MEDICO-LEGAL FINDINGS FROM EXAMINATION OF RAPE VICTIMS IN SOUTH AFRICA

EVIDENCE AND RECOMMENDATION FROM A STUDY OF THE INVESTIGATION, PROSECUTION AND ADJUDICATION OF REPORTED RAPE CASES IN SOUTH AFRICA, 2012

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INTRODUCTION

The National Directives and Instructions on Conducting a Forensic Examination on Survivors of Sexual Offence Cases in terms of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 2007, provide for standardized procedures for conducting forensic examination on sexual offence survivors in all health establishments (1). Together with the National Sexual Assault Policy and the National Management Guidelines for Sexual Assault Care (2), the Health Directives provide for a full range of comprehensive services for victims (1). In accordance with these Health Directives, victims reporting cases at police stations should be referred to a public health facility. The medicolegal examination of a rape survivor forms part of the investigation of the case, while also providing the necessary medical care. Findings from the examination are captured on the J88 form, which constitutes key evidence that is used during court proceedings. The Sexual Assault Evidence Collection Kit (SAECK) for children or adults is also used to collect samples for DNA analysis during the medical examination. The forensic kit is a standard part of medical evidence collection [9,10].

As part of the national integrated response to sexual offences, the National Prosecuting Authority's Sexual Offences and Community Affairs Unit manages a national network of specialise Thuthuzela Care Centres (TCCs), which provide a one-stop service to survivors and essential services including emergency medical care, HIV post exposure prophylaxis, counselling and follow-up support. The TCCs are either located at public health facilities or are stand-alone facilities, and are operational to varying degrees across the country (2).

This research brief outlines key findings from an analysis of 2810 J88 forms from a random and representative sample of rape cases opened at police stations across South Africa in 2012(3). The study conducted by the SAMRC and partners was aimed to describe attrition of rape matters within the criminal justice system and investigate the factors associated with it. The data abstracted from the j88 forms included details of the healthcare provider who completed the form, the medical and gynaecological history of the victims, the findings on physical, genital and anal examinations, and the quality of completion of the J88 forms

HEALTHCARE PROVIDER AND LOCATION OF SERVICE

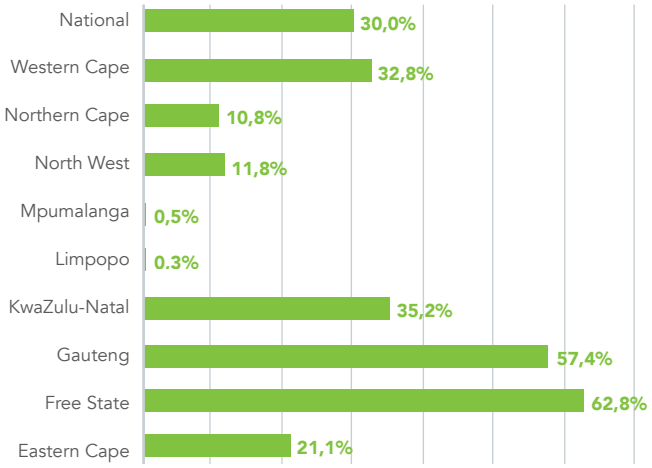
MAJORITY OF CASES ARE SEEN IN GENERAL PUBLIC FACILITIES

Whilst there has been concerted efforts to increase coverage of the specialised and one-stop TCCs nationally, the majority of rape victims still utilize services at general public facilities (56.8%). Only 30% of victims were examined in Thuthuzela Care Centres (TCC) and another crisis centres. Less than 1% of victims were seen in private practice (0.5%). In the remaining cases, the location of the examination was not recorded or unclear from the J88 forms. Compared to older victims, child victims less than 12 years of age were more likely to have been examined in a TCC or other crises centre.

AVAILABILITY AND UTILIZATION OF TCCS IS UNEVEN ACROSS PROVINCES

The proportions of victims utilising TCC services differed across provinces. The fewest victims seen in TCCs were in the Limpopo and Mpumalanga provinces. In contrast, victims in Free State (62.8%) and Gauteng (57.4%) victims were more likely to have had their examination done in TCCs. Significant proportions of victims were also examined at crises centres in KwaZulu-Natal (35.2%), Western Cape (32.8%) and Eastern Cape (21.1%). These findings reflect provincial differences in the availability and utilization of specialised centres of care for victims of rape.

