (disciplinary / criminal) will result in the educator returning to school unless the school / department of education appeals or the state appeals in a criminal case.

Sexual Violence in Schools

WARNING SIGNS FOR EDUCATORS TO NOTICE POTENTIAL SEXUAL ABUSE OF LEARNERS

Unusual knowledge / curiosity around sex

Sexual acting out / inappropriate behaviour

Withdrawal in the classroom / secretive

Sudden drop in school performance

Poor peer relationships

Loss of self-esteem / depression / tearfulness

Fear for personal safety

Unexplained anger / hostility

STEPS TO BE TAKEN BY AN EDUCATOR

Try to speak to the learner

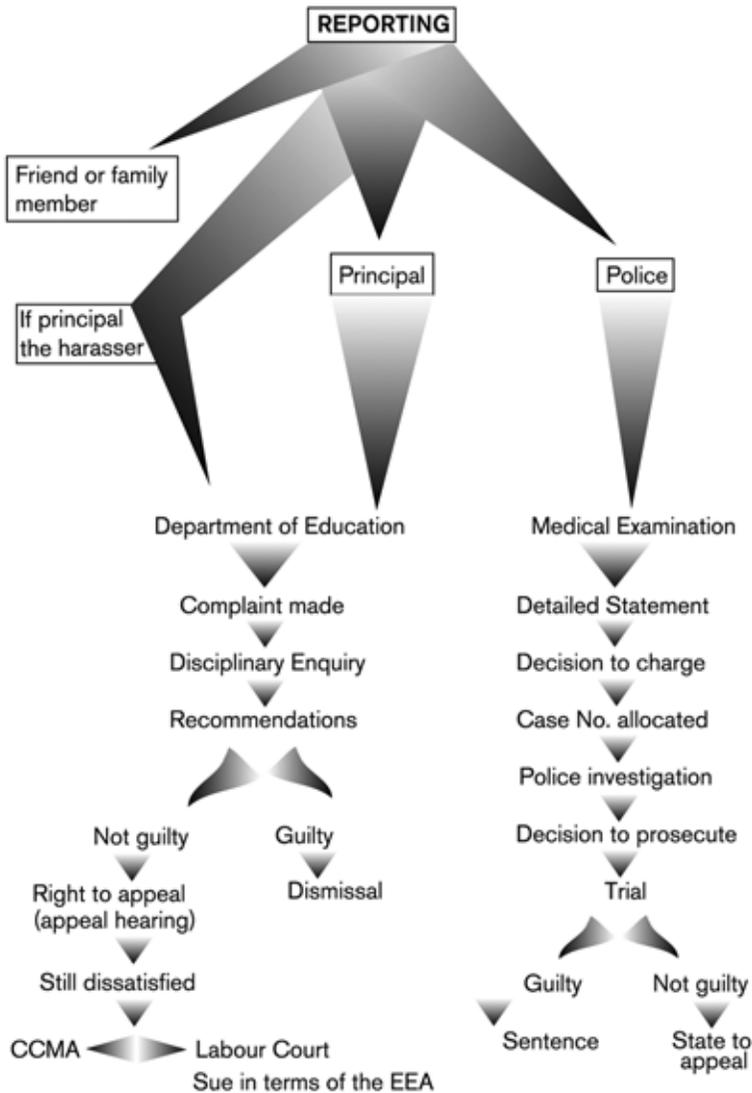
Believe the learner and do not judge

Explain that it was not the learner's fault

Explain and help in terms of what will happen next and who will
need to be notified

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STEP-BY-STEP GUIDE FOR EDUCATORS WHO ARE SEXUALLY HARASSED



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I. WHO TO CALL WHEN IN A CRISIS

