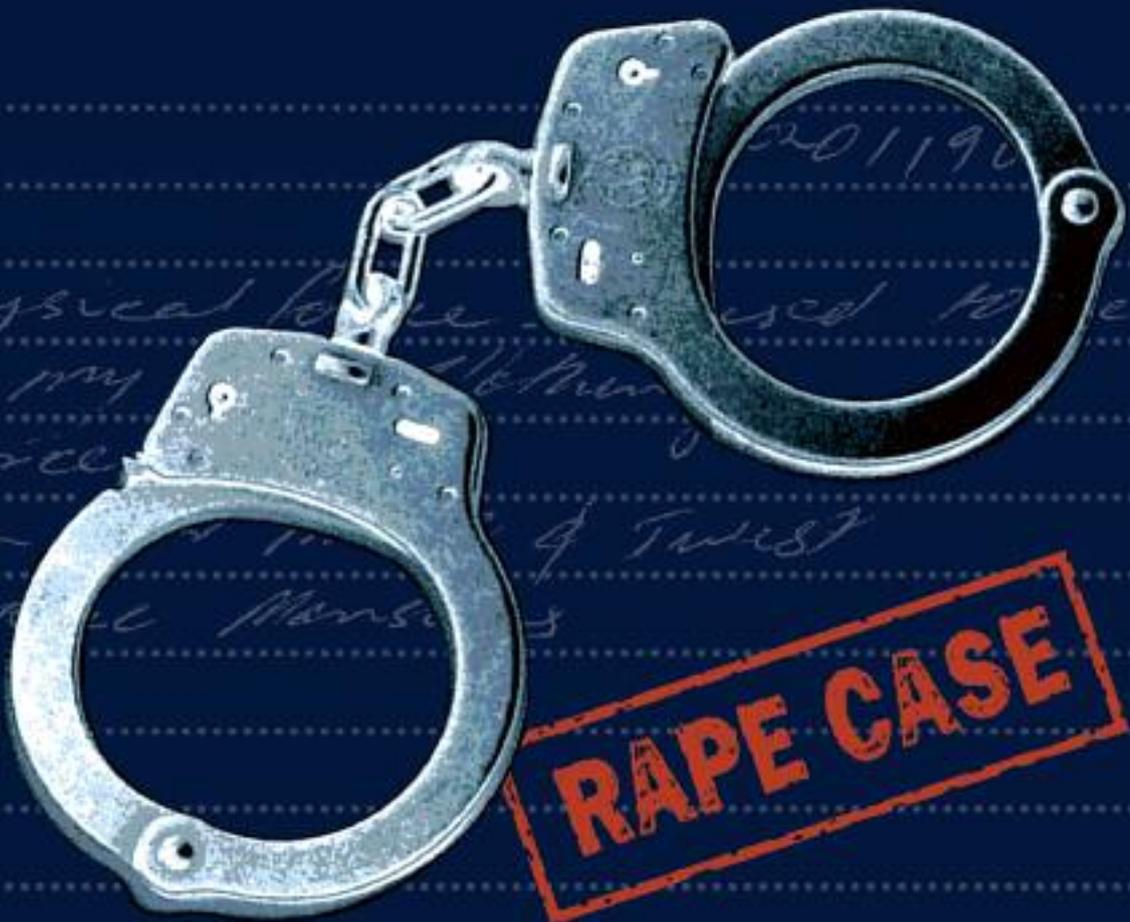


# TRACKING RAPE CASE ATTRITION IN GAUTENG:

## The Police Investigation Stage



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# Executive Summary

*Tracking Justice: the Attrition of Rape Cases through the Criminal Justice System in Gauteng*<sup>1</sup> aimed to describe the characteristics of reported rape in Gauteng province, and to describe the processing of rape cases by the police and courts at selected courts and police stations. One of the study's key findings was that 45% of rape cases never proceed beyond the police to the courts. This follow-up report analyses in greater detail the police investigation of rape cases in Gauteng and the resultant case attrition at the police investigation stage.

The police act as the 'gateway' to the criminal justice system. The fate of any reported rape complaint, in terms of its movement through the criminal justice system, is subject to a thorough investigation of the case by the police, as well as their discretionary power in making decisions around the processing of complaints. As such, the police are an important factor in the phenomenon known as the attrition of rape cases in the criminal justice system: that is, 'the dropping or filtering of cases from the criminal justice system prior to a trial's conclusion.'<sup>2</sup>

*Tracking Justice* was undertaken in the Gauteng Province of South Africa where 11,926 rapes were reported in 2003. A methodology accounting for probability proportional to size was used to select 70 out of a possible 128 police stations in Gauteng. Thirty closed rape dockets were randomly sampled from each police station, from which information was extracted. A sample of 2068 cases was yielded for the study.

## Key Findings

### Reporting to the police:

- 87% of victims left the scene of the rape immediately following the incident, with almost 40% of adult victims immediately phoning for help or reporting the rape to the police. Young girls (0-11 years) were more likely to be taken to the police or hospital by a witness or friend, indicating their greater dependence on the help of others after such a traumatic incident.

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1. Vetten, L., Jewkes, R., Sigsworth, R., Christofides, N., Loots, L. & Dunseith, O. (2008). *Tracking Justice: The Attrition of Rape Cases through the Criminal Justice System in Gauteng*. Tshwaranang Legal Advocacy Centre, Medical Research Council, Centre for the Study of Violence and Reconciliation: Johannesburg. Available at: [http://www.csvr.org.za/docs/tracking\\_justice.pdf](http://www.csvr.org.za/docs/tracking_justice.pdf)

2. Ibid, p. 14.

- The majority of victims reported the rape to the police within a day. However, the delay did range from between one day to five years (or 1834 days) after the event.
- 

**The scene of the crime:**

- The police did not visit, and therefore did not examine, the scene of the crime in 73.7% of cases reported to them.
- 

**The victim's statement:**

- In 7.5% of all cases, the complainant's statement was not in the police docket.
  - In 15.5% of cases the statement had not been signed by the complainant; in 7.8% of cases the statement was not signed by both the complainant and the relevant police officer; and in 8.5% of cases the statement was not dated.
  - In 51 cases, there was no address recorded for the complainant.
  - On average, four days elapsed between the report of the rape and recording the complainant's statement. This is double the length of time recommended by the SAPS National Instructions 22/1998.
- 

**Witness statements:**

- No statement from the witness to the first report was taken in almost half of the cases.
  - In 42% of cases, the complainant had identified other witnesses to the crime but no statements were taken from these identified witnesses.
  - On average, when the police did take a statement from the witness to the first report, they did it within a day.
  - In 70% of cases, the police could not provide a reason for why witness statements were not obtained, if there had been a witness to the rape. In 13.6% of cases, police did not obtain a witness statement because the witness had disappeared or was untraceable.
  - In 42% of the cases for which a statement from the witness to the first report was taken, an instruction to do so was issued by a superior officer before the witness was interviewed.
- 

**Sending forensic evidence to the Forensic Science Laboratory (FSL):**

- Of those cases where a J88 and forensic kit were completed, the specimens were not sent to the FSL by the police in 41.6% of cases.
- It took investigating officers an average of 15 days (over two weeks) to send forensic specimens to the FSL.

### Identification of suspects:

- A description of the suspect was absent from 78.4% of victims' statements.
  - The most common procedures used to identify suspects were the pointing out letter (19.8% of cases); police accompanying victims to point out the suspect (55.9%); the compilation of an identikit of the suspect by the victim (4.7%); and an identity parade (1.6%).
- 

### Arrest or non-arrest of suspects:

- Overall, 1 014 suspects (49.7%) were arrested with a further 33 subpoenaed to appear in court.
  - The reasons why police did not arrest suspects included: the suspect was unknown to the victim and therefore was difficult to trace (48%); the suspect disappeared (17%); the victim disappeared (15%); and the victim withdrew the complaint (11%).
- 

### Disposal of cases by the police:

- In total, 45% of cases were disposed of by the police.
  - In over 80% of cases, the reason for the closure of the docket was because the suspect or the victim could not be traced; 9% of cases were withdrawn by the victim or the complainant (if the victim was a child); and 7% of cases were unfounded, in that it was decided that the cases provided no evidence of rape or were false accusations.
  - A withdrawal statement, required by SAPS Standing Order (G) 325 in order to ensure that the victim was not intimidated or pressured into withdrawing the case, was included in less than half (48%) of the cases finalised as 'withdrawn' by the police.
  - In terms of the 30.1% of victims who were untraceable, the main reason recorded by the police for not being able to trace the victim was that the victim provided inadequate contact details.
  - For the most part, only 3 attempts were made to contact the complainant after she disappeared. In half of cases, the police spent one month trying to contact the victim; however, in 25% of cases, the police spent only four days or less looking for her.
- 

### Recommendations

- **Recording basic information:** systems for recording and keeping accurate records should be designed and implemented in police stations across the country.
- 
- **Statement taking:** SAPS should develop a pro forma statement for rape cases (similar to that used in road traffic accidents) so that adequate details are recorded for each aspect of the rape incident in line with the guidelines already set out in the National Instructions.

- **Collection and the chain of evidence:** systems and regular training for members of SAPS should be put in place to improve the gathering of data and evidence crucial for the prosecution of sexual offences.
- 

- **Identification and arrest:** investigating officers must be encouraged and supported to use more of the suspect identification measures available to them. Efforts need to be strengthened to ensure that, when in possession of identifying and contact information about the suspect(s), police officers can and do arrest suspect(s) promptly, rather than waiting to be instructed to do so by their commanding officers.
- 

- **Resources:** recommendations made in this report need to be costed and included in the SAPS budget for the focused investigation of rape cases. The necessary resources need to be made available to investigating officers to ensure that they can do their job effectively.
- 

- **Training for SAPS officers:**

- Training on the nature of sexual violence and the special needs of victims of sexual violence should be designed and rolled-out to all the members of SAPS, on a regular basis.
  - The training materials and the training itself should be offered in several official languages.
  - Resources for comprehensive and on-going training (as well the monitoring and evaluation of the training) for police officers on sexual violence must be allocated to SAPS.
  - Training on the substantial and procedural aspects of the new Sexual Offences Act should also be designed and rolled-out to all the members of SAPS.
  - Interdepartmental training of the criminal justice system (CJS) officials in rape and sexual offences should be developed and rolled out, in order to give CJS officials knowledge of how the different phases of the CJS are integral to each other and the success of one depends heavily on the thorough work of the other.
- 

- **Specialised units:** these units should be re-established with specialised individuals trained to investigate and manage sexual assault cases. Specialised individuals should be awarded the appropriate status, including the development of unique career paths, within SAPS and given proper incentives to work in this area (this should include regular debriefing and counselling services for the officers). Sufficient resources should be allocated to strengthen such specialised units.

# List of Abbreviations

## South Africa

CAS	Crime Administration System
CJS	Criminal Justice System
CPA	Criminal Procedure Act
FCS	Family Violence, Child Protection and Sexual Offences Unit
FSL	Forensic Science Laboratory
ID	Identification
IDMT	Interdepartmental Management Team
NDPP	National Directorate of Public Prosecutions
NGO	Non-governmental organisation
NPA	National Prosecuting Authority
PEP	Post-Exposure Prophylaxis
SAPS	South African Police Service
SOA	Sexual Offences Act
SOCA	Sexual Offences and Community Affairs Unit
SPP	Senior Public Prosecutor
TCCs	Thuthuzela Care Centres

## International

CALD	Culturally and Linguistically Diverse
CPS	Crown Prosecution Services
FMO	Forensic medial officer
MPA	Metropolitan Police Authority
NFA	No further action
NSW	New South Wales
SARC	Sexual Assault Referral Centre
SOE	Sexual Offence Examiners
SOIT	Sexual Offence Investigation
UK	United Kingdom
US	United States
VATE	Video and Audio Taping of Evidence
VIFM	Victorian Institute of Forensic Medicine

# Introduction

In 2008 the research report *Tracking Justice: The Attrition of Rape Cases through the Criminal Justice System in Gauteng*<sup>3</sup> was released. Key findings from this study have thus far been published in the above report and in an article entitled ‘Medico-Legal Findings, Legal Case Progression, and Outcomes in South African Rape Cases: Retrospective Review’<sup>4</sup> in the *Public Library of Science* journal. This report into the police investigation stage of the processing of rape cases will comprise the third in the series, while a fourth report examining the functioning of the courts in the processing of rape cases is forthcoming.

*Tracking Justice* aimed to describe the processing of rape complaints in Gauteng, from the time they were reported to the police to the point at which they were disposed of by either the police or courts. One of the study’s key findings was that 45% of rape cases never proceed beyond the police to the courts. This report analyses in greater detail the police investigation of rape cases in Gauteng and the resultant case attrition at the police investigation stage.

It is well-established that the progress of any reported case through the criminal justice system reflects a highly selective process of elimination, often referred to as ‘attrition’. The police play an important role in this filtering process in their position as the first port of call for complainants. The police thereby act as the gateway to the criminal justice system. The fate of any reported complaint, in terms of its movement through the criminal justice system, is therefore subject to the police’s significant discretionary power in the processing of complaints. Police use discretion throughout the variety of their day-to-day tasks and as the basis for many of their decisions: decisions about whether to enforce the law, whether to arrest a suspect, whether to use force in an encounter, whether to devote resources to an investigation, and whether to lay a charge in any particular circumstance.