Proportion of victims examined in TCCs and crises centres by province



MORE VICTIMS ARE EXAMINED BY DOCTORS COMPARED TO NURSES

More victims were examined by doctors (81%), compared to nurses. Almost all victims were examined by doctors in Kwazulu Natal (96,3%), Western Cape (93.3%), North West (91.4%) and North Cape (87.9%). In comparison, more victims examined by nurses in the Free State (62.9%) followed by Mpumalanga (44.2%), Limpopo (23.6%) and Gauteng (21.0%). Doctors are a much more limited human resource, who are often needed for other health care services and there needs to be considerations made to the role of the forensic nurse in the delivery of post-rape services in South Africa.

COLLECTION OF FORENSIC EVIDENCE

VICTIMS WERE MORE COMMONLY EXAMINED DURING THE DAY

Victims were mainly examined during the day and 60% were examined between 7am and 7pm. Almost all the examinations conducted by nurses were during the day (7am to 7pm). Due to the organisation of service, doctors are still primarily responsible for providing after-hours services. Depending on the arrangement, this may mean that doctors must provide medico-legal services in addition to other services that they cover after-hours, for example the emergency room, and this may affect the quality of care provided.

CHILD AND MALE VICTIMS OFTEN DELAY REPORTING CASES

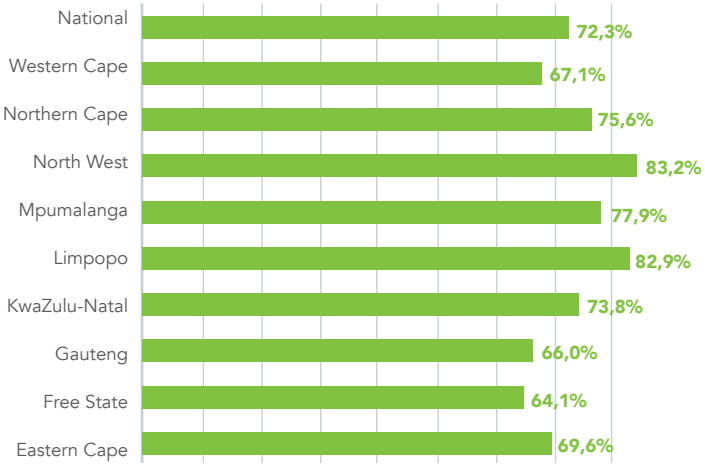
Most victims (84.7%) were examined within 72 hours of the rape incident. Children often delayed in presenting after rape: 92% of adults were examined within 3 days compared to 66% of children aged 0-11 years. More male victims (67.5%) were examined after 72hours. These findings are consistent with previous literature showing that 43% of children's cases come to the attention through accidental detection when someone becomes concerned due to observed injuries, behaviour change, or emotional changes leading to questioning/assessment (4). The delayed reporting and examination could affect the provision of medical care including post-exposure prophylaxis for HIV, and to negatively impact the possibility of obtaining forensic evidence.

Victims examined within 72hours of incident by age

COLLECTION OF SAECK EVIDENCE IS UNEVEN BY PROVINCE, VICTIM AGE AND SEX

Health providers also collected forensic evidence with the SAECK in three quarters of cases in which the J88 form was available. The proportion of cases in which the health care providers collected SAECK evidence ranged from 64% in the Free State to 83% in the North West. SAECKs were completed in more of the female than male cases and more among the adult compared to the child victims. Moreover, Forms appeared to be more poorly completed for male survivors. This could undermine the use of the J88 form as evidence for these survivors. The examination of male or child victims require specific skills, knowledge and approach, yet no evidence was found that they were consulted by more experienced health care providers or specifically within specialised centres.

Completed SAECKs by province



QUALITY OF J88 COMPLETION

J88S ARE NOT ALWAYS COMPLETELY AND APPROPRIATELY FILLED.

Sections of the J88 form were sometimes left incomplete. Problematic sections included sections covering injury findings, developmental stages and conclusions of examinations. The deficiencies in the completion of records by health care providers and the collection of evidence from rape survivors is similar to what has been reported in other previous work (2). This is despite past training efforts made to improve training of health care providers (3). The inadequate completion of forms may be due to several factors: forgetting to record information, healthcare providers feeling that the information is not required or essential, e.g. age of menarche, victims unable to provide information, healthcare providers unable to assess victims to provide a definite response, e.g. lack of equipment to obtain height and weight, lack of awareness or training of healthcare providers, and deficiencies in the design of the current J88 form. Nonetheless, the quality of J88 completion by healthcare providers highlights gaps in medicolegal services offered to some survivors with differential quality for those with specialised needs such as children and male victims.

