



## **Thohoyandou Victim Empowerment Programme**

Profile report: rate of conviction rates in rape cases with which the TVEP Access to Justice System worked, between 1<sup>st</sup> January, 2011 – 31<sup>st</sup> December 2012

May 15<sup>th</sup>, 2015

### Introduction

This report is based on the quantitative analysis of 699 case folders held by the Access to Justice Project at the Thohoyandou Victim Empowerment Project. Each case folder contains information on a rape reported to TVEP, by the complainant or (in the case of a minor) by the complainant's parent or guardian. While there have been important studies on low conviction rates within cases of rape in South Africa (Artz and Smythe, 2009; Jewkes, et al, 2012), very little reference is made in national research to Limpopo Province. Given the centrality of TVEP's work in this province on the provision of legal support to complainants of rape, particularly in the Thulamela District, it is valuable to begin to establish a baseline concerning conviction rates in the province, one characterized by high levels of poverty, unemployment and immense pressure on the policing and juridical systems.

### Executive Summary

Low conviction of alleged perpetrators in cases where a complainant bears witness to a rape has been factually established by post-1994 research, in several studies. These conviction rates compare unfavorable with those of other countries (Jewkes et al, 2012). While a CIETAfrica study of 1998 stated that .25 of 394 cases they analysed resulted in a conviction, later studies have put the rate of conviction higher (Vetten, et al, 2008) at 17% for reaching a trial, and 4.1% conviction. Artz and Smythe point out that what is term 'the rate of attrition' in rape cases varies very widely from province to province, and within provinces between districts. The range of reasons for high attrition rates is also complicated, and multidetermined. Many studies point to the under-resourcing and undertraining of police (Jewkes, et al, 2012) and to the overall



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difficulty of establishing credibility for complainants in the eyes of the court (Bennett, 2013).

TVEP provides rights-based prevention, empowerment and support services to remote and under-resourced communities. Their model consists of nine integrated projects aimed at reducing the incidence and mitigating the impact of sexual assault, domestic violence, child abuse and HIV&AIDS; all these interventions were developed in direct response to needs identified by the community they serve. In the Access to Justice Projects, team members take over the monitoring of each case of domestic violence, sexual assault or rape, once the client has left the trauma centre, with the specific objective of ensuring that the SAPS investigation is well managed, the client's rights are not violated and that their cases move swiftly through the criminal justice system. Services provided by this Team, as well as the Victim Advocates who report to them, include legal advice, accountability monitoring, case monitoring and management, liaison between the client, SAPS and the CJS, court preparation, care of child witnesses whilst waiting to testify, general advocacy and lobbying. AtJ thus maintains a comprehensive database of materials relating to all TVEP clients who lay charges against perpetration of domestic violence, sexual assault or rape.

In this study, 699 cases of rape were quantitatively analysed in order to determine the rate of perpetrator conviction in a cohort of closed cases, taken from the period January 1<sup>st</sup>, 2011 to December, 2012.

Key findings were:

- Of the 669 cases documented, 360 complainants were over 18, and 339 below 18. 51.5% were thus legal adults, and 92% of these were women. 48.5% were minors, and 99% of these were girls.
- The youngest complainant in the cohort was 1 year and 4 months old, and the oldest was 86 years old.
- Among the minors, 68% of the complainants were under 15. 37% were under 10.
- The vast majority of all complaints did not reach a trial (94.7%). 341 (48.7% of whole cohort) of the adult complainants did not reach trial, and 321 (46% of the whole cohort) of the minor complainants did not reach trial.



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- The majority of cases not reaching trial involved a failure to find and arrest the perpetrator (40.2%). This failure resulted in attrition of 46.9% of adult complainants, and 37.7% of minor case attrition. Of the 37.7% minor attrition through a failure to find and arrest a perpetrator, 28% involved the rape of minors below 10.
- 37 cases altogether reached a trial. That constitutes 5.3% of the whole cohort.
- 5.3% of adult cases reached a trial, and 5.3% of minor cases reached a trial.
- Overall, there was a 3% conviction rate.
- 11 adult cases resulted in a conviction, with sentences for the perpetrators ranging from 10 to 18 years. 10 of the cases involving minors reached a conviction rate, and sentences ranged from life imprisonment to suspension of sentence for 5 years. Of the 10 cases of minors, two involved minors under 10.
- 16 cases making it to trial resulted in acquittal of the perpetrator (2.3%). This affected 8 adult complainants and 8 minors. All of the latter were over 10.