At the time when this research was conducted, the South African Police Service (SAPS) followed National Instructions 22/1998 to guide them through the investigation of rape cases. SAPS would also have been directed by the outdated and conservative Sexual Offences Act of 1957. However, in 2007, a new Sexual Offences Act (SOA) was promulgated in South Africa; it was received with wide acclaim because it had been in development for almost 10 years, but also with wide criticism, as many activists felt that the SOA did not go nearly far enough in providing the ‘maximum and least traumatising protection that the law can provide, [in combating] and, ultimately, [eradicating] the relatively high incidence of sexual offences committed in the Republic’.<sup>5</sup> It is important to note that the new SOA does not impose any positive legal duties on the police to perform certain essential investigative and performative functions in the processing of sexual offences cases: the SOA does, however, provide for the establishment of a National Policy Framework that will: ‘(a) ensure a uniform and co-ordinated approach by all Government departments and institutions in dealing with matters relating to sexual offences; (b) guide the implementation, enforcement

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3. Vetten et al, *op. cit.*, note 1.

4. Jewkes, R., Christofides, N., Vetten, L., Jina, R., Sigsworth, R., et al. (2009). ‘Medico-Legal Findings, Legal Case Progression, and Outcomes in South African Rape Cases: Retrospective Review’, *PLoS Med* 6(10): e1000164. doi:10.1371/journal.pmed.1000164.

5. Criminal Law (Sexual Offences and Related Matters) Amendment Act, No. 32 of 2007 section (2), p. 18.

and administration of this Act; and (c) enhance the delivery of service as envisaged in this Act by the development of a plan for the progressive realisation of services for victims of sexual offences within available resources.<sup>6</sup> In August 2008, SAPS released a new set of national instructions to comply with its legal obligation in the SOA to issue and publish 'national instructions regarding all matters which are reasonably necessary or expedient to be provided for and which must be followed by all police officials who are tasked with receiving reports of and the investigation of sexual offence cases ... including the following: (i) The manner in which the reporting of an alleged sexual offence is to be dealt with by police officials; (ii) the manner in which sexual offence cases are to be investigated by police officials, including the circumstances in which an investigation in respect of a sexual offence may be discontinued'.<sup>7</sup>

These new national instructions are as comprehensive as National Instruction 22/1998. However, as will become clear through this report, a set of guidelines on paper, no matter how wide-ranging and in-depth, will do little to improve the processing of cases through the police phase of the criminal justice system if not accompanied by extensive training, widespread implementation and the will of the police officers to treat rape cases seriously and rape victims with respect and sensitivity. It is important to emphasise at this point that the overall goals of law reform cannot be met without critical institutional shifts in policing and prosecutorial practice, as the findings in this report will bear witness to.

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6. Ibid, section 62 (1), p. 74.

7. Ibid, section 66 (1) (a), p. 76.

# International Literature Review: The Impact of Policing on Rape Case Progression

## Attrition Studies

Previous rape case attrition studies have been undertaken in a number of countries, including England and Wales, Scotland, Finland, the Irish Republic, New Zealand, Canada, the United States, Australia and South Africa. Below is a snapshot of the findings and understanding of the police investigation of rape cases generated by a selection of these studies.

### United Kingdom

Harris and Grace examined nearly 500 incidents initially recorded as rape by the police in the United Kingdom (UK) in 1996 and followed their progress through the criminal justice system (CJS)<sup>8</sup>. Information was extracted from police and Crown Prosecution Service (CPS) files, using the complainant's account of the incident as the basic source of information, supplemented by police records, medical reports and witness statements. Interviews were also carried out with the police, CPS lawyers, barristers, judges and complainants.

The key findings of this study in relation to the police investigation of a rape case were:

- **6% of the cases originally recorded by the police as rape resulted in convictions for rape;**
- **25% of cases were no-crimed by the police;**
- **no suspect was identified in 11% of cases;**
- **the police took no further action (NFA) against the suspects in 31% of cases;**
- **of the cases that were 'crimed', only 15% went undetected – however, the detection rate in stranger rape cases was considerably lower than average: despite advancements in forensics, only one-third was detected.**<sup>9</sup>

The two major points of attrition for rape cases during the police investigation were: 1) cases being no-crimed; and 2) cases where the police took 'no further action'. The authors of this research study comment that, 'Cases should only be no-crimed where there is clear evidence that the allegation was fabricated. The research suggests that, although fewer cases are no-crimed than used to be, many are wrongly no-crimed rather than being NFA-ed. For example, it was found that in some instances the reason for no-crimeing was that there was insufficient evidence.'<sup>10</sup> It was clear that one of the most common reasons for cases being no-crimed and NFA-ed in this study was because the complainant did not wish to proceed

8. Harris, J. & Grace, S. (1999). *A question of evidence? Investigating and prosecuting rape in the 1990s*. A Home Office Research, Development and Statistics Directorate Report: London.

9. Ibid, p. x-xi.

10. Ibid, p. 44.

with the case. There were a number of suspected reasons for complainant withdrawals, including:

1. Emotional and financial dependence was felt by police and lawyers to be a common reason for a woman feeling unable to pursue the allegation. In one case a complainant's statement revealed that she wished to withdraw her allegation, even though she still maintained that she had been raped: if her husband went to prison and lost his job, she would lose everything.<sup>11</sup>
2. In cases where there had been a high degree of consensual contact between the victim and the suspect.
3. Pressure from families and groups, especially in strongly ethnic or religious communities.
4. Cases where the complainant felt there was no or little likelihood that the case would succeed in court. In these cases, there is a high probability that the complainant was influenced by police officers, who admitted that 'it was important for them to warn the complainant about possible evidential difficulties with her case and what would happen if she went to court.' It was felt that in warning complainants about the difficulty of securing a conviction, the police might have put complainants off pursuing their case without meaning to, so that even if they did not explicitly tell the complainant to withdraw her allegation, she might be left feeling that it is her only option.<sup>12</sup>

There were a number of other important observations made by the authors of this report. First, vulnerable adults (mentally and/or physically disabled) often encounter severe barriers when trying to access justice. Sometimes police thought that these complainants would not make convincing witnesses, or allegations of rape by complainants suffering from mental disorders were considered by the police to be a 'cry for help' or 'attention-seeking' as these women had often made similar allegations in the past or, despite the fact that the police sometimes believed that the complainant had been raped, they were concerned that the stress of a trial might damage her health.<sup>13</sup> Secondly, good communication was found to be vital if rape cases are to be pursued effectively. Quoting Chambers and Millar (1986), the authors maintain that the 'main problem for a woman after the initial investigation was undoubtedly the general lack of information resulting in feelings of helplessness and non-involvement.'<sup>14</sup> Thirdly, the authors felt that the high number of complainant withdrawals prompted the following questions: do complainants receive sufficient support to persevere when the case could succeed, or are they too often discouraged by the police? Do the police set the evidential test too high, perhaps second-guessing the CPS? Is sufficient use made of evidence of violence? In conclusion, the authors recommended that 'Those reporting rape to the police should be given greater support, perhaps involving agencies other than the police. Some other jurisdictions (e.g. some US states) have involved victims more closely in the investigative process, and have coupled this with support to help them persevere and 'further research could examine the ways in which cases are dealt with and complainants treated in the early stages of the process in order to produce a better understanding of why withdrawals occur.'<sup>15</sup>

Research conducted by the Home Office in 2002 aimed to increase the understanding of attrition in the United Kingdom, with an emphasis on early withdrawal from the criminal justice system process by complainants.<sup>16</sup> Data were collected from three Sexual Assault Referral Centres (SARCs) and three comparison areas, which were selected to reflect a combination of metropolitan, inner city and rural areas. The base sample of 3,527 cases was tracked prospectively through the CJS. The study's key findings included:

- around one-quarter of reported cases were 'no crimed', and in a proportion of detected cases no proceedings were brought;
- there was inconsistency in the police classification of case outcomes, particularly among those that were 'no crimed';

11. Ibid, p.20

12. Ibid, p.21.

13. Ibid, p.23.

14. Ibid, p.22.

15. Ibid, p.45.

16. Kelly, L., Lovett, J. & Regan, L. (February 2005). *A Gap or A Chasm? Attrition in Reported Rape Cases*. Research Study 293, Home Office Research, Development and Statistics Directorate Report: London.

- the vast majority of cases did not proceed beyond the investigative stage, with the overall conviction rate being 8%;
- the majority of reports to the police were made within 24 hours;
- 9% of reported cases were designated false, with a high proportion of these involving 16- to 25-year-olds (this figure is considerably lower than the extent of false reporting estimated by police officers interviewed in the study);
- evidential issues accounted for over one-third of cases lost at the investigative stage, including cases where: the complainant had learning difficulties, mental health issues or was otherwise unable to give a clear account; DNA testing was not conducted; and an offender was identified but not traced;
- victims who declined to complete the initial investigative process and victim withdrawals accounted for over one-third of cases lost at the police stage.<sup>17</sup>

Worryingly, a substantial number of cases lost in the early stages of investigation were discontinued as a result of judgements about the victim's credibility.<sup>18</sup> In addition, complainant withdrawals were linked to the following factors: areas where there was no SARC to provide support; fear of being disbelieved by the police; early assessments of the difficulties of prosecution and conviction by police officers may be interpreted by complainants as discouragement to continue; and fear of the CJS and court.<sup>19</sup>

There were a number of key findings from this research. First, there is an over-estimation of the scale of false allegations by both police officers and prosecutors which feeds into a culture of scepticism, leading to poor communication and loss of confidence between complainants and the police. Secondly, there was some evidence of poor investigation and understanding of the law by the police and CPS, and in some cases there had been an emphasis on discrediting features only when CJS officials reviewed rape cases. Thirdly, categorisation of cases by the police was internally inconsistent within and between force areas. Fourthly, alcohol consumption was implicated in a far larger number of cases than drugs, but there was no understanding of how exactly this contributes to attrition.

Data from service user questionnaires and interviews showed that there are specific elements that would improve responses to reported rape. These include: the availability of female practitioners for rape complainants; a culture of belief, support and respect towards rape complainants within the CJS; access to clear information at appropriate points in the process by rape complainants; the need for rape complainants to be kept informed about case progress; and the need for courtroom advocacy that does justice to the complainant's account.<sup>20</sup>

## Australia

Research on the attrition of sexual offences from the New South Wales (NSW) criminal justice system was undertaken by the NSW Bureau of Crime Statistics in order to inform the work of the Criminal Justice Sexual Offences Taskforce, which aimed to improve the response of the criminal justice system to sexual assault.<sup>21</sup> Overall, the study found that from 1995 to 2004, the number of proven charges (or those rape cases ending in a guilty sentence) was consistently less than 16% of the number of incidents that came to the attention of the police.<sup>22</sup> In addition, the study found that of the 3752 sexual offence incidents involving a victim aged 0-15 reported to the police in 2004, 72.2% were not cleared up within 180 days of reporting (i.e. the cases fell out of the criminal justice system at this point). Of the 4132 sexual offence incidents involving victims aged 16 years or older, 68.3% were not cleared up within 180 days of reporting.<sup>23</sup> The authors note that, 'with 70% of incidents uncleared [by the police] after six months, it is at this point that the largest number of incidents are lost from the criminal justice system.'<sup>24</sup> In cases that were cleared any without charges being

17. Ibid, p. xi.

18. Ibid, p. 58.

19. Ibid, p. 59 – 69.

20. Ibid, p. 87.

21. Fitzgerald, J. (2006). 'The Attrition of Sexual Offences from the New South Wales Criminal Justice System', *Crime and Justice Bulletin*. No. 92.

22. Ibid, p. 2.

23. Ibid, p. 3.

24. Ibid, p. 4.

laid, the researchers note that ‘police commonly include a notation on their system such as *arrest not desired* or *no formal action* in relation to the suspected offender’; however, they concede that ‘these descriptors ... provide no insight into why the offence was cleared but criminal proceedings not commenced.’<sup>25</sup> The study found that criminal proceedings were more likely to be commenced in sexual assault incidents that involved aggravation, where reporting was within ten days of the assault, where the victim was a female, where the victim was over 10 years of age, and where the victim knew the offender. The researchers find that these findings are ‘consistent with the assumption that proceedings are more likely to be initiated in cases where the evidence suggests that there is a reasonable prospect of a successful prosecution ... the present findings show a higher proportion of prosecutions among cases when the victim could be regarded as more credible (e.g. when the victim is older) and/or when other evidence (e.g. injury) can be used to corroborate victim testimony.’<sup>26</sup> They conclude that more research needs to be done on the reasons behind police and prosecutorial decision-making in relation to sexual offence cases.

### South Africa

The high levels of sexual violence in South Africa and a focus among gender activists, researchers and academics on the role of legislation and the criminal justice system in denying victims of rape access to justice, have prompted a handful of research studies into the attrition of rape cases through the criminal justice system in South Africa.