SOME HEALTH CARE PROVIDERS DO NOT PROVIDE CLEAR AND RELEVANT CONCLUSIONS TO THE EXAMINATION

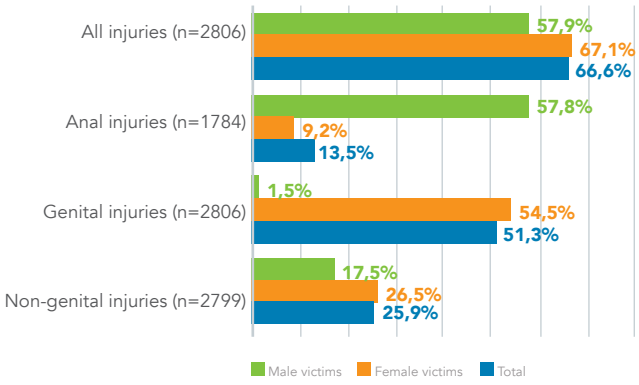
Conclusions made by the health provider are important to assist prosecutors and presiding officers to interpret the findings reported in the J88 form. Conclusions were made on the separate examination sections in approximately 90% of victims, except for the male genital examination, where conclusions were recorded in 56.7% of forms of male victims. Irrelevant conclusions were often made in the general body examination section of the form. Here healthcare providers tended to comment on the genito-anal findings, and did not comment on the general physical examination. Irrelevant conclusions were made in over a third of forms for the general examination and were more common for the examination of female victims than male victims. Forms completed by doctors were more likely to have irrelevant conclusions recorded (43.9%) compared to those completed by nurses (11.3%). These findings show different proficiencies of providers in completing the forms and inherent problems with the structure of the current J88 form.

INJURY FINDINGS

GENITAL INJURIES WERE MOST COMMONLY REPORTED BUT WERE NOT FOUND IN ALL VICTIMS

Injuries were found among 66% of victims and these were more likely to be genital injuries (51.3%). A quarter of victims (25.9%) had non-genital injures, and 13.5% had anal injuries. Genital injuries and non-genital injuries were higher among female victims (54.5% and 26.5% respectively). Genital injuries and anal injuries were highest among the under 12 victims. Non-genital injuries increased with age and were highest among the adult victims and this follows findings that perpetrators were more likely. Anal injuries were higher among male victims (57.8%). The most common anal injuries were lacerations (50.0% for female victims and 52.5% for male victims respectively). A high number of victims were also reported to have funnelling or abnormal tone (21.1% and 36.0%).

Recorded injuries by victim sex



HEALTH CARE PROVIDERS INADEQUATELY DESCRIBED INJURIES

Healthcare providers did not describe injuries sufficiently for medico-legal purposes as the location of the injuries was not adequately reported in 29% of victims with injuries. Similarly, injuries reported in the text did not correlate with those reported on the diagrams in 23.4% of cases with general body injuries and in 40.3% of cases with genito-anal injuries.

CONCLUSION

Medico-legal evidence is very important in progress of cases in the criminal justice system. The majority of victim examination and health care is still provided through hospitals rather than crisis centres and it is vital that staff are properly trained to carry out this work. The National Department of Health developed a national curriculum for this in 2008(54) and training was rolled out in the provinces, but there has not been a great deal of training recently. It is essential that this is continued.

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WHAT CAN BE DONE

- More nurses should be trained to provide post-rape care services and conduct examinations.
- Improve the ability of health care providers with basic training and in generalised settings to offer specialised care to child and male survivors by ensuring that training on post-rape care includes focused areas on the care of child and male survivors, and that the training continues in a systematic approach.
- Completion of J88 forms needs to be reinforced with health care providers and quality control measures are implemented to ensure this.
- All health care providers tasked with providing post-rape care should be trained to understand the National Directives and National Guidelines. Health care providers should also be familiarised with the approved revised J88 form and how to complete forms satisfactorily.
- Continue raising awareness among stakeholders in the criminal justice system that in every age group, the lack of injuries does not imply that rape did not occur. Health care providers should use this information when interpreting findings from a medicolegal examination and during court testimony.

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