Key points to note from these findings are:

- The overall rate of case attrition is very high (94.7%). It is not, nonetheless, substantially higher than that documented in earlier research, done in both rural and urban environments.
- It is critical to note that despite the very low conviction rate, something of which rape complainants must be aware, 669 rape complainants were willing to work with TVEP's AtJ project over a period of the 24 months in the study. This may suggest a very high level of confidence in what it is that the project delivers, outside of the hope of a conviction for the perpetrator.

### Brief background to the study

Since 1998, research on the process from making a formal complaint of rape, through state services (including presentation at a hospital or clinic) through to case resolution



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has been one focus of South African work on the meaning of gender-based violence in the country. Strong studies have been consistently conducted by a core group of researchers, based *inter alia* at the Medical Research Council, Tshwaranang Legal Centre, and the Gender, Health and Justice Unit, have developed a profile of what is term 'attrition' in cases of rape (and domestic violence) (see Jewkes et al, 2012; Sigsworth, et al, 2009; Artz and Smythe, 2007, 2008, 2009; Vetten, et al, 2008). Key findings include the difficulty of understanding 'attrition' in a generalized way, giving the vast socio-economic differences in the nine SA provinces, and between districts in each province, and the fact that 'attrition' may include a number of distinct phases (such as a complainants' withdraw of a complaint as opposed to a Deputy Prosecutor's decision not to take the case to trial), each of which deserves full analytic attention. While there is an overarching profile which suggests that a only a very small percentage of rape complainants actually go to a trial and even fewer cases result in a conviction, almost nothing is known about what it means to support complainants during their (usually) months' long engagement with NGO-based support programmes and about whether such support makes a difference to their experience of the justice system.

TVEP works in largely rural communities in the Thulamela District of Limpopo Province, and offers a wide range of support and prevention projects which have a strong focus on victims of rape, sexual assault, and domestic violence. Although TVEP is responsible for running a number of education and advocacy programmes, the organization also supports those who have been assaulted, in very proactive ways. Since 2002, TVEP has supported over 17,000 clients,' and runs both a Victim Support and Empowerment project and an Access to justice project which interacts directly with each client's case. One of the results of this work is the maintenance of a data-base of client case-folders. These folders are not 'dockets,' in the same way that police records are 'dockets,' and they hold records pertinent to TVEP's internal handling of each client's case as it develops. This means that details of what has happened to each client as she/he progresses through the medico-legal system, after a rape, sexual assault, or instance of domestic violence, are housed within TVEP, and offer a solid record of key aspects of a client's experience.

Given that Limpopo province is rarely foregrounded in research on gender-based violence, TVEP is a central source of critical information. This particular study arises in



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the context of maintaining TVEP's Access to Justice programme, and complements a number of studies and reports addressing aspects of work generously supported by Sonke Gender Justice.

### Study Design

The study was implemented by researchers within TVEP. 669 closed cases were selected from the period of January 1<sup>st</sup> 2011 to December 2012 (this does not constitute the available sample for the period, but unresolved cases were clearly not relevant to the study). These cases included both minor and adult (18 years and older) clients, 339 of the former (48.5%) and 360 of the latter (51.5%).

Case folders of each client are used by TVEP to monitor the process of her/his engagement with the justice system, and (usually) include the following documents:

1. A cover sheet, listing the client's profile number (internal to TVEP), name, the name of the Victim Advocate, options for the legal status of the case, additional notes on the case, its date of closure, its legal outcome
2. The intake profile forms completed by TVEP
3. The Summary of the incident as told to TVEP worker
4. The plan of action developed for the client by TVEP
5. Detailed follow up record on the plan of action as it unfolded
6. Copy of the J88
7. Copies of additional TVEP record documents (such as records of home visits)
8. Follow up form recording details of legal court

Case folders include the names and identifying details of both clients and sometimes alleged perpetrators. They may also include details of client's family members and/or places of employment. They are thus highly confidential documents, and as such, as kept secure at all times, and available only to TVEP workers and allied researchers. At no time in the study were these details transferred to any other document, or made available to anyone beyond the area of the research team.