In 1998, CIETAfrica conducted a three-year social audit at the request of the Southern Metropolitan Local Council (SMLC) of Johannesburg, producing a detailed information base on sexual violence in the area.<sup>27</sup> In terms of attrition, CIET found that for every 394 women raped, 69% report the rape to the police, 6% become ‘cases’, one docket gets lost and five are referred to court by police, and one gets convicted.<sup>28</sup> The study found that one in four (24%) rape victims had been raped more than once in the last year and that nearly half the rapes happened in their home or in a neighbour’s house. Andersson and Mhatre state that, ‘Improved policing, in the traditional sense of the term, would do little to stop this. With 60% of rapists known to their victims, there is little that a police presence on the street will do to prevent these rapes.’<sup>29</sup> The police themselves pointed to a number of reasons why rape cases fail to make it into the court system. These included: victims refusing to open a case in the first place (as a result of being in shock or too scared to speak); rape victims withdrawing their cases for a range of reasons including being too scared to continue and reconciling with or reaching a settlement with the suspect and/or his family; the inability of the victim to identify the suspect; and finding evidence to prove that force was used (in order to demonstrate a lack of consent). Furthermore, police noted that a lack of training, huge caseloads and a lack of the transportation necessary to investigate cases (including no vehicles to get to the rape scene) further hampered the process. The prosecutors interviewed for this study highlighted the need for police training in the taking of victims’ statements, as well as noting that the lack of evidence in rape cases frustrated their ability to prosecute cases. Interviews with 91 police officers revealed that there is attrition even between a victim going to the police and the opening of a case docket: the victim may lose confidence; she may be pressurised by the suspect, her family, or even the police to leave without formally reporting the case; the officer receiving the report might ‘negotiate’ the case in some way, perhaps labelling it as a ‘family matter’; or the officer might label the case as assault, which is not coded as sexual violence in the legal system.<sup>30</sup> Interviews with rape victims confirmed that while a victim might go to the police station to report the rape, ‘this report was not always entered into the crime management information system as a case of rape’.<sup>31</sup> A number of the rape victims interviewed indicated that corruption was involved in the processing of their rape cases and that their dockets had been ‘lost’ by the police. Andersson and Mhatre conclude that, ‘In the case of sexual violence, such system leakage communicates a strong message about the low social value of women, the

25. Ibid, p. 11.

26. Ibid.

27. Andersson, N. & Mhatre, S. (March 2003). ‘Do Unto Others – and Pay the Price: Combating Sexual Violence in the South of Johannesburg’, *SA Crime Quarterly*, 3. Available at: <http://www.iss.co.za/Pubs/CrimeQ/No.3/2Andr.html>

28. Ibid.

29. Ibid.

30. Ibid.

31. Ibid.

perceived unimportance of their abuse and the low price of violence.<sup>32</sup>

In 2002, the *Mail & Guardian* published the findings of a heretofore publicly unavailable internal report by a government interdepartmental management team (made up of the National Directorate of Public Prosecutions (NDPP), the SAPS, the Department of Health, and the Department of Social Development) intended to inform the development of a national anti-rape strategy. The findings showed that, in 2000, 43% of the rape cases reported to the police were withdrawn, either before court or in court, despite the fact that police investigators are under instructions not to withdraw cases. Other key findings were that: 46% of the cases were withdrawn on request of the victim; 36% by the DPP and 14% by the police. The main reasons for withdrawals included that the parties involved had reconciled or sorted the matter out amongst themselves (19%), that the victim was not found (17%), there was contradictory or inconclusive evidence (15%), and that the complainant admitted to having laid a false complaint (7%). Nationally, in 2000, nearly 30% of suspects in reported rape cases could not be traced; in Gauteng, this figure rose to 54% for adults and 37% for children. For combined adult and child cases in Gauteng in 2000, the study revealed the following figures: 16.5% of cases were withdrawn; 47.9% of cases were untraced; 3.1% of cases were unfounded; and 38.3% of cases were referred to court. The study also found a number of problems with the processing of rape cases through the criminal justice system, including:

- the statements of rape victims are often taken by police officers who are not trained to understand sexual violence offences;
- investigating officers are not always available at police stations where a rape is reported and a rape victim may have to wait between three or four hours before meeting with an investigating officer;
- a lack of transport prevented investigating officers from investigating the case effectively;
- there are sometimes no crime kits available at the police stations where rapes are reported, making it difficult for both the police officer and the medical examiner to correctly collect forensic evidence; and
- the caseloads for investigating officers are very heavy.

Lillian Artz and Dee Smythe conducted two attrition studies in 2003 and 2006 examining 1600 rape cases across six urban police stations.<sup>33</sup> In looking at research conducted more than 30 years ago in the United States by the National Institute of Law Enforcement and Criminal Justice, the authors comment that, 'It is disturbing to note that a number of the findings of the National Institute's study are reflective of problems with the processing of rape cases still found today in the South African criminal justice system. The study found that apart from the necessary elements of the cases (including penetration and lack of consent) the minimum requirement set out by respondents for accepting a rape complaint also included the threat of force (77.3% of cases), physical proof of penetration (50%), the use of physical force (38%) and evidence of resistance (24.7%).'<sup>34</sup> The studies conducted by Artz and Smythe found that 'there is considerable variance from station to station and court to court, even within the same magisterial jurisdiction' in the processing of rape cases in the Western Cape Province of South Africa. The authors cite the example of one large urban police station (Station A), analysed between January 2001 and May 2003, where 33% of cases were filed as undetected, 16% filed due to the complainant, 21% were withdrawn in court and 16% filed *nolle prosequi*.<sup>35</sup> However, at another nearby station (Station B), 4% were filed undetected, 7% due to the complainant, 8% were withdrawn in court and 61% filed *nolle prosequi*.<sup>36</sup> The authors account for the inconsistency between these two stations in the following explanation:

... undetected cases are those where a rape is believed to have occurred but the police have been unable to positively identify the offender. In police terms it constitutes a failed investigation. Given the high number of rapes in which the suspect is known to the victim, it is surprising to see one third of

32. Ibid.

33. Artz, L. & Smythe, D. (2007). 'Case Attrition in Rape cases: A Comparative Analysis', *South African Journal of Criminal Justice*, 20 (2), p. 158.

34. Ibid, p. 160.

35. *Nolle prosequi* refers to a prosecutor's decision to decline to prosecute an alleged offence when there is no prima facie case on the basis of which to pursue prosecution at that time, i.e. the prosecutor does not believe that there is a reasonable prospect of instituting a successful prosecution.

36. Ibid, p. 172.

cases being disposed of in this manner at Station A. There is also a strong organizational incentive not to have cases disposed of under this category. This plays out most markedly as it did at Station B above, where investigating officers referred cases that were technically ‘undetected’ to the prosecution, who summarily classified them ‘nolle prosequi’.<sup>37</sup>

Further key findings in relation to the police investigation of rape cases include:

- despite the fact that police standing orders require that a case closed as ‘undetected – complainant not traced’ should be substantiated by witness statements attesting to the fact that the complainant has ‘disappeared’, such substantiation is seldom available;
- police do not collect enough information about the suspect from the complainant;
- the extent to which investigating officers are trained and equipped to investigate rape cases, including the collection of appropriate and relevant evidence for the successful prosecution of rape cases, is questionable;
- the accessibility of investigating officers and high case loads contribute to poorly investigated rape cases; and
- information about the status of a case, including whether or not an arrest has been made, is often difficult to ascertain.

Artz and Symthe found that the taking of rape complainants’ statements was particularly problematic, with a content analysis of police statements revealing that:

... the contents of the statements are sketchy, sometimes not even documenting the complainant’s name and residential address, the name or description of the suspect or witnesses, the place where the incident took place, when the incident took place or a brief description of the events; some police do not know the legal elements of what constitutes a sexual offence and therefore do not know what to look for or ask for from a rape complainant; the statements contain information and details that are irrelevant; the language used in the statements is poor (for instance, poor translation from Xhosa to English and the inappropriate use of terms such as ‘he raped me’ when the offence was an indecent assault).<sup>38</sup>

In summary, the authors point to a range of factors associated with ‘positive or negative police and prosecutorial action’ found in their analysis of rape case dockets, including:

- The assumption of risk (and reasonability of perceived risk) taken by the victim.
- Assumption of provocation or consent.
- The level of caseloads and the extent of investigation.
- Characteristics of the victim (race, co-operativeness, socio-economic position, known substance abuse, community status, ‘credibility’).
- Reporting factors (length of time after assault and reasons for reporting).
- Criminogenic or crime related factors which influence the disposition of a case, such as ‘expected’ levels of rape and violent crime in a certain geographical area, considered ‘normal’ by police officials or statistics.
- Corroborating evidence (the extent and constitution of, even if not a legal requirement).
- Likelihood of finding or arresting the offender, particularly within the first 48 hours of the offence.
- Level of resistance offered by victim/use of force by suspect.
- Injury to the victim (including what constitutes ‘injury’ and whether injuries were genital or other physical injuries sustained during the commission of the offence).
- Voluntary verses involuntary interaction with the suspect (‘willingness’ to consent or participate and to

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37. Ibid. p.173

38. Ibid. p. 179.

what extent) or nature of the prior relationship with the suspect.

- Results of the forensic/medico-legal examination.
- Plausibility of the rape (circumstantial evidence).
- Aggravated verses non-aggravated circumstances.
- Danger of the offender to the community or to the victim.
- Perceived intention in laying a charge of rape.
- Consistency of statement(s).
- Possibility of 'alternative resolutions' (for example victim-offender mediation).<sup>39</sup>

Most recently, Vetten et al conducted a study into the processing of rape cases and their outcomes in the Gauteng Province of South Africa, from the time the case was reported in 2003 to the point that the case was finalised by either the police or the courts. The study also investigated the nature and characteristics of the rapes reported during 2003 in Gauteng.<sup>40</sup>

Key findings from the attrition aspect of this research include, among others: that half the cases in our sample resulted in arrests; trials commenced in 17.3% of cases; a conviction for any crime resulted in just over 1 in 20 cases; and a conviction for rape was secured in just 4.1% of cases. Of those cases that resulted in conviction, 15.6% of perpetrators were sentenced to less than the mandated 10 years minimum sentence; indeed, of the 41% of perpetrators eligible for a life sentence under South African law, a life sentence was handed down in a mere three cases.<sup>41</sup>

Other significant findings that are not later examined in the body of this report include:

- **Perpetrators:**
  - The ages of perpetrators ranged from six years old to 76 years old;
  - 13.1% of perpetrators were juvenile offenders, aged 17 years and younger;
  - 17.4% of cases involved two or more perpetrators – the maximum number of perpetrators involved in a gang rape scenario was 17 perpetrators;
  - Almost one in five of those perpetrators who were arrested had previously been found guilty of another crime (one-third of these previous convictions were for rape).<sup>42</sup>
- **Injuries sustained by victims:**
  - 57.5% of cases resulted in ano-genital injuries, leading to the conclusion that 'Penetration may actually be more forceful in rape in South Africa' as this finding is 'a higher proportion of such injury than has been found in studies conducted in the developed world'.<sup>43</sup>
  - However, in a high proportion of cases there were no injuries to the genitals or other parts of the body which 'confirms findings from other countries which vigorously argue that absence of injuries should not be interpreted as indicating that no rape took place.'<sup>44</sup>
- **Medico-legal evidence:** for adult women, a conviction for a sexual offence was three times more likely if a bodily injury had been sustained and more than four times more likely if a genital injury had been sustained.<sup>45</sup>
- **Victims with disabilities:**
  - 1.9% of victims had some form of disability: disaggregated by age, this breaks down into 1.1% of adult women with disabilities, 3.4% of adolescents and 1.3% of girls.
  - These figures are lower than the prevalence of disability for the province of Gauteng, leading the

39. Ibid, p. 177.

40. Vetten et al, *op. cit.* note 1.

41. Ibid, p. 8.

42. Ibid.

43. Ibid.

44. Ibid.

45. Ibid, p. 9.

authors to two possible explanations: an under-recording of disabilities in the J88s and police dockets; and/or the under-reporting of rape by disabled victims.<sup>46</sup>

In terms of medico-legal findings and case progression, Jewkes et al found that a 'decline in the proportion of cases in which the chain of activities were performed to enable specimens to be collected and sent to a laboratory so that a report on the presence and analysis of DNA would be potentially available for use in trial'<sup>47</sup> paralleled the attrition of cases described above. Forensic kits were completed in 91.3% of adult cases and 63.3% of child cases, but only 69.3% of forensic kits were sent to the lab in adult cases and 45.8% in children's cases. The suspect's blood was obtained in 8.9% of adult cases and 9.3% of children's cases, but a report from the forensic lab on DNA was available in only 1.1% of adult cases and 2% of children's cases. Jewkes et al also found that 'the presence of ano-genital injuries was associated with children's cases going to trial, and in adult cases conviction was very much more likely if injuries were documented.'<sup>48</sup> Importantly, the authors conclude that:

Our findings raise important questions about the value of evidence that requires the use of forensic laboratories at a population level in countries like South Africa that have substantial inefficiencies in their police services. They suggest that in a resource constrained setting far more benefit may be accrued to rape victims and the criminal justice system by establishing policy, guidelines, and training for the forensic medical examiners (be they nurses or doctors) and ensuring that they are equipped to provide good basic health care, including the forensic medical examination, than by focusing on complex and expensive systems to allow for DNA analysis.<sup>49</sup>

### A Comparative Analysis of Rape Case Attrition in Five Countries

In 2008, Kathleen Daly and Brigitte Bouhours undertook a five country comparative analysis of research into rape and attrition in the criminal justice system.<sup>50</sup> The authors looked at studies conducted in the United States, Canada, Australia, England & Wales, and Scotland between 1970 and 2005, and clustered the data into two phases: earlier (data from 1970 – 1989) and later (data from 1990 – 2005). The authors found that, on average, 'across all time periods and countries, the overall conviction rate to any sexual offence is 15%, and to the original offence charged by police, 9%.'<sup>51</sup> They summarise that:

