

# LEGAL ACTION AND RAPE: LANDMARK CASES OF THE PAST 10 YEARS



- The 1998 case of *S v Jackson* (SCA), abolished the “cautionary rule”, a rule that characterised female complainants in all sexual assault cases as liars or witnesses with “a deceptive facility for convincing testimony”.
- The 2002 case of *Van Eeden v Minister of Safety and Security* (SCA) established that the state had a duty to detain suspects likely to commit further sexual offences against women.
- The 2005 case of *K v Minister of Safety and Security* (CC) held the Minister of Safety and Security liable for damages after three 'on-duty' policemen had raped a woman.

The 2005 case of *S. v Sikipta* (SCA) reprimanded a judge for patriarchal and sexist attitudes that suggested men may be forgiven for rape if women are dressed or act seductively.

The 2007 case *Masiya v Director of Public Prosecutions and Others* (CC), in which a man anally penetrated a nine year old girl, held that anal penetration of a woman constitutes rape not the lesser crime of indecent assault. However, the court found that anal rape of a man does not count as rape according to current statutes. In their decision, the Court wrote:

*Due in no small part of the work of women's rights activists, there is wider acceptance that rape is criminal because it affects the dignity and personal integrity of women. The evolution of our understanding of rape has gone hand in hand with women's agitation for the recognition of their legal personhood and right to equal protection. To this end, women in South Africa and the rest of the world have mobilised against the patriarchal assumption that underlay the traditional definition of rape. They have focused attention on the unique violence visited upon women. Much of this activism focused on creating support systems for women, such as rape crisis centres and abuse shelters; and also on the process whereby rape is investigated and prosecuted. It is now widely accepted that sexual violence and rape not only offends the privacy and dignity of women but also reflects the unequal power relations between men and women in our society. (para 29)*

These decisions by the highest courts in South Africa are victories but they must be made real. We can build upon them to educate ourselves and our communities, and to make sure that the government respects, protects, and promotes the right to be free from all forms of violence from either public or private sources. TAC members and the rest of South African society must be educated about rape, the toxic social attitudes surrounding its acceptance, and the legal protections against sexual assault.



# CAMPAIGN

# AGAINST RAPE

**Soweto Rapes & Murders:** On July 8<sup>th</sup> 2007, Sizakele Sigasa, 34, an outreach coordinator at Positive Women's Network and a lesbian & gay rights activist, and her friend Salome Masooa, 23, were found tortured, raped and brutally murdered in Meadowlands, Soweto. Sizakele was found with her hands tied together behind her back with her underpants and her ankles bound by her shoelaces. She was shot execution-style, with three bullet-holes in her head and three in her collarbone.

## HIGHEST RATE OF SEXUAL ASSAULT IN THE WORLD

More than 52,000 cases of rape and 9,000 cases of “indecent assault” (includes any tactile or penetrative sexual assault without consent that does not fall under the crime of rape, e.g. Digital penetration, penetration with an object, and fondling of the genital area and breast) were reported to the South African Police Services between April 2006 and March 2007. Approximately 50% of rapes have been perpetrated against girls under the age of 18. It is estimated that one in three South African women will be sexually assaulted in her lifetime. This rate is the worst in the world for a country not at war. Government estimates indicate that only one in nine women who are raped report the attack to the police. Rape is underreported for a variety of reasons, including fear of retaliation, lack of education about the law's protections, economic dependence upon the assailant, and feelings of shame about the assault. In addition, children who have been sexually assaulted are less likely to report the attack because the assailant is often in a position of authority over the child and gate-keeps the opportunities for reporting. Only 11% of rape cases result in conviction, creating a lack of faith in the law, which also contributes to underreporting. The low conviction rate can be linked to a number of causes, including lack of police interest, unwillingness of witnesses to testify, and poor handling of physical evidence.



The Treatment Action Campaign raises its voice in solidarity with the coalition of organisations fighting to end all gender-based violence, including rape. Sexual assault is degrading, violent, and inhumane. All people in South Africa must unite to oppose it!

The people in the photographs are not necessarily survivors of rape. Rape affects us all.

# RAPE INCREASES RISK OF HIV INFECTION

No amount of HIV/AIDS education or prevention training can defend a person from the transmission of HIV through rape, which, due to its violent nature, increases the likelihood of transmission. Children are especially vulnerable to HIV transmission and injury due to their size. Only post-exposure prophylaxis (PEP), a treatment cycle of anti-retroviral drugs (ARVs) can prevent HIV infection. Since 2002, the government has claimed to guarantee access to PEP for all rape survivors, but most survivors are still unable to access these medications, particularly in rural or poor areas.

**We demand that the government prioritize access to PEP for rape survivors in ALL communities!**

**Lorna Mlofana:** In December 2003, Lorna Mlofana, a Treatment Action Campaign activist, was raped in a Khayelitsha shebeen toilet. When her rapist, Ncedile Ntumbukane, discovered she was HIV-positive, he assaulted and murdered her. She had been raped, kicked, had her head stamped upon and her vagina was bruised and lacerated. During these fatal blows, Vuyelwa Dlova, 21, and her boyfriend, on their way to the shebeen, came across Ntumbukane administering these blows. Upon hearing the rapist's reasons for assaulting Mlofana Dlova joined in the attack because she believed Mlofane was giving AIDS to the township men. Cape High Court Judge Dumisani Zondi sentenced Ncedile Ntumbukane to life for murder and a concurrent ten years for rape. Dlova (21) was found guilty of attempted murder for participating in the attack and was sentenced to ten years, three of them suspended. Mlofane's attackers were only brought to justice because of the sustained activism of TAC members.



## **Student Doctor raped at Chris Hani Baragwanath:**

On 1 August 2007, a young female medical student was raped in a supposedly secure area of the hospital complex in Johannesburg while doing her job saving lives.

*"Everyone has the right to freedom and security of the person which includes the right to be free from all forms of violence from either public or private sources."*  
 - The Constitution of the Republic of South Africa (Section 12)

## **ACTS AND BILLS: PERTAINING TO GENDER-BASED VIOLENCE AND SEXUAL ASSAULT**

**Domestic Violence Act of 1998:** This Act commits the government to the elimination of domestic violence, noting that the victims of domestic violence "are among the most vulnerable members of society." This act includes provisions for protection orders against perpetrators of domestic violence, guarantees the privacy of survivors, and criminalizes rape within marriage.

**Sexual Offences Bill:** This bill, proposed eight years ago, was passed in the National Assembly in May 2007. It is now before the National Council of Provinces. The Sexual Offences Bill is a much-needed improvement on South Africa's previous rape laws. It severely restricts the circumstances in which survivors' sexual histories can be admitted as evidence, widens the definition of rape beyond "sexual intercourse with a woman without her consent" to include different kinds of penetration that can be perpetrated against women or men, and provides access to post-exposure prophylaxis. However, it only guarantees access to PEP if the incident is reported to the police; TAC must work with its allies to ensure access to PEP for all survivors of sexual assault, as many cannot or do not wish to bring charges against their attackers.

**Make protection from sexual assault a legislative priority! The Sexual Offences Bill must become law in 2007, and it must include PEP access for ALL survivors, not just those who report the assault to the police.**

**There is a stigma surrounding rape, much like with HIV+ status. This stigma prevents survivors from and fighting for and accessing their rights as citizens. We must end the stigma surrounding sexual assault, so more survivors can come forward without shame. Only then will survivors be truly protected by the law. Through education, we can empower South Africa to stand up and speak out against rape.**