Each folder was analysed in order to respond to the following questions:



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1. What does the data tell us about the rate of conviction in cases of rape with which TVEP is engaged, through the AtJ project?
2. What does the data tells us about the shape of ‘attrition’ in these rape cases?

Quantitative analysis of the data was done, usually Microsoft Excel, and quantifying each case by number, so that both percentages and actual numbers could be found.

Findings

Table 1 offers a breakdown of the ‘attrition’ profile for the 699 clientcase folders analysed

**TABLE 1: BREAKDOWN OF LEGAL OUTCOME FOR RAPE CASES FROM TVEP’s ACCESS TO JUSTICE PROGRAMME (1<sup>st</sup> January, 2011 – 31<sup>st</sup> DECEMBER, 2012)**

N = 699<sup>1</sup>

<b>CASE-FOLDER OUTCOME</b>	<b>ADULT (18 and above)</b>	<b>MINOR (17 and below)</b>
<b>UNDETECTED 281</b>	<b>160</b>	<b>121</b>
<b>WITHDRAWN BY DPP 147</b>	<b>63</b>	<b>84</b>
<b>WITHDRAWN BY PO 29</b>	<b>19</b>	<b>10</b>
<b>CASE NOT OPENED 167</b>	<b>67</b>	<b>100</b>
<b>CLIENT W/DRAWN 38</b>	<b>32</b>	<b>6</b>
<b>ACQUITTED 16</b>	<b>8</b>	<b>8</b>
<b>CONVICTED 21</b>	<b>11</b>	<b>10</b>
<b>TOTAL 699</b>	<b>360</b>	<b>339</b>
<b>PERCENTAGE CONVICTED 3.0</b>	<b>3.05</b>	<b>2.92</b>

<sup>1</sup> This does not include the entire set of case-files from AtC during this period; it excludes still ongoing cases, and all DV cases, some of which include sexual abuse and rape



As the table suggests, of 699 case folders analysed, very few of them reached the trial stage. 94.7% of the overall cohort did not. 341 (48.7% of whole cohort) of the adult complainants did not reach trial, and 321 (46% of the whole cohort) of the minor complainants did not reach trial.

There data shows that the strongest zones of attrition come from two categories: “Undetected” and “Withdrawn by Deputy Prosecutor”.

281 cases resulted in an “Undetected status (40.2%). This failure resulted in attrition of 46.9% of adult complainants, and 37.7% of minor case attrition. Of the 37.7% minor attrition through a failure to find and arrest a perpetrator, 28% involved the rape of minors below 10. “Undetected” means that the police have been unable to find the alleged perpetrator, and it is noteworthy that the vast majority of the intake forms within this group listed the perpetrator as ‘unknown,’ and ‘a stranger.’

147 cases, however, were “Withdrawn by the Deputy Prosecutor.” This amounts to 21% of the overall cohort, and includes 63 adult clients and 84 minors (9.7% of those adults who did not make it to trial; 26% of minor cases which did not go to trial). It is not possible to tell from TVEP what the reasons were for the DPP withdrawals; other research studies have suggested a number of factors can be responsible, including the lack of evidence of sexual assault of a J88, an inability to find witnesses, the ‘inconsistencies’ in a witness’s statement, the inability to find the complainant, and the suggestion in a complainant’s being drunk (Jewkes, et al, 2012). TVEP is in the process of interviewing the prosecutors’ offices for this study, and the findings will complement this quantitative analysis here. An additional note is that whereas the “Undetected” zone involves more adults than minors (160 adult cases: 121 minors), the “Withdrawn by DPP” zone reverses that (63 adults are ‘dropped’, as opposed to 84 minors). This is another area well worth exploring in more depth, especially as 47% of this group of minors were under 13 years of age.