... studies from the United States and Australia show a stable pattern of high rates of attrition at the police and prosecution stages over two time periods (80% of cases dropped). However, rates of court conviction have increased significantly in the United States, but decreased significantly in Australia. Canada has a relatively high case flow into court rate; however, this has decreased significantly over time, and court conviction has dropped sharply. For England & Wales, case flow into court has decreased significantly, and like Australia and Canada, court conviction has declined, although not as sharply.<sup>52</sup>

The authors report that attrition is greatest at the police stage, when 65% of cases reported to police drop out of the system: 'the police stage' starts when the rape or sexual assault is reported to the police and attrition at this point measures the proportion of cases that police refer to the prosecutor's office. The main sources of attrition found at the police stage were as follows:

- 'no crimed' or 'unfounded' (i.e., police find no evidence that a crime took place and do not investigate further);
- no suspect can be identified;
- there is not enough evidence to arrest/charge a suspect; and
- the victim withdraws the complaint or does not cooperate with police in their inquiry.<sup>53</sup>

46. Ibid, p. 8.

47. Jewkes et al, *op. cit.* note 4, p. 6-7.

48. Ibid, p. 7.

49. Ibid.

50. Bouhours, B. & Daly, K. (2008). *Attrition Study Technical Report (ASTR) No. 5: Rape and Attrition in the Legal Process: A Comparative Analysis of Five Countries*. Brisbane, Queensland: School of Criminology and Criminal Justice, Griffith University, p. 41. Available at [www.griffith.edu.au/professional-page/professor-kathleen-daly/publications](http://www.griffith.edu.au/professional-page/professor-kathleen-daly/publications)

51. Ibid.

52. Ibid, p. 51.

53. Ibid, p. 28.

Daly and Bouhours also point out that ‘All the commentators agree that rape law reform did not have the expected impact on the processing and conviction of cases.’<sup>54</sup> While they found that reforms were generally supported by the judges and lawyers and probably had some symbolic impact on social attitudes and beliefs (e.g. victims of acquaintance rape may now be more likely to report the offence to the police), court procedures did not change significantly despite the abolition of some legal requirements and extra legal factors remained important (e.g. a victim’s resistance is still expected even if not legally required).

## Factors Affecting Police Investigations of Rape

In an overview of the literature on police decision-making in rape cases in the United States, Soulliere argues that the rationale behind designating a sexual assault complaint as ‘unfounded’ by police investigators may be either subjective or practical.<sup>55</sup> In reviewing the literature on police decision-making in sexual assault cases, she posits that the reasons for ‘unfounded’ designations can be divided into four main categories:

1. police do not believe the sexual assault complaint,
2. no formal complaint was made by the victim or victim drops the charges,
3. victim apprehension about proceeding with prosecution, and
4. prosecutorial concerns by police.

The first and foremost reason for police to designate a sexual assault complaint as ‘unfounded’ is that they simply do not believe, based on the victim’s account of the incident and available evidence, that a sexual assault has occurred or that evidence has revealed the complaint to be false. In addition to those complaints believed to be false, sexual assault complaints may be designated as ‘unfounded’ when no formal complaint by the victim is made or when the victim decides to drop the original sexual assault charges. In both cases, the complaint is stalled at the police level either because the victim does not come forward as the primary witness or because the case cannot proceed to the prosecution level: the police, therefore, choose not to follow through with the investigation of the complaint. In many cases, the victim’s apprehension about proceeding with the charge may lead to a police designation of a sexual assault complaint as unfounded. Soulliere points out that since detectives have more cases than they can handle, they have little incentive to pursue a case if the complainant does not want to prosecute because the complainant’s cooperation is crucial to a successful investigation.

The majority of the reasons for classifying a sexual assault complaint as ‘unfounded’ can be attributed to prosecutorial concerns by the police. When the police foresee that the prosecutor will have difficulty in proceeding with the charge, this may lead to a decision to stymie the complaint at the police level with an ‘unfounded’ classification. Such concerns regarding prosecution may involve any of the following:

1. **Insufficient evidence**, which may include: lack of physical injury, lack of corroborating medical evidence, suspect not identified, and suspect not apprehended;
2. **Victim’s credibility at question**, which may include: victim’s account inconsistent, victim does not initially contact the police, possible ulterior motives, report of sexual assault not prompt, emotional state of victim not ‘typical’, alcohol/drug use by victim, victim has criminal record, and victim has history of mental illness;
3. **Question of consent**, which may include: lack of resistance by victim, victim-offender relationship, degree of violence, victim-offender contact, risk-taking by victim, and victim considered promiscuous; and;
4. **Additional factors**, which may include: occupational status of victim, marital status of victim, number of offenders, criminal record of offender, multiple sexual acts, other criminal acts committed, and racial composition of victim-suspect dyad.<sup>56</sup>

54. Ibid, p. 14.

55. Soulliere, D.M. (September 2005). ‘Pathways to Attrition: A Qualitative Comparative Analysis of Justifications for Police Designations of Sexual Assault Complaints’, *The Qualitative Report*, 10 (3), pp. 416-438.

56. Ibid, p. 419.

Police decisions are also often based on legal considerations, particularly evidentiary concerns. Soulliere suggests that police also rely on typifications in making decisions regarding their daily tasks. Typifications are constructs or formulations of events based on experience and involve what is typical or common about routinely encountered events, and 'it is suggested that police officers routinely "typify" offenders and victims as well as offence situations, paying most attention to what they consider deviations from a "typical" offence scenario.'<sup>57</sup> It is acknowledged that such typifications may be based on stereotypes and discriminatory views of people and circumstances. Nevertheless, these typifications ultimately influence police decisions and subsequent police actions. Such scenario typifications also include:

1. **Typifications of post-incident interaction:** i.e. the typical interaction pattern between victim and suspect after a sexual assault incident is one of no contact;
2. **Typifications of rape reporting:** both police and prosecutors expect sexual assault victims to report the incident promptly, any delay in reporting may lessen the victim's credibility or may lead officials to question the victim's motives;
3. **Typifications of victim's demeanour:** the typical emotional state of a victim after a sexual assault incident is one of hysterics; and
4. **Typifications of offenders:** sexual assault offenders are strangers to the victim, who use violent force, and have a violent criminal history.<sup>58</sup>

Larry Ullian writes that there are several reasons for attrition, ranging from the victim's own assessment of the tradeoffs and likelihood of conviction to the role played by criminal justice professionals and a jury in assessing the victim and her chances of winning the case.<sup>59</sup> Ullian comments that, 'concern about attrition is in part a function of the possibility that some of it may be avoidable because it results from correctable shortcomings in the way the criminal justice system operates. Hence, attrition may be the result of intimidation by suspects, scepticism about the effectiveness of the system, or inconsiderate treatment of victims and witnesses by the system. These reasons are frequently cited for attrition although a thorough review of the research has also yielded another reason for attrition – specifically that the victim may voluntarily decide not to cooperate or pursue the case.'<sup>60</sup> Ullian maintains that a case is more likely to be prosecuted if it is weighted with objective data or evidence that is clearly illustrative of a sexual assault – he makes the examples of: injury, the use of a weapon, an eyewitness, the suspect's confession, the suspect is a stranger, complete medical evidence, the suspect is known to the criminal justice system and the victim's willingness and ability to assist with the prosecutor's case.<sup>61</sup> Ullian believes that 'as the elements of the case move from the objective to the subjective, the role of the victim becomes increasingly pronounced'<sup>62</sup>, with an increase in the scepticism of the police and prosecution concomitant to an increase in their need to rely on the victim's account of the incident. The police and prosecution's confidence in the victim's account is reliant on their assessment of her credibility, 'which she demonstrates in part, by her behaviour, her communication skills, her circumstances and her motivation to pursue the case.'<sup>63</sup> Ullian sums up by stating that it is the degree to which the victim unknowingly violates the 'pre-conceived notions, operating assumptions, mental model, or perceptual shorthand of the police or prosecutor' that becomes the basis for the police and prosecutor's assessment of the case's potential for success.<sup>64</sup>

In an overview of recent research on rape, Liz Kelly comments that the 'extent to which police officers still believe that many - and some of them estimate the proportion as 50% - of reported rapes are false complaints is shocking'<sup>65</sup>: she attributes this to little or no curiosity on behalf of the police to wonder why this may be; rather, police prefer to 'invoke the centuries old cliché that "rape is the easiest crime to allege"

57. Ibid, p. 420.

58. Ibid.

59. Ullian, L. (December 2002). *Attrition of Sex Offender Cases in Maine's Criminal Justice System: The Role of the Victim and the Criminal Justice Community*. Institute for Public Sector Innovation: Maine.

60. Ibid, p. 3

61. Ibid, p. 10

62. Ibid.

63. Ibid.

64. Ibid.

65. Kelly, L. (2000). 'A War Of Attrition: Recent Research on Rape.' Printed in *Trouble and Strife*, 40.

and/or anecdotes to justify their position.’<sup>66</sup> She adds that the bitter irony is that ‘we know from research that women are less likely to report rape than domestic violence, and that one of the main reasons for not reporting is (justified) fear of being disbelieved by the police. In this context it is hard to imagine why one woman, let alone such large numbers, would voluntarily subject themselves to having to give a statement and being forensically examined about something which had not happened.’<sup>67</sup> Kelly asserts that despite feminist research, activism and advocacy, the myth of the ‘real rape’ scenario (rape being perpetrated by a stranger, at night, in a dark secluded place, and accompanied by excessive violence) persists in the minds and attitudes of criminal justice officials. In giving an overview of the reasons for attrition in rape cases, Kelly asserts that:

We do not need more research to see that the majority of rape cases are being lost at a very early point; we do need research to find out what is going wrong in the encounters between women reporting rape and the police. Both UK and international research confirms that there remains a core problem in perceptions and understandings of rape, which is not limited to the ‘acquaintance’ category. Feminists and women’s projects need to begin some serious thinking, and quickly, about how we might begin to make sustained inroads into the myths and stereotypes about rape.<sup>68</sup>

In their five country comparative analysis,<sup>69</sup> Daly & Bouhours identified various factors that could be identified with case progression through the criminal justice system. These were:

- The victim’s age;
- The victim’s good character and credibility: includes one or more characteristics such as victim does not engage in risky behaviour (e.g., walking alone at night, hitch hiking, going home with the suspect), victim has little sexual experience (e.g., a virgin) or is in a monogamous relationship, she has not had consensual intercourse with the suspect prior to the rape, she did not use drugs or alcohol prior to the rape, she does not have a criminal record, and there are no inconsistencies in the victim’s story;
- The promptness in reporting: the time between the sexual assault and the victim’s report to the police. The literature suggests that when the victim reports the rape promptly (within hours of the assault), her story is more likely to be believed, whereas delay in reporting may give rise to suspicion that she made up the story;
- The suspect is a stranger;
- The suspect has prior conviction: this includes previous official conviction for sexual or non-sexual offence, as well as the suspect being known to the police because of a previous arrest or questioning;
- Existence of witness(es) and/or physical evidence: includes a range of elements that corroborate and lend credence to the victim’s story such as a third party witnessing the sexual assault, physical evidence of the offender’s presence, and forensic evidence such as the presence of semen in the victim’s vagina;
- The victim’s injuries or evidence of victim’s resistance: physical injuries on the victim’s body, and evidence that the victim clearly expressed non-consent (verbally or physically), or physically resisted the offender or tried to escape; and
- The suspect’s use of force or presence of a weapon: evidence that the suspect used or threatened to use force against the victim, and used or threatened to use a weapon (including fists).<sup>70</sup>

Daly and Bouhours’ study found that:

In the early period, the factor evincing the most consistent effect on police and court decisions is the victim’s ‘good character’ (89%). Next is the presence of injuries (67%) and the suspect’s criminal history (58%). Close to half of observations show effects for stranger victim-offender relations (48%), use of force/weapon (47%), and witness or physical evidence (45%). In the later period, the picture changes significantly for two factors: the effect of victim’s ‘good character’ decreases significantly (38%) as well

66. Ibid.

67. Ibid.

68. Ibid.

69. Daly & Bouhours, *op. cit.* note 50.

70. Ibid, p. 57-58.

as stranger victim-offender relations (25%). The effect of other factors increases somewhat: witness or physical evidence, from 45 to 50%; injuries and victim resistance, from 67 to 76%, use of force or weapon, from 47 to 55%, and suspect's prior conviction, from 58 to 67%. The impact of promptness in reporting to police is small and constant overtime (33%). Just one factor had differential effects for police compared to prosecution or court: witness and physical evidence differentiated prosecution/court (59%), but not police outcomes (29%).<sup>71</sup>

In short, therefore, the study found that the 'real rape' scenario was more strongly supported by criminal justice officials in the earlier period examined, but that there was a significant reduction in the effect of a victim's 'good character' and stranger relationship in the progression of rape cases in the later period. However, the continued (and increasing) strength of the evidence factors suggests that independent evidence of non-consent (e.g., a third party witness, physical injuries, weapon present) and specific kinds of evidence (marks on the victim's body) are increasingly required in rape cases.

## International Guidelines for the Police Investigation of Rape

A review of the mechanisms employed by police forces around the world to guide the police investigation and management of sexual offence cases reveals that there are a number of points of agreement on best practice for investigating and managing sexual offence cases.<sup>72</sup>

First, the first response to a victim of sexual assault needs to be appropriate to the crime, as this will affect the victim's willingness to pursue the case.<sup>73</sup> An appropriate response includes, among others:

- That the police member must listen carefully and be supportive.
- That the relevant police and emergency units must be contacted and called out.
- That the victim must be protected and supported.
- That steps must be taken to preserve the crime scene and secure any physical evidence until an investigator can take charge (this includes restricting non-essential access to the crime scene).
- That the police officer in charge explains to the victim the necessity of a medical examination, as well as the next steps in the investigation of the crime.

Secondly, the investigation of a rape case needs to include, among others, the following elements:

- a team dedicated to the investigation of rape cases;
- the use by the investigating officer of a decision log documenting the rationale behind the lines of investigation and other management issues;
- the practice of equipping first response staff with mouth swab and urine kits, to prevent loss of evidence;
- ensuring that the victim fully understands the investigative process and any subsequent criminal proceedings at all times (constant communication with the victim, even if there is no progress on the case, is essential);
- in culturally and linguistically diverse settings, police should not alter the victim's words or phrases in an attempt to produce a 'grammatically correct' statement: statements should always be in the victim's own words.

In terms of the withdrawal of cases, it is generally agreed that under no circumstances should police encourage a victim to request no further action or to sign a statement of no complaint.

Other common procedural points included:

- Monitoring the current levels of performance of police officers investigating rape cases is key to

71. Ibid, p. 62.

72. For a more detailed overview of the international mechanisms, please refer to Appendix A.

73. Metropolitan Police Authority (April 2002). *Scrutiny Report: Rape Investigation and Victim Care*. MPA: London, p. 6.

- improving rape investigations and victim care;
- Police forces should develop guidelines for the referral of rape cases to the relevant prosecution services for advice; and
- Training for police officers receiving, managing and investigating rape cases should conform to a minimum standard.

## National Instructions for the Police Investigation of Rape

### National Instruction 22/1998: Sexual Offences: Support to Victims and Crucial Aspects of the Investigation

National Instruction 22/1998 provides clear instructions to the SAPS on the investigation of sexual assault cases and the support of victims in such cases. These instructions were developed from guidelines that formed part of the National Policy Guidelines for Victims of Sexual Offences developed in 1998 as part of a government campaign on preventing violence against women. An intersectoral task team, comprised of personnel from the South African Police Service (SAPS), the Departments of Health, Welfare and Correctional Services, representatives from different aspects of justice (prosecutors, magistrates and appellate courts) and an NGO representative from the National Network on Violence against Women, was established to develop uniform national guidelines for all role-players handling rape and other sexual offence cases. The guidelines were designed to facilitate the development of an integrated and holistic approach across the government and NGO sectors to deal with sexual offences. Departmental personnel at ground level were to have access to these guidelines to support them in their everyday work with victims of sexual offences.

#### Chapter 1: Role of SAPS in Victim Support:

The Guidelines state that it is the right of any person to know that if they lay a complaint with the police, the complaint can expect professional service: as SAPS must attempt to meet the expectations that people have, the guidelines have been developed to assist members of the SAPS to deal with victims of sexual offences.

#### Chapter 2: Sexual Offence Reported:

*Procedure:* the Guidelines outline what police officers are expected to do in the event that the sexual offence is reported in person, *inter alia:* the reporting victim is to be taken to a 'quiet room/area away from the main duty desk' and the officer in charge should take only basic details from the victim, to be filed in the newly opened docket. The police officer should establish if the victim needs medical assistance and, if so, should arrange for it immediately. If the offence is reported by telephone, the police officer should ask the victim for the address from where he or she is telephoning, find out if the victim is in any immediate danger, a patrol vehicle should be sent to the victim's address immediately to secure the crime scene and assist the victim, and an ambulance should be sent immediately to the victim's address if necessary.

*Victim Support:* the guidelines expressly state that 'until the contrary is proved, allegations of sexual offences are to be accepted as such.'<sup>74</sup> In addition, a victim can lay a charge at any time and no victim should be turned away.

#### Chapter 3: First Officer at the Scene and the Investigating Officer's Duties:

*Procedure:* the Guidelines state that it is extremely important that the scene of the crime and surrounding areas be secured to ensure that evidence remains intact. At this point, the attending officer may talk less formally to the victim and should 'write everything down that the victim says, using foolscap paper and file it under annexure B of the case docket'. The attending officer must also: inform the victim of police procedures (including the role of each police official in the process); advise the victim of the confidentiality of her

74. Available at: [http://www.doj.gov.za/2004dojsite/policy/guide\\_sexoff/sex-guide01.html](http://www.doj.gov.za/2004dojsite/policy/guide_sexoff/sex-guide01.html) All subsequent references to the SAPS National Policy Guidelines for Victims of Sexual Offences or SAPS National Instruction 22/1998 will be to this website address.

case; explain the reason for the medical examination; and make the necessary arrangements for the victim to be taken to a healthcare facility for the examination. In addition, the investigating officer must register the case docket, obtain a brief description of what happened from the victim in private, explain procedures to the victim if this has not already been done, offer support to the victim, and complete an SAP 308 (permission for medical examination) in which the investigating officer must 'record precisely which samples he/she requires from the accredited health care practitioner'.

**Victim Support:** the victim should not in any circumstances be left alone and must be shown 'empathy (understanding)' not 'sympathy (pity)'. For the investigating officer, it is 'essential to try to win the victim's trust during the first meeting'. Lastly, 'it is important for the investigating officer to escort the victim to the accredited health care practitioner and thereafter to a place where the victim feels safe.'

#### **Chapter 4: Medical Examination (Victim):**

**Procedure:** the Guidelines list the different samples that should be taken during the medical examination. It is the investigating officer's role, during and after the medical examination, to ensure that: correct samples are taken, samples are clearly marked, that samples to be transported are stored correctly, and that the victim is not unnecessarily embarrassed or stressed by the examination. The Guidelines clearly state that even if the sexual assault 'was not reported timeously (72 hours), [the investigating officer must] make an appointment with the medical health care practitioner. Even if the victim has washed, do not discount the possibility that evidence could still be obtained.'

**Victim Support:** before any samples are taken the medical examination procedures must be explained to the victim to help calm the victim. Furthermore, if the victim requires or requests additional medical treatment, the investigating officer should refer the victim to a primary health care centre or private clinic, and 'if circumstances permit, the investigating officer may take the victim to the health care centre of his or her choice.'

#### **Chapter 5: The Victim's Statement:**

**Procedure:** the initial brief statement taken from the victim needs to be followed by a more in-depth statement. The 'victim's statement must be comprehensive. (Rather write too much, than too little.)'. The Guidelines specify a checklist of **78** details that should be included in the victim's statement. Apart from the obvious details of the crime, the checklist also includes: how the suspect approached and maintained control of the victim; exact words spoken; a description of anything touched by the suspect; a continual description of the victim's state of mind during the whole incident; whether the suspect was circumcised or not; whether the suspect took steps to avoid leaving fingerprints; a full description of the suspect from head to toe; and the inclusion of the fact that the victim did not give consent, even if this is obvious. In terms of victim support, the statement must be taken in a relaxed, private atmosphere as soon as the victim has recuperated sufficiently, when the investigating officer has more than enough time to take a statement of this nature. It must be explained to the victim why certain intimate questions will have to be asked and that these questions are necessary to substantiate the allegations. The victim must also be told, 'with great sensitivity, that if he or she has done something that might put him or her in a bad light when he or she is cross-examined, it is essential that he or she does not try to hide this fact or facts but states it clearly.'

#### **Chapter 6: Medical Examination (Suspect):**

**Procedure:** the Guidelines state that if the suspect is traced he must be taken to the accredited health care practitioner, who will take specified samples in order to determine that the right person is to be prosecuted.

#### **Chapter 7: Preventing Exhibit Contamination:**

**Procedure:** the guidelines state that 'from the moment the investigating officer takes the samples into possession from the accredited health care practitioner, the SAPS is responsible for maintaining the chain of evidence. The exhibits must therefore be marked and sealed properly.'

**Chapter 8: Identification Parades:**

*Procedure:* the identification parade should, as far as possible, be held at a venue or station where the facility of a one-way mirror is available. If an identification parade is necessary, all that is expected of the victim is that he/she clearly identifies the suspect. The victim does not have to touch the suspect.

*Victim Support:* the Guidelines suggest that an identification parade be held only when the identity of the suspect/s is in dispute. If uncertain of the necessity, the investigating officer must liaise with the prosecutor in this regard as this is yet another trauma the victim has to undergo. The importance and purpose of the identification parade should be explained to the victim.

**Chapter 9: Victim Aftercare:**

*Procedure:* the victim aftercare Guidelines state that a list of all counselling service organisations must be kept in every charge office so that the victim can be informed of what counselling services are available locally.

*Victim Support:* under the heading ‘Help victim to get counselling’, the Guidelines read, ‘although it remains the task of the police to investigate crime, an attempt must be made, without losing objectivity and as far as practically possible, to assist the victim throughout.’

**Chapter 10: Assistance to Victim during Court Proceedings:**

*Procedure:* the police must always keep the victim informed of the progress of the case (e.g. bail proceedings, court hearings), even if there is not any positive progress to report because ‘the victim will feel reassured that their case has not been “forgotten” if regular reports are made to them.’ The police must also prepare the victim for court: it is the officer’s duty to put the victim at ease by explaining court procedures. In terms of a pre-trial impact statement, the Guidelines state that ‘a further statement from the victim must be obtained before he or she gives evidence. It must describe, e.g. nightmares, personality and or physical changes. The purpose of this is to impress upon the court the impact the crime has had on the victim’. Lastly, the Guidelines state that whenever a sentence of 2 years or longer is imposed by the court, a SAP 62 must be completed in triplicate by the investigating officer to assist the Parole Board when determining possible parole for the suspect.

*Victim Support:* the investigating officer must put the victim at ease by explaining court procedures; take the victim to the court where the case will be heard prior to the day of the trial and organise a pre-trial consultation with the prosecutor; give the victim her statement to read once again; inform the victim about the possibility of delays in the court proceedings; and encourage the victim to persist with the case.

**National Prosecuting Authority Directives on the Prosecution of Sexual Offences**

In 2003, the year from which the rape dockets were sampled for this research, the National Prosecuting Authority’s (NPA) handling of rape cases was guided by *National Directives on the Prosecution of Sexual Offences*, as well as by a set of guidelines within the National Policy Guidelines for Victims of Sexual Offences.<sup>75</sup> These instructions and guidelines (which have now been superseded by new National Directives on the Prosecution of Sexual Offences cases in terms of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007) are outlined here inasmuch as they interlink with and speak to the police investigation of a rape case.

The Guidelines state that, if at all possible, the prosecutor who first handled the case should follow it through the trial stage until its conclusion: part of this prosecutor’s duty is to ensure that the case docket has been fully investigated before the trial commences so that no unnecessary delays occur. This requires constant and in-depth communication between the prosecutor and the investigating officer on the case. The

75. Available at: [http://www.doj.gov.za/policy/guide\\_sexoff/sex-guide04.html#1](http://www.doj.gov.za/policy/guide_sexoff/sex-guide04.html#1)

prosecutor has a direct responsibility to ‘consult with the police who investigated the case, particularly those likely to be called as witnesses. Discussion to ensure that all necessary documents and exhibits are available will assist the smooth running of the case.’

In coordination with the SAPS Guidelines under Chapter 10 (above), the prosecutor also has a duty to ‘consult thoroughly with the victim before the trial commences. The prosecutor must ascertain what fears the victim has, and attempt to allay these fears.’ Alongside the investigating officer, the prosecutor is encouraged to familiarise the victim with the court room itself and the interpreter, if applicable, before the trial or court proceedings begin.

It is apparent, therefore, that the work of the police in a rape case does not stop when the case is referred to the prosecution or goes to trial – the police have a crucial role to play, alongside the prosecution, both in preparing the victim for her experience in court and in ensuring the solidity of the case through making sure that the necessary documents and evidence are available and by being present at court if called as a witness in the case.

# Tracking Justice: Rape Survivors in the Criminal Justice System in Gauteng

## Background to the Study

Overall, the aims of the *Tracking Justice* study were to describe the characteristics of reported rape in Gauteng province; and to describe the processing of rape cases by the police and courts at selected courts and police stations.

To describe the processing of rape cases by the police we conducted a retrospective review of records held by the police on a random sample of rape and attempted rape cases reported to the police in Gauteng Province in 2003. In 2003, the common law definition of rape was still in effect (now replaced by the statutory definition contained in the new Sexual Offences Act of 2007). In terms of the common law definition, only women and girls could lay charges of rape and only men and boys be accused of the crime. Consequently this report refers to victims as female and suspects as male. All cases selected would have met the common law definition of rape in force at the time: 'intentional, unlawful sexual intercourse with a woman without her consent.'

The terms 'victim' and 'complainant' are used interchangeably throughout this report.

## Methodology<sup>76</sup>

The methodology of the full *Tracking Justice* study has already been detailed in the first report.<sup>77</sup> For the purposes of this report, only the methodology used to obtain information about police practice in rape cases is described here.

