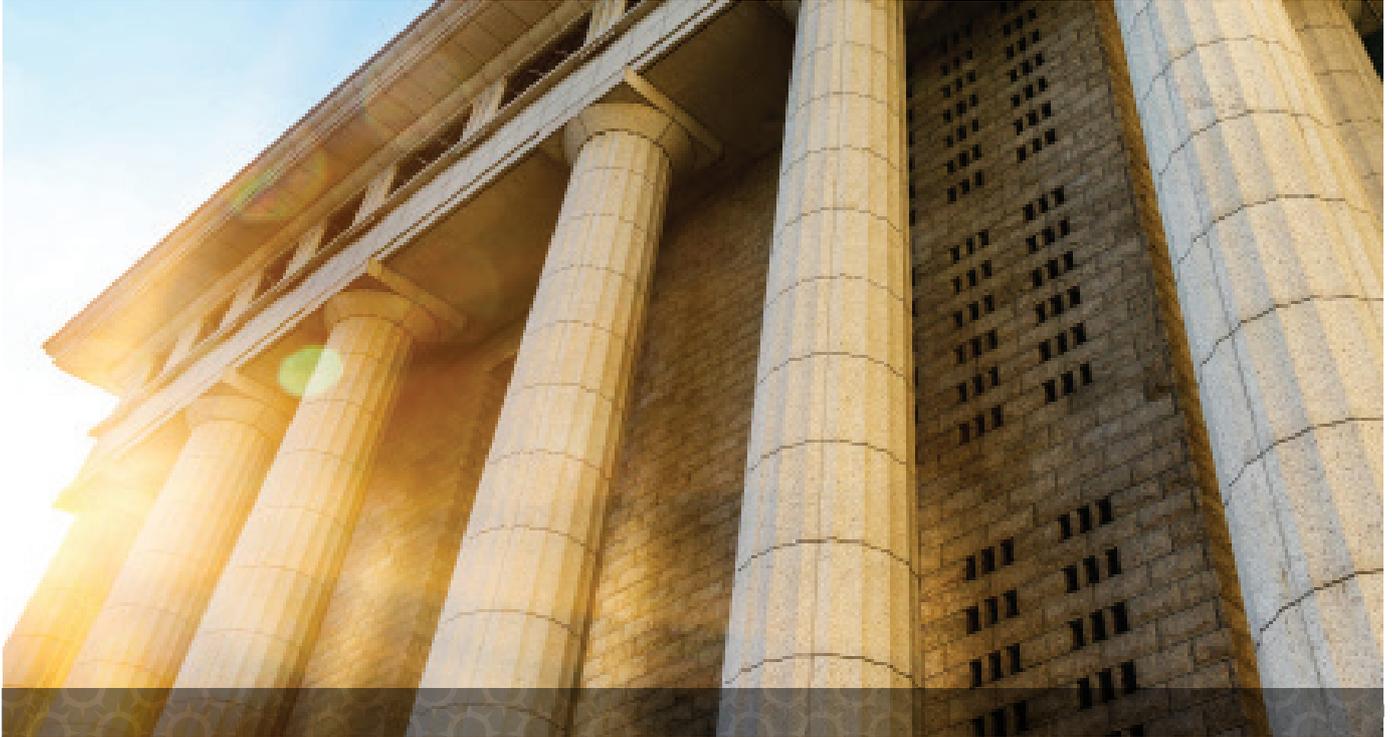


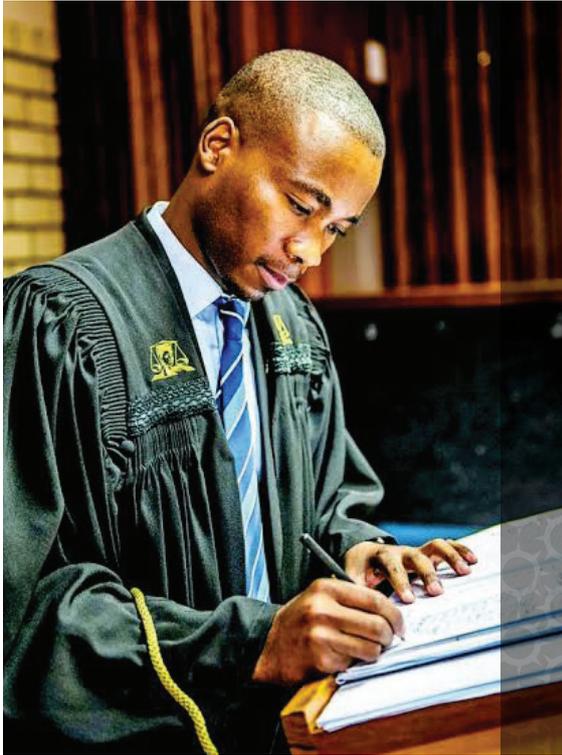


ILITHA LABANTU
PEOPLE WHO CARE ABOUT PEOPLE



TOOLKIT ON
PUBLIC PROSECUTORS





THE LAWYERS FOR THE PEOPLE

WHO ARE THE PEOPLE'S LAWYERS?

In 1998 as part of his International Association of Prosecutors awards speech, the late Former President Nelson Mandela said that the prosecutor has to build an effective relationship with the community and to ensure that the rights of victims are protected. That they must build a prosecution service that is an effective crime deterrent and is known to show great compassion and sensitivity to the people it serves.

In the spirit of the Constitution of South Africa and the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985, the Department of Justice and Constitutional Development started a project that sought to take measures to minimize the inconvenience and unbundle the somewhat complicated justice system and its procedures for survivors whose lives had been violated. They drafted the Service Charter for Victims of Crime in South Africa (Victims' Charter) which gave birth to the Victim Support Services Bill (VSS) and the Minimum Standards on Services For Victims of Crime guide (Minimum Standards).

The VSS is a statutory framework for the promotion and upholding of the rights of victims of violent crime which seeks to prevent secondary victimisation of survivors and to provide for the development and implementation of survivor empowerment services, norms and minimum standards. The Minimum Standards document is a guideline that assists service providers (public institutions) with information on what is expected of them to do when they render services to the survivors of.

1. WHO IS A PUBLIC PROSECUTOR

A public prosecutor is the legal representative of the state, representing the citizens, in criminal proceedings. Public prosecutors are found at every magistrate court.

2. DUTIES OF A PUBLIC PROSECUTOR

A public prosecutor's main duty is to see justice being done, therefore, act as the gatekeepers of the criminal justice system. They have to ensure that they act in the interest of the community. Their role and responsibilities include the following:

- They decide whether or not to institute criminal proceedings against an accused person.
- They decide on which charges to continue with and withdraw.
- They provide legal advice and policy guidance in investigations on cases that have reached the prosecutorial stage.
- They represent the state in criminal proceedings.
- They decide on whether to oppose bail or not.
- They decide to either accept or reject a plea of not guilty by the accused.
- They lead evidence in court by state witnesses and further decide on which evidence to present.
- They decide whether or not to appeal a court decision to a higher court.
- They decide on whether or not to seek review on court proceedings.
- They ensure that the prosecution authority's policy directives are performed.

3. WHEN THE DOCKET IS HANDED TO THE PUBLIC PROSECUTOR

After a criminal offence has occurred and the South African Police Service (SAPS) are done with their investigations;

- They hand over the docket to the public prosecutor for their assessment of the evidence and statements.
- Upon assessment they decide whether there is enough evidence to support a decision to prosecute, and decide on which charges should be levelled to prosecute and in which court forum. This includes adding charges to those already charged.

What is taken into consideration to make the final decision is that they need to consider public interest; this means they need to determine if prosecuting or not benefit the public. This shows just how much they potentially have a significant influence over the administration of justice in a community. They have to prove their case in court beyond a reasonable doubt.





4. BAIL

PRE-TRIAL

When the accused applies for bail;

- the prosecutor is obligated, if it is in the interest of justice, to oppose bail at the pre-trial stage;
- They must consider the effects of this on the victim of the crime as well as peace in the community.

DURING TRIAL

- They ought to allow the victim of the crime to be called in to give evidence against the court granting them bail.
- The victim of the crime may disclose to the court the effects of the crime; how their family/family relationship was broken down. How their work or schooling has been affected. Further, what the offence has done to their dignity.