“Undetected” form the largest group of cases which fail to progress to court. The second largest group involves “Case Not Opened”. 167 of TVEP’s clients failed to have cases opened, and this is 29% of the full cohort. Here again, many more are



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minors than adults: 67 are adults (19.7% of adult cohort not reaching trial), and 100 are minors (31.1%). This means that just about a third of the minors who come to TVEP as clients, bearing witness to being raped (or their parents or guardians bearing witness to this) result in a ‘case not opened’ result. “Case not opened” can entail a very wide range of factors, which include a client’s lack of willingness to open a case, missing documentation, a client’s leaving the area, and a decision by a client’s parent (in the case of a minor) not to proceed to order to protect the minor. In-depth interviews with TVEP workers in the Victim Empowerment Project will be able to offer more information.

A clear finding from this level of analysis concerns the number of cases (37 out of the cohort of 699, or 5.3%, which reach the stage of trial.

Table 2 offers a breakdown of these cases:

**TABLE TWO: PERCENTAGE OF RAPE CASES WITHIN TVEP’S AtJ PROGRAMMEREACHING TRIAL (January 1<sup>st</sup> 2011 - December 31<sup>st</sup>, 2012)**

**N = 699**

<i>TO TRIAL</i>	<i>ADULT #</i>	<i>ADULT %</i>	<i>MINOR #</i>	<i>MINOR %</i>	<i>PERCENTAGE OF N</i>
37	19	5.3	18	5.3	5.3
<i>ACQUITTED</i> 16	8	2.3	8	2.5	2.3
<i>CONVICTED</i> 21	11	3.05	10	2.9	3.0
<i>ATTRITION BEFORE TRIAL</i> 662	341	48.7	321	46	94.7



As Table 2 indicates, 37 cases altogether reached a trial, which constitutes 5.3% of the whole cohort.

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Overall, there was a 3% conviction rate.

11 adult cases resulted in a conviction rate, with sentences for the perpetrators ranged from 10 to 18 years. 10 of the cases involving minors reached conviction and sentences ranged from life imprisonment to suspension of sentence for 5 years. Of the 10 cases of minors, two involved minors under 10.

16 cases making it to trial resulted in acquittal of the perpetrator (2.3%). This affected 8 adult complainants and 8 minors. All of the latter were over 10.

### Summary conclusions

From the level of the analysis done, it is clear that there is a very low conviction rate of perpetrators brought to trial, within the Thulamela District, in the years 2011 and 2012. This is based on the outcomes of clients' cases with which the TVEP's Access to Justice Project worked (it thus does not reflect on all cases processed through police precincts in the District, some of which did not come to TVEP for support.) 97% of the clients with whom TVEP worked in that period did not see their perpetrator(s) convicted, and only 5.3% of them reached the stage of a court trial.

While this is a shockingly low figure, it is one fairly consistent with the profile of attrition in rape cases nationally. Given that the Thulamela District is one of the most under-resourced in the country, it would be surprising to find a different conviction rate for alleged perpetrators of rape, whether of minors or of adults.

What flows from this point is the fact that despite a very low conviction rate, TVEP's AtJ and VE projects continue to attract and support very high levels of clients, across all age group. Low conviction rates are undoubtedly well known to communities in the



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Thulemela District, and yet, it is clear that hope still remains for victims of rape that they will find concrete support at TVEP. It is also clear that such TVEP continue to have some faith that the legal system may recognize the injustice done to them, and that if any organization is likely to support them in their quest for justice, it will be TVEP. It seems likely that the quality of counselling, information about the legal system, and the sense of 'being believed' that clients encounter through TVEP and the AtJ project is what makes it possible for them to keep asking for assistance and to keep 'voicing' their experiences of rape to those committed to taking such narratives deeply seriously. Despite the attrition rates, and the need to continue research to understand this more deeply within the context of the Thulamela District, the fact that rape victims continue to seek out TVEP's support, and to trust that support, speaks volumes about the quality of the organization's interventions.