## Sampling

Cases were sampled from rape complaints reported to the police during the calendar year 2003 (i.e. 12:01am on 1 January 2003 to 11:59pm on 31 December 2003). 2003 was chosen because it was recent enough for the findings to still be relevant, while ensuring that most cases reported in that year would have been finalised or otherwise disposed of by mid-2006 (which was when the fieldwork was conducted). SAPS permission for the study was given on condition that no open cases were studied; in order to prevent against bias it was important that almost all cases had already been finalised.

A total of 11 926 rapes were reported at the 128 police stations in Gauteng during 2003. A sample was drawn for the study using a two stage procedure. The first stage drew a sample of 70 police stations using probability proportional to size, where size was based on the number of rape cases reported to the police

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76. The information in this section is adapted from Vetten et al, *op. cit.* note 1, and is reproduced here for the readers' convenience.

77. See Vetten et. al., *op. cit.* note 1, pp. 24 – 27.

in 2003. Within each police station all the finalised rape cases for the year were identified by their CAS numbers and a random sample of 30 dockets were selected (or all cases if fewer than 30 cases were reported in that year to the sampled police station). The dockets were then located either at the police station or at the specialist Family Violence, Child Protection and Sexual Offences (FCS) Units and data extracted. The proportion of dockets from which we were able to draw the sample was 70.1%. We were unable to ascertain how many dockets were not available, either because they were still open or were missing for other reasons. There was no replacement of dockets that were unavailable. This procedure provided a sample of 2 068 cases for the study.

Cases sampled from were those classified by the police, at the time the docket was opened, as crimes of rape and attempted rape. Cases of rape were defined for the purposes of the study as assaults against an individual victim. Thus, if one man raped two victims this was counted as two cases of rape. If one man raped a victim twice, or one victim was raped by two or more men, it was counted as one case of rape.

### Sources of Data

Permission to review finalised rape dockets was obtained from both the national police and the Gauteng provincial police.

The data instrument recorded information from the police docket, extracted by a team of trained fieldworkers. The docket, essentially a file, has three sections consisting of: direct evidence (such as witness statements), the J88 on which the medical examination and its findings is documented and any other reports, including that from the Forensic Science Laboratory if available; administrative correspondence peripheral to the case; and the 'investigation diary', which consists of written communications between the investigating officer, a superior police officer and the prosecutor.

Fieldworkers read through the sampled dockets and recorded: the details of the victim, the circumstances of the rape and the victim's behaviour after the rape; details of the suspect (where they were available); whether, when and how the suspect was arrested; whether and when the suspect was charged and taken to trial; and the outcome of the case. If cases did not proceed to arrest and then trial, information was gathered on reasons for non-progression. The data sheet contained both closed and open questions. Closed questions were used for items where the range of responses was well defined, such as age, language, occupation, dates or where there were a limited range of likely responses e.g. use of weapons. Open questions were used for items where coding in police stations was likely to lead to inconsistency. This included the circumstances of the rape, instructions given during the rape and actions taken afterwards. These were coded after the end of the data collection by the project team, with one individual working on all dockets to ensure consistency. In addition, there was a section at the end of the data instrument where fieldworkers could copy verbatim from the investigation diary, reflect on the case or record inconsistencies and interesting information.

### Confidentiality and Ethics

Information about individual rape victims is highly sensitive, with the publication of their names and contact details strictly proscribed by sections 154 and 335A of the CPA. All data were de-identified by creating a unique identification number for each case. No identifying information such as names, CAS numbers or identification numbers were captured on the data collection tools. A separate sheet linking CAS numbers to the identification numbers was kept in order to find the appropriate court records in cases that had progressed to court. These records were kept securely by the Principal Investigator and destroyed once all information pertaining to the case had been located. All completed data coding sheets were kept securely at the Medical Research Council. No attempt was made to contact either the victim or suspect. Ethics approval was given for the study by the University of Witwatersrand, Faculty of Health Sciences Ethics Committee.

### Data Analysis

The data capture sheet for each case was entered separately into an Epi-info database. The data was cleaned and any errors were corrected. In a few cases when discrepancies were found between data sources that were

incompatible with other data and veracity could not be resolved, the response was set to missing.

For the *Tracking Justice: the Attrition of Rape Cases through the Criminal Justice System in Gauteng* report, some of the findings of which are reproduced in this report, the data was analysed in Stata 10.0 at the Medical Research Council. The analysis took into account the survey design and used the `svy` commands of Stata. The distribution of variables was described for the whole sample and for the victim age groups 0 - 11 years, 12 - 17 years and 18 years by calculating medians and ranges or means (as appropriate) or frequencies.

For the quantitative findings analysed in this report, the data was analysed using Statistical Package for Social Scientists (SPSS).

Descriptive data captured from 1657 police dockets was transcribed by fieldworkers verbatim from the docket and then entered into Excel spreadsheets by data capturers. This data was analysed thematically.

### Response Rate

The study was designed to enable the findings to be generalised to rapes reported to the police in the province of Gauteng. However, while data were collected from all 70 police stations selected for the study, it was not possible to determine precisely the proportion of dockets at each police station that met the eligibility criteria for the study. This was due to our not being able to obtain figures for the proportion of rape cases still open at the time of the fieldwork. From the data gathered it was apparent that 70.1% of dockets opened in 2003 were available for sampling.

Some dockets could not be found due to misfiling, with dockets from different years and months sometimes organised in the same bundles.<sup>78</sup> Other dockets may have been unavailable due to corruption. Further, some dockets still remained with the specialist FCS Units and had not been returned to the station where the complaint originated while others had been reopened for investigation. As it happened, the study coincided with a police operation reviewing all finalised dockets to ascertain whether or not further progress could be made on these cases. It is impossible to determine whether the non-available dockets would have differed in important respects from the dockets available for the sample. However, it seems likely that the unavailable dockets included both those that had been finalised very early due to corruption and so would contain few investigation details, as well as those that may have been re-opened because they contained more information on which to pursue legal action. It is also possible that as a result of the review process, slightly more cases may have resulted in arrests and prosecutions. But given that such reviews are extraordinary, any slight increase in arrest, trial or conviction rates that may have been produced are not reflective of the routine processing of cases.

### Limitations of the Study

This study was based on data that was generated for particular purposes that did not include research. As a result there was no control over the completeness of information or its availability. Many items of interest were missing from dockets including, in some cases, the victim's age. The proportions presented here were calculated as the frequency with which the item of interest was reported as a proportion of all case that included information on the item. This results in some fluctuation in denominator across tables.

Finally, police records are compiled for the purposes of a prosecution that must be conducted within the confines of the laws governing evidence and procedure. Witness statements, for example, are very rarely written down verbatim. It is therefore impossible to be sure of the relationship between the written content of witness statements and what was actually said by the witness to the statement-taker; or the content of the statement and the actual events of the rape. The information contained in witness statements is therefore only as accurate and reliable as the record-keeper and narrator.

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78. Police stations with disorganised docket stores included Rietgat, Sebenza and Kwathema.

# Research Findings on the Police Investigation of Rape Cases in Gauteng

## The Prevalence of Rape in South Africa

The exact prevalence of rape in South Africa is unknown. Many acts of rape go unreported, not only to state or private institutions, but often even to the victim's family and friends.

Table 1: *Reported rapes in South Africa for the period April to March 2003/2004 to 2006/2007*

Province	2003/2004	2004/2005	2005/2006	2006/2007
Eastern Cape	7,027	7,405	8,960	7,796
Free State	3,828	3,983	3,709	3,589
Gauteng	11,926	11,923	11,562	11,114
KwaZulu-Natal	9,230	9,614	9,731	9,587
Limpopo	4,158	4,780	4,416	4,573
Mpumalanga	3,714	3,942	3,991	3,871
North West	5,004	5,074	5,007	5,065
Northern Cape	1,531	1,559	1,405	1,300
Western Cape	6,315	6,834	6,145	5,722
<b>RSA Total</b>	<b>52,733</b>	<b>55,114</b>	<b>54,926</b>	<b>52,617</b>

Official SAPS statistics, available at: [www.saps.gov.za](http://www.saps.gov.za).

The Medical Research Council estimates that the number of rapes may be up to nine times that of the reported statistics.<sup>79</sup> The collection of truly reflective information on the prevalence of rape in South Africa is hampered by a number of issues. First, violence as a means of expression or as a way to negotiate conflict has become normalised in South African society, especially in intimate relationships. This means that some victims have internalised the violence acted out on them to such a degree that they might not see it as something worth reporting. Secondly, there are many barriers to reporting rape in South Africa. These

79. Jewkes, R. & Abrahams, N. (October 2002). 'The Epidemiology of Rape and Sexual Coercion in South Africa: an Overview', *Social Science & Medicine*, 55 (7), pp. 1231-1244.

include: feelings of shame and self-blame; societal attitudes and discrimination against those who have been victims of sexual violence; community taboos around sexual violence; reluctance towards or threats against reporting a family member or intimate partner; discriminatory police attitudes; and the secondary victimisation experienced by sexual assault victims in the criminal justice system.

## Terms and Definitions

In this report, the following terms and definitions are used:

- A case is referred to as having been ‘disposed’ of by the police when the case does not proceed further than the police investigation: in other words, the case docket is not referred to the NPA for a decision whether or not to prosecute.
- A case is ‘finalised’ when the police are no longer actively investigating the case due to the following reasons:
  - the case is *undetected*: a rape is believed to have occurred but the police have been unable to positively identify the offender;
  - the case is *undetected – complainant not traced*: a complainant cannot be found after reporting the matter;
  - the case is *undetected – warrant issued*: the identity of the suspect is known but his whereabouts are not, but should the suspect resurface at a later stage he may be arrested on this warrant;
  - the case is *unfounded*: the investigation clearly ascertains that an offence has not been committed; and
  - the case is *withdrawn – no consequence*: the complainant has requested, through an affidavit, that the case be discontinued as a result of being of no consequence.<sup>80</sup>

## General Characteristics of the Rape

The information in this section of the report was originally published in *Tracking Justice: The Attrition of Rape Cases through the Criminal Justice System in Gauteng*.<sup>81</sup> It is reproduced here for the reader’s benefit and to provide some context for the information on the processing of rape cases by the police that follows.

### Victim’s Age

Table 2: *Victim’s age*

	TOTAL n = 2064	0-11 YEARS n = 298	12-17 YEARS n = 514	18+ YEARS n = 1230
<b>Proportion in each age group</b>	100%	14.6%	25.2%	60.2%

The precise age of the survivor was not recorded for 56 of the 2 068 cases: in 22 cases it was impossible to determine whether the victim was a young child, adolescent or adult. Where age could be determined, analysis showed that victims ranged from 1 year to 89 years, with the median age being 20 years. Women aged 18 years and older comprised the majority of rape victims in our sample (60.2%). Of the rapes involv-

80. South African Police Service Standing Orders (G) 325; Artz, L. & Smythe, D. (December 2007). ‘Losing Ground: Making Sense of Attrition in Rape Cases’, *SA Crime Quarterly*, 22, p. 15.

81. Vetten et. al. *op. cit.* note 1.

ing children 17 years and younger, adolescent girls faced the greater risk, with 63.3% of victims between the ages of 0-17 years being girls between 12-17 years.

### Victim's Race

Table 3: *Victim's race, by age*

RACE	TOTAL n = 2051	0-11 YEARS n = 298	12-17 YEARS n = 514	18+ YEARS n = 1230
African	88.2%	92.3%	83.7%	89.3%
Coloured	4.7%	3.4%	4.9%	5.0%
White	4.5%	1.3%	7.6%	4.1%
Asian	0.8%	-	2.3%	0.4%
Unknown	1.8%	3.0%	1.6%	1.3%

The official population statistics for South Africa in 2003 reflect the following: 79.5% black; 9.1% white; 8.9% coloured; and 2.5% Indian/Asian.<sup>82</sup> The victims' race does not, therefore, follow the demographics of the country. There was an over-representation of Africans and an under-representation of other race groups. This may be due to one or more of three reasons: an unequal distribution of rapes; an unequal distribution of the reporting of rape; or a bias in the non-available dockets at police stations.

### Victim's Relationship to Suspect

Table 4: *Victim's relationship to suspect, by age*

	TOTAL n = 1488	0-11 YEARS n = 192	12-17 YEARS n = 364	18+ YEARS n = 932
Relatives	9.7%	31.8%	14.0%	3.4%
Current or ex-intimate partners	13.9%	0.5%	8.5%	18.8%
Strangers/known by sight	39.0%	14.6%	28.6%	48.1%
Friend/acquaintance/neighbour	32.8%	52.1%	43.4%	24.8%
Someone just met	4.6%	1.0%	5.5%	4.9%

There were significant differences in the relationship between suspect and victim according to the age of the victim. Almost half (48.1%) of adult women reported being raped by strangers, or those known only by sight, while this same group accounted for only 14.6% of rapes reported by girls aged 11 years and younger. Conversely, relatives were much more likely to rape girls of all ages than they were to rape adult women. Almost one in five adult women (18.8%) was raped by a current or ex-intimate partner.