MINIMUM STANDARDS GUIDE ON BAIL

- The Minimum Standards states that upon a survivor's request, the prosecutor will have to inform them of the outcome of bail proceedings and any special bail conditions imposed; and further explain the implications of such bail conditions. It can be reasonably inferred that the survivor can get a printed copy of the bail conditions.
- Should the prosecutor fail to discharge any of their duties or fail to make available important information on the survivor's case one could either lodge a complaint in writing or make an appointment with the senior public prosecutor at the court that dealt with the case. The same may be escalated to the chief prosecutor in the area should the senior public prosecutor fail to remedy the situation.

5. THE RIGHT TO RECEIVE INFORMATION

It is at the request of the survivor that they may ask that the prosecutor notify their employer of any proceedings that necessitates their absence from work or school.

- In the instance where a prosecutor has declined to prosecute, the survivor must be informed of other avenues available to them to seek justice from; they have the right to institute a private prosecution.
- The survivor must be kept up-to-date on their case and be given reasons for when there are any delays on the matter.

Further, because of the sensitivity of these cases, prosecutors are discouraged from having one case handled by different prosecutors. It frustrates the process and harms the trust relationship.

6. WITNESSES

When there are witnesses to be called in, the prosecutor will have to consult with them before you being called to testify. They will have to conduct several interviews before the witness testifying for them to be ready for testifying in court.

7. MAGISTRATE COURT'S ACT

In the magistrates' court, there are people called assessors, these civil servant individuals are the for the sole reason to assist the magistrate with their opinion and assessment of the merits of the case before them before judgement is handed.

These assessors are normally present in complicated cases before the court, however, they need not be legal scholars, it is ordinary people from the community.

Section 17(1) of the Magistrates Act states that a prosecutor may make an application to the magistrate for the recusal of an assessor if:

- (a) the assessor has a personal interest in the proceedings concerned;
- (b) there are reasonable grounds for believing that there is likely to be a conflict of interests as a result of the assessor's participation in the proceedings concerned; or
- (c) there are reasonable grounds for believing that there is a likelihood of bias or prejudice on the part of the assessor.



8. PAROLE APPLICATIONS

Should a convicted person apply for parole, the survivor has the right to request to attend parole hearings.

The prosecutor will be required to let them know of the date of the hearing and further testify before the Parole Board and make their submission of why the offender's request should be declined.

9. COMPLAINTS ABOUT A PUBLIC PROSECUTOR

If there are any complaints about a prosecutor same may be lodged in writing to the Senior Public Prosecutor at the office which dealt with the case.

Further, should the complaint not be attended to or addressed to the complainant's satisfaction, it may be escalated in writing to the Director of Public Prosecution of the area who will carry out an independent review. Thereafter, the same procedure may be followed to escalate the same complaint to the National Director of Public Prosecutions up to the Office of the Public Protector.



CONCLUSION

As Ilitha Labantu we seek to prevent any form of abuse; physical, psychological to women, children and vulnerable groups. We seek to respond to challenges faced by our clients and lastly ensure that we empower victims of violence as well as the community. This means that we will be with our clients from before the crime is reported until justice is served and we have safer communities. We will be at the forefront of keeping prosecutors accountable because they have a constitutional mandate to prosecute crime. They also have the mandate to prevent secondary victimisation. We will ensure to further hold them up to their constitutional and ethical duty to disclose all evidence and information that supports the survivor's case that has the potential to illuminate the truth.

To ensure fairness and the effectiveness of prosecution, the people's lawyers ought to ensure that they cooperate with community organisations, the police, social service providers, and everyone in-between that is working to see justice prevail.



OUR CONTACT DETAILS:

GUGULETHU MAIN OFFICE

Address: Ny 22 No 26a Guguletu

Tel: 021 633 2383 or 021 633 3048

Email: admin@ilithalabantu.org

OUR CONTACT DETAILS:

PHILIPPI MAGISTRATES COURT OFFICE

Address: Philippi Magistrates Court,
Cwangco Cres, Philippi, Cape Town

Tel: 021 372 0901

Email: admin@ilithalabantu.org

OUR CONTACT DETAILS:

KHAYELITSHA SATELITE OFFICE

Address: Shop No 5 Isivivana Centre,
8 Mzala Street

Tel: 021 361 0078

Email: Khayelitsha@ilithalabantu.org