National Organisations	Services	Telephone number
1. SAPS Emergency Number	Emergency facility of SAPS to report any crime	10111
2. SAPS Crime Stop	Toll-free number of SAPS	08600 10111
3. Child Protection Unit	Division of South African Police Services specialist unit	(012) 393-2359 /62/63
4. Child Line	Gives telephonic counselling and clinical services to children and their families and also short-term intervention therapy. Toll-free number.	0800 055555
5. Stop Women Abuse Help Line	National hotline number (toll-free) referral base and counselling	0800 150150
6. Rape Crisis: Western Cape Port Elizabeth Kwa-Zulu-Natal	Emergency crisis counselling and forensic examination as well as face to face counselling and information	(021) 447-9762 (041) 481-3804 (033) 342-5929
7. People Opposing Women Abuse (POWA)	Telephone and face to face counselling, Emergency crisis counselling and shelter facility	(011) 642-4345
8. Resources Aimed at the Prevention of Child Abuse and Neglect (RAPCAN)	Advice, training, resources and counselling on child abuse.	(021) 448-9034 (011) 403-0541

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USEFUL CONTACT INFORMATION

1. Commission on Gender Equality (CGE)	Power to investigate any instance of gender inequality and to resolve cases through mediation or litigation	(011) 403-7182
2. Director of Public Prosecutors	Makes decisions whether to prosecute criminal cases. Can be approached to make reports or complaints re: prosecutors	(012) 845-6000
3. Family and Marriage Society of South Africa (FAMSA)	Telephonic and face to face counselling as well as emergency crisis counselling and group therapy	(011) 788-4784
4. Independent Complaints Directorate	Deals with complaints in relation to members of the police force	(012) 320-0431
5. Life Line	Emergency crisis counselling as well as face to face and telephonic counselling and Court preparation	(011)781-2337 or 0861 322 322
6. National Network on Violence Against Women	Acts as a link body and advisory capacity in relation to violence against women	(012)321-4959
7. National Institute for Crime Prevention (NICRO)	Long-term counselling, face to face counselling, paralegal advice and advice from lawyers	(011)336-5236
8. S A National Council for Child & Family Care	The co-ordinating body for 177 affiliated child welfare societies, organisations and community outreach projects.	(011)492-2950
9. SAPS Provincial Management - National	To report any irregularities / problems encountered at police stations or with officers concerned	(012)393-1000

Sexual Violence in Schools

THE DEPARTMENT OF EDUCATION CONTACT DETAILS

Province	Telephone Number
Eastern Cape	(040) 608-4230
Free State	(051) 404-4911/8434
Gauteng	(011) 355-0597
Kwazulu-Natal	(031) 274-4013
Limpopo	(015) 290-7600/7661
Mpumalanga	(013) 766-5300
National	(012) 312-5420/5465/ 5377/5428
Northern Cape	(053) 839-6500
North West	(018) 387-3424/5
Safe Schools Call Centre	0800 45 46 47
Western Cape	(021) 467-2577

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OTHER USEFUL ORGANISATIONS

Organisation	Services	Telephone number
Agisanang Domestic Abuse Prevention & Training	Telephonic and face to face counselling as well as group therapy	(011) 786-6608 or 885-3305
Black Sash	Legal protection and advice for Refugees	(011) 834-8361/5
Centre for the Study of Violence & Reconciliation	Face to face counselling and emergency crisis counselling. Training programmes dealing with gender-based violence	(011) 403-5650
Lawyers for Human Rights (Gauteng)	Gender Project provides legal advice in all matters relating to gender	(011) 339-1960/2
Legal Resources Centre (LRC) - National	Public interest law centre, general legal advice.	(011) 403-0902
Sexual Harassment Education Project	Telephonic advice by Lawyer as well as by a Paralegal	(011) 403-0541
Women's Legal Centre	Public interest litigation around women's rights; general legal advice	(021) 424-0870

Sexual Violence in Schools

A useful resource is the National Directory of Services Addressing Gender-Based Violence. The Directory has information and contact details for more than 200 organisations countrywide. Many of them also provide services for men and boys who have been sexually assaulted.

The Directory includes listings in each of South Africa's nine provinces for:

- counselling services
- shelters
- legal services
- specialist police units
- courts
- health services
- one-stop centres.

Download the directory at
www.csvr.org.za/gender/directory/index.html
To order a copy contact Towera Sichinga on
(011) 403 5650 extension 126 or
tsichinga@csvr.org.za