82. Available at: <http://www.statssa.gov.za/publications/Po302/Po3022003.pdf>

## Location of Rape

Table 5: *Location of rape, by age*

	TOTAL n = 2028	0-11 YEARS n = 291	12-17 YEARS n = 510	18+ YEARS n = 1219
Victim's home	20.3%	28.5%	17.1%	19.6%
Suspect's home	31.7%	34.0%	39.6%	28.0%
Another residence	9.8%	8.9%	12.4%	8.9%
Roadway or alley	5.3%	0.7%	2.2%	7.8%
Open space	20.4%	8.6%	16.9%	24.9%
Education/school premises	1.1%	3.4%	1.4%	0.4%
Institution: children's home, health facility	0.3%	0.7%	0.2%	0.3%
Car/vehicle/train	2.8%	1.0%	3.7%	2.9%
Other	4.8%	2.7%	4.5%	5.5%
Unknown	3.4%	11.3%	2.2%	1.7%

More than half of all rapes occurred in a home: the victim's, the suspect's or another residence. The data shows that the rapes reported in this study were more likely to occur in the suspect's home, particularly when the victim was an adolescent girl. Adult women were more likely than children to be raped outdoors, which is probably reflective of a number of factors: the greater number of strangers raping adult women, adult women's great mobility and adult women's need to access public transport and work, often through open spaces. Although the number was not great, it is notable and of concern that 4.1% of the young child rapes occurred in a school, children's home or health facility.

## Use of Weapons and Physical Force

Table 6: *Use of weapons and use of bodily physical force, by age*

USE OF WEAPONS	TOTAL n = 1990	0-11 YEARS n = 276	12-17 YEARS n = 503	18+ YEARS n = 1206
Suspect/accomplice armed	32.4%	4.7%	27.4%	40.9%
Armed with knife/panga	10.4%	2.7%	7.4%	13.7%
Armed with gun	15.0%	1.0%	13.2%	19.3%
Armed with tools/sharp object	1.9%	0.3%	1.2%	2.7%
Armed with blunt objects	2.7%	0.3%	2.3%	3.5%
Armed with rope or wire	0.7%	-	1.4%	0.6%

USE OF BODILY FORCE	TOTAL n = 1990	0-11 YEARS n = 276	12-17 YEARS n = 503	18+ YEARS n = 1206
Suspect used bodily force	59.9%	25.3%	55.2%	70.1%
Suspect threatened to kill, hurt, injure	34.6%	18.6%	35.5%	38%
Coercion (abuse of power or authority)	13.9%	49.8%	19.4%	3.0%
Coercion (trickery, blackmail, false pretences, abuse of trust)	31.9%	28.7%	36.5%	30.8%

A third of all the rapes (32.4%) occurred in the context of the suspect or an accomplice carrying a weapon. Weapons were most likely to be used in the rape of adult women, but the weapon was most likely to be used to injure the victim in the case of the teenage victims. In more than half the cases (60%), some bodily force was used by the suspect of the rape (this includes, *inter alia*: strangulation, beating/hitting with fists/hands, kicking, pushing/shoving, and placing a hand over the victim's mouth and/or nose).

### Reporting to the Police

Table 7: *Victim's actions in the immediate aftermath of the rape, by age*

	TOTAL n = 2061	0-11 YEARS n = 298	12-17 YEARS n = 514	18+ YEARS n = 1230
Fled the scene	15.7%	5.4%	13.4%	19.4%
Fell asleep or remained in place	13.0%	5.0%	16.9%	13.4%
Phoned for help or immediately reported	32.2%	14.8%	28.0%	38.5%
Went elsewhere before going to police	19.9%	12.8%	23.9%	20.2%
Taken to police/hospital by witness/friend	14.9%	28.2%	14.8%	11.9%

The majority of victims (87%) left the scene of the rape immediately following the incident, either to flee the place or to seek help. Almost 40% of adult victims immediately phoned for help or reported the rape to the police. However, young girls (0-11 years) were more likely to be taken to the police or hospital by a witness or friend, indicating their greater dependence on the help of others after such a traumatic incident. In total, 13% of victims fell asleep where the rape had occurred or remained in place after the rape: this figure is highly likely to include a percentage of victims who were abducted and then imprisoned by the suspect following the rape and were therefore unable to flee or look for help.

In terms of how long it took victims to report to the police, the majority reported the rape within a day. However, the delay did range from between one day to five years (or 1834 days) after the event. From the police perspective, a delay in reporting a rape to the police may have implications for the investigation of a

case, such as the gathering of evidence (e.g. influencing findings from a medico-legal examination) and subsequent arrest of the suspect. However, a delay in reporting is not necessarily a choice that the victim makes, and may illustrate the range of structural barriers to reporting that victims of rape are faced with. These barriers include a general lack of access to the police, both physically, in the case of only intermittent satellite police stations in the rural areas, and psychologically, through issues of shame, self-blame, fear, and lack of faith in the police, as well as threats and intimidation by the suspect and/or the suspect's family and friends. A delay as long as 1834 days would be more common where there was chronic abuse, a child who did not report the sexual abuse until she was older, or where the sexual abuse of a child or disabled person was only discovered later by a third person.

## Technical Aspects of the Police Investigation

### Visits to the Scene of the Crime

Table 8: *Police visits to the scene of the crime*

	TOTAL n = 2029	PERCENT
<b>Police <i>did not</i> go to scene of crime</b>	1496	73.7%
<b>Police <i>did</i> go to scene of crime</b>	533	26.3%

The police did not visit, and therefore did not examine, the scene of the crime in 73.7% of cases reported to them.

Visiting the scene of the crime in a rape case is crucial for the collection of physical evidence and fingerprints. Rape cases are notoriously difficult to prove (especially if it is the victim's word against the perpetrator's word and there are no obvious signs of violence), and therefore it is vital to ensure that any chance of accumulating evidence is taken. Whilst there may not be much physical evidence at the scene of the crime, it is impossible to know what evidence may or may not be there, and therefore assist in the investigation of the case, without visiting it. Both the international best practice and the SAPS National Instructions advocate visiting the scene of the crime in order to collect and safeguard any physical evidence.

### The Victim's Statement

The victim's statement is the most important piece of evidence in a rape investigation and forms part of the police docket and the court records. It is crucial that the statement records accurate contact details for the victim so that the investigating officer can follow up with the complainant: to get additional information if needed, to ask the victim to identify a suspect, and to keep the victim informed of the progress of the case. In other words: the victim's details (such as name and date of birth or age) need to be correct; it needs to be proven that the statement was written of free will (by being signed by the victim); and that the statement was written in the presence of an officer of the law and therefore not fabricated (by being signed by the police officer recording the statement).

Table 9: *Completeness of the victim's statement, by age*

	TOTAL n = 2042	0-11 YEARS n = 292	12-17 YEARS n = 514	18+ YEARS n = 1227
<b>Handwritten victim statement not in docket</b>	7.5%	30.2%	6.6%	2.1%
<b>Neither age nor date of birth recorded</b>	1.8%	2.0%	0.6%	0.9%
<b>Address not recorded</b>	2.5%	3.4%	2.5%	2.0%
<b>Work address not recorded</b>	75.2%	75.0%	75.9%	76.1%
<b>Contact person not recorded</b>	82.2%	76.2%	78.3%	85.3%

Table 9 shows the completeness of the victim's written statement and pro forma cover page, by age. In 7.5% of all cases, the complainant's statement was not in the police docket at all. The high proportion of missing dockets for child victims (30.2%) can partly be explained by the victim being too young to provide even a verbal statement; or, in the case of a parent reporting a case of rape on behalf of a teenage girl, the 'victim' may not want to submit a statement because the sex was consensual. Victim statements were included in as many as 70% of children's cases because if the child is old enough to explain what happened, she will explain what happened to a police officer who will transcribe her words into a statement; in addition, if a child is too young to report or give a statement, the mother or guardian of the child will report the case and act as the complainant in the case, which would entail giving the police a statement on the child's behalf. However, especially in the case of adult victims, where 2.1% of victim statements were missing from the police docket, there is no reasonable explanation for why these statements were not taken by the police or were not in the police docket. Even if the adult victim was illiterate or had a mental/learning disability, the police would write down the victim's verbal explanation of the incident (in the case of illiterate victims) or the complainant (in the case of victims with mental/learning disabilities) would provide a statement to the police.

In 15.5% of cases the statement had not been signed by the complainant, while in 7.8% of cases the statement was not signed by both the complainant and the relevant police officer, and in 8.5% of cases the statement was not dated. The omission of these details points towards a general carelessness of attention to detail and record-keeping within the police force and, more worryingly, may have an impact on the admissibility and reliability of the victim's statement in court.

It is very problematic that in 51 cases, not even an address was recorded for the complainant. This means that in those cases the police had no way to contact the complainant subsequent to her reporting the rape incident. Aside from police error, the absence of a physical address for the complainant may also indicate that some victims may not have fixed addresses; however, in these cases the police should record that the victim has no fixed abode and note down other contact information for the victim. It is not surprising that in 75% of cases there was no work address recorded, considering the high percentage of our sample that were unemployed (although, it must be noted that the percentage of unemployed victims was lower, at 57.7%, than the percentage of work addresses not recorded). But with children, a school address should be taken instead of a work address and this was usually not done. However, it is disturbing that in 82% of cases no contact person was recorded: this means that if the complainant moved, was unavailable or for some other reason un-contactable, there was no alternative way for the police to contact her. Considering the number of victims who disappeared in the course of the police investigation (discussed below), it would seem imperative for the police to record a contact person.

The location where the rape occurred (in other words, the scene of the crime) was missing in 14% of cases. It is possible that some complainants (and especially children) may not have known where exactly the

rape occurred, but it is hard to understand why in so many cases no effort was made to record some description of the location of the rape.

Table 10: *Time lapse between report of rape and statement taking by police, in days*

	<b>N (DAYS)</b>	<b>RANGE</b>	<b>MIN</b>	<b>MAX</b>	<b>MEAN</b>
<b>Time lapse between report of rape and statement taking</b>	1906	1096	0	1096	3.66

On average, four days elapsed between the report of the rape and recording the complainant's statement. This is double the length of time recommended by SAPS National Instruction 22/1998, which states that an in-depth statement 'must be taken as soon as the victim has recuperated sufficiently (depending on circumstances, ideally between 24 and 36 hours)'. Our findings show that the longest time lapse between reporting and statement-taking was 1096 days (or three years), which has serious implications for the victim's ability to remember correctly the details of the rape incident.

A complainant's statement should be in-depth, correct and contain all-inclusive contact details for the complainant to ensure that communication and follow-ups with the complainant are unproblematic. Although not recorded quantitatively, it was obvious while doing the fieldwork for this study that statements did not include the 78 criteria outlined by National Instruction 22/1998: most of the statements contained no more than one A4 page of handwritten information and many were much shorter. Generally, the statements did not contain much detail about the rape. However, it was apparent from the dockets that some investigating officers were insistent on semantics: in one case, the victim said in her statement that she 'was forced to sleep with her boyfriend' and the investigating officer insisted on retaking her statement as he considered her first statement 'valueless' on account of not using the word 'rape'.

### Witness Statements

Table 11: *Number of cases where witness statements were not taken by the police, by age*

	<b>TOTAL n = 2042</b>	<b>0-11 YEARS n = 292</b>	<b>12-17 YEARS n = 514</b>	<b>18+ YEARS n = 1227</b>
<b>First report statement was not taken</b>	45.8%	26.0%	38.1%	53.6%
<b>Other witnesses but no statements taken</b>	41.6%	35.2%	37.1%	46.7%

Witness statements are very important as they may corroborate the story of the victim. The witness to the first report (i.e. the first person the rape victim told about her ordeal) is considered to be of potentially great value in corroborating the victim's claims. The police should identify this witness, and any other witnesses to the crime, in order to obtain statements from them. The longer it takes the police to obtain statements from the witnesses, the more chance that their recall of the events will fade or that they will have become untraceable.

In almost half of the cases, no statement from the witness to the first report was taken: the statements of 54% of the adult victims were not supported by this first report statement. It is possible that this was partly due to the fact that some victims told no one before reporting to the police and that statements are not routinely taken from police officers to whom the initial report was made. It is also possible that some of these witnesses may not have wanted to co-operate with the police and provide a statement.

In 42% of cases, the complainant had identified other witnesses to the crime but no statements were taken from these identified witnesses. Again, this is possibly due to witnesses not wanting to submit statements but seems to also indicate careless police investigative work.

Table 12: *Time lapse between reporting to the police to the taking of a first report statement*

	RANGE (DAYS)	MEDIAN	25 PERCENTILE	75 PERCENTILE
<b>Reporting to SAPS to the statement from the witness to the first report</b>	0-535	0	0	9

On average, when the police did take the witness to the first report statement, they did it within a day. In 25% of cases, it took 9 days or more to take the statement and the maximum amount of time taken to obtain a first report statement was 18 months.

Table 13: *Reasons why the police did not take witness statements*

	TOTAL n = 405	PERCENT
<b>Witnesses disappeared/were untraceable</b>	55	13.6%
<b>Identity/names of witnesses unknown</b>	28	6.9%
<b>No reason provided/unknown</b>	283	70.2%

There were two main reasons given by police officers for why they had not obtained statements from witnesses. In 13.6% of cases the witness had disappeared or was untraceable: considering the lack of attention paid by police in recording contact details for the complainant, this figure clearly raises questions about whether, and how carefully, the contact details of witnesses were recorded by police. Unfortunately, in the vast majority of cases (70%), no reason was given for why police did not follow-up with and obtain statements from witnesses. Superior officers should, at the very least, insist on investigating officers giving a valid reason for not interviewing and obtaining a statement from a witness, if such a person has been identified; and superior officers should issue multiple instructions to investigating officers to follow-up on identified witnesses who have not been interviewed.

Table 14: *The number of times an instruction to take a first report statement was issued by a superior officer or noted by the investigating officer*

	N (INSTRUCTIONS)	RANGE	MIN	MAX	MEAN
<b>No of times instruction issued and/or noted</b>	478	9	1	10	2.25

In 42% of the cases for which a statement from the witness to the first report was taken, an instruction to do so had to be issued by a superior officer before the witness was interviewed. Regarding other witness statements, for the 478 dockets in which details were available, the minimum number of instructions issued

by a superior officer to obtain the statement of a witness was one, and the maximum was 10 instructions. On average, 2.25 instructions were issued before witness statements were taken by the investigating officer.

### Specimens Sent to the Forensic Science Laboratory

A medical examination needs to be conducted as soon as possible after the rape is reported, even if more than 72 hours have elapsed since the rape incident, as the victim's body is another important 'scene of the crime'. Once the examination has been done and the forensic specimens have been collected, the investigating officer needs to ensure that the chain of evidence is not broken (by signing that s/he has received the specimens from the medical officer), and s/he needs to send the specimens to the Forensic Science Laboratory (FSL) in Pretoria as soon as possible.

Table 15: *Specimens sent to the Forensic Science Laboratory (FSL)*

	TOTAL n = 1806	PERCENT
Specimens not sent to FSL	751	41.6%
Specimens sent to FSL	1055	58.4%

Of those cases where a J88 and forensic kit were completed, the specimens were not sent to the FSL by the police in 41.6% of cases.

In terms of the delay between the specimens being collected from the victim and the investigating officer sending them to the FSL, it took investigating officers an average of 15 days (over two weeks) to send the specimens. In 75% of cases, it took the police a month to send the specimens, and staggeringly, the longest time lapse between the specimens being collected and being sent to the FSL was 18 months (or 577 days). Any time lapse between specimen collection and arrival at the FSL has implications for the chances of the specimens being lost or misplaced, or for the chain of evidence to be broken. On average, it took 2 instructions from a superior officer to send the specimens to the FSL before the investigating officer complied with the instruction. In one instance, the superior officer issued 31 instructions to the investigating officer to send the specimens to the FSL.

Forensic evidence was reported or recorded as being lost, damaged or destroyed in only 1.6% of cases. This does not, however, necessarily reflect the actual number of cases wherein specimens were lost, damaged or destroyed: it only reflects those cases in which such an incident was reported or recorded. There was also not enough information to determine whether the police or the FSL were responsible for the loss or damage in these cases.

There seemed to be particular problems around the drawing of and sending for analysis of suspects' blood. Vetten et al note that 'in only 16.4% of cases where a suspect was arrested was his blood taken. Collecting DNA evidence from the victim is a meaningless exercise if it cannot be tested against a suspect's DNA'.<sup>83</sup> Delays or omissions in this regard were the fault of both the police and the FSL. The police found it hard to draw blood from suspects who were already incarcerated, either due to issues of access (a warders' strike in one instance) or bureaucratic confusion (such as the suspect being temporarily transferred or given bail without the police being notified). However, in one case, it was discovered that the police officer who had withdrawn blood from the suspect had forgotten the blood sample in his office for six months.

Information in the police dockets gave a more detailed insight into what is happening 'on the ground' in terms of the medical examination of rape complainants and the collection of forensic evidence in rape cases.

83. Vetten et. al. *op. cit.* note 1, p. 9.

In some cases, the police did not appropriately facilitate the victim accessing a medico-legal examination after reporting. In some cases the police felt they did not need to send the victims for a medical examination because they had reported the rape more than 72 hours after the incident; in others, the victims were given the J88 form by the police and told to go to the hospital themselves. It seems that in the latter set of cases, many victims did not have the financial means to get to the hospital in order to have the examination done. In one case, the police felt they did not need to send the victim for a medical examination on the basis that there would be no forensic evidence because she had reported that the suspect had used a condom.

Some medical officers complicated the work of the police by being uncooperative or negligent. One doctor refused to examine the victim without giving an explanation, so that the J88 was left as blank in the docket. In one case, a doctor found 'no injuries' and the police were so sure that this statement was untrue that they took the victim to a second doctor who examined her and documented clear injuries. The investigating officer noted in his Investigation Diary that he considered the first doctor to have blatantly defeated the ends of justice in order to protect herself from long court procedures. In another case, the doctor's findings that the child victim's hymen was intact and there were no signs of penetration was contested by a social worker who found that the victim was severely traumatised with blisters and open sores on, and a bloody discharge from, her vagina. In yet another case, one doctor examined two victims of one rapist on the same occasion and found both to have multiple signs of injury and both to have identical signs of injury. This would have been a very surprising finding and casts doubt on the examination.

In a number of cases, major delays in the processing of rape cases were attributable to the fact that the forensic analysis had not been completed by the FSL. In some instances, the delays resulted in the disappearance of the witness(es) and/or victim.

### Identification of the Suspect

If the complainant identifies the suspect in her statement, it is incumbent on the police to immediately bring the suspect in for questioning or arrest him pending the completion of the investigation.

Table 16: *Identification of the suspect by the victim or a witness*

VICTIM OR ANOTHER WITNESS NAMED THE SUSPECT	TOTAL n = 1297	PERCENT
First name only	659	50.8%
Surname only	23	1.8%
Both first name and surname	615	47.4%

VICTIM OR ANOTHER WITNESS PROVIDED CONTACT DETAILS OF THE KNOWN SUSPECT	TOTAL n = 2030	PERCENT
No	906	44.6%
Yes	1124	55.4%

In almost half of the cases (47.4%) where the suspect was known to the victim and she provided information to identify the suspect, the full name of the suspect (that is, both the first name and the surname) was given to the police. In over half (55.4%) of the cases where information on the identification of the suspect was provided by the victim or a witness, the contact details of the suspect (i.e. a telephone number, physical address or both) were provided to the police. It is clear that in many of the cases the police were

given a substantial amount of information on both the identification of the suspect and the means by which to contact him.

A description of the suspect was absent from more than three-quarters of victims' statements (78.4%). This is significant as SAPS National Instruction 22/1998 emphasises that the victim's statement must contain the following elements in relation to a description of the suspect:

- A full description of the suspect(s) from head to toe;
- A description of the suspect's clothing, and it may even be necessary to state what the suspect was not wearing, e.g. a jacket;
- The language the suspect used to speak to the victim (i.e. was the language used known to the victim?);
- Whether or not the suspect had an accent.<sup>84</sup>

The absence of these descriptive factors may have implications for the later positive identification and potential arrest of the suspect (except when the suspect is known, when such a description is not as crucial). If the victim does not record a description of the suspect soon after the incident, her memory of the suspect may fade over time making it more difficult for her to positively identify the suspect later on. Secondly, an accurate description of the suspect's clothing may help the victim identify the suspect if she is given a pointing out note, or it may help the public or police identify the suspect if an identikit is published.

Table 17: *Time lapse between the victim/witness giving the police the suspect's contact details and the suspect being contacted or arrested, in days*

	<b>RANGE (DAYS)</b>	<b>MEDIAN</b>	<b>25 PERCENTILE</b>	<b>75 PERCENTILE</b>
<b>Giving SAPS the suspect's contact details to his being contacted</b>	0-731	1	0	6
<b>Giving SAPS the suspect's contact details to his being arrested</b>	0-522	1	0	9

In 75% of cases, the police contacted the suspect within six days of his contact details being provided to the police, and they arrested the suspect within nine days of his contact details being provided. However, the extreme end of the range is several years. Whilst this could be seen as an indication of very dedicated police work, it also may point to suspects who should have been arrested much earlier not being pursued vigorously. The maximum amount of time taken for the police to contact the suspect after his details had been provided to them was over two years (731 days). Similarly, the maximum time taken for the police to arrest the suspect after his details were provided was over 18 months.

84. Available at [http://www.justice.gov.za/policy/guide\\_sexoff/sex-guide01.html#Chap5](http://www.justice.gov.za/policy/guide_sexoff/sex-guide01.html#Chap5), numbers 62 – 65.

Table 18: *Identification procedures used by the police*

	TOTAL n = 1154	PERCENT
Victim given a pointing out letter	229	19.8%
Identity parade	18	1.6%
Set of photographs/Identity kit	54	4.7%
Police accompanied victim to identify/point out suspect	645	55.9%
Other	208	18%

The police have a range of procedures at their disposal to facilitate the identification of a suspect: however, the findings show that these measures were rarely used. Procedures most often used were the pointing out letter<sup>85</sup> (19.8% of cases) and the police accompanying victims to point out the suspect (55.9%). On the positive side, the procedure whereby the police accompany the victim to point out the suspect is demonstrative of a good policing practice, and the fact that it was performed in almost a third of cases shows a high rate for a resource heavy detection procedure. However, on the negative side, both the pointing out letter and the police accompanying the victim to point out the suspect entail the victim coming face-to-face with her assailant and, while both these procedures might reduce the margin of error, they would also be traumatic for the victim. More indirect and less traumatic identification procedures were used less frequently: the compilation of an identikit of the suspect by the victim, which would be used by the police or flighted in the provincial/national media, was used in 4.7% of cases; and an identity parade, where the victim identifies the suspect from a line-up (usually behind one-way glass), was used in 1.6% of cases. The very occasional use of the identity parade seems, however, to be in line with the SAPS National Instruction 22/1998, which recommends that an identification parade only be held 'when the identity of the suspect/s is in dispute. If uncertain of the necessity therefore, the investigating officer must liaise with the prosecutor in this regard as this is yet another trauma the victim has to undergo.'<sup>86</sup> This guideline, however, is the only guideline within the SAPS National Instruction 22/1998 that relates to the identification of suspects.

Information in the dockets reflected both positively and negatively on police attempts to identify suspects. Good efforts by the police included repeated attempts to trace the suspect, including visiting the suspect's home on numerous occasions, and flighting an ID kit on national TV and in the SAPS monitoring journal. Unconvincing efforts by the police included finalising a case as undetected because the victim was unable to compile an ID kit, despite the fact that the victim had provided physical descriptions of the suspect in her statement.

85. A pointing out letter is a letter that the police issue to a complainant in a rape case, where the suspect (known or unknown) is still at large. The letter states that the complainant can identify the suspect by pointing him out to the closest law enforcement authority, who is then mandated to arrest the suspect.

86. Available at: [http://www.doj.gov.za/policy/guide\\_sexoff/sex-guide01.html#Chap8](http://www.doj.gov.za/policy/guide_sexoff/sex-guide01.html#Chap8)

### Arrest and Non-Arrest of the Suspect

Table 19: *Perpetrators arrested or asked to appear in court, by age*

	TOTAL n = 2064	0-11 YEARS n = 298	12-17 YEARS n = 514	18+ YEARS n = 1230
<b>Perpetrator arrested or asked to appear in court</b>	50.5%	55%	56.7%	46.8%

Overall, 1 014 suspects (49.7%) were arrested with a further 33 subpoenaed to appear in court. Considering that 48.1% of adult victims were raped by strangers, a 46.8% rate of arrest for adult victims should be considered satisfactory, even taking into consideration the fact that some of the arrests were effected on strangers. However, considering that 84.4% of child victims were raped by someone they knew (relatives, friends, acquaintances or neighbours), a 55% arrest rate is relatively low. The rate of arrest should also be considered in light of the procedures used to identify the suspects, discussed above. More frequent and widespread use of identification procedures (including following up on information on the suspect provided by the victim or a witness, such as his name and/or contact details), coupled with more effective use of DNA to positively identify suspects,<sup>87</sup> could increase the rate of arrest.

A number of other factors associated with arrest in this study include:

- Arrests were less likely in rapes of adults involving multiple perpetrators;
- Arrests in both adult and child cases were much more common if the accused was known to the victim;
- Armed perpetrators were less likely to be arrested;
- An arrest was more likely to be effected if a first report witness statement had been taken; and
- The presence of injuries in the rape cases of adults and children did not appear to have any influence over arrests, but a 'notable finding was the high proportion (approximately 40%) of cases where an arrest was affected in rape cases of adults and children where no injuries were described'.<sup>88</sup>

Table 20: *The number of times an instruction to arrest a suspect was issued by a superior officer*

	TOTAL n = 2042	0-11 YEARS n = 212	12-17 YEARS n = 514	18+ YEARS n = 1227
<b>First report statement was not taken</b>	41.2%	36.9%	38.8%	43.3%
<b>Other witnesses but no statements taken</b>	52.7%	55.7%	54.5%	52.6%

In 41% of cases (833 cases), the investigating officer had to be issued with an instruction by his superior officer to arrest the suspect before the arrest was actually effected: this figure may be what it is because superior officers routinely instruct the investigating officer to 'trace and arrest the suspect'. However, it is worrying that in over 50% of cases the instruction had to be issued more than twice before any action was taken. This could be explained by the high case load of investigating officers, or simply by lethargy on the part of the police.

87. For more information on this, see Jewkes et al, *op. cit.* note 4.

88. Information reproduced from: Jewkes et al, *op. cit.* note 4, p. 6. For the Tables within which this information is represented, please see Jewkes et al, *op. cit.* note 4, pp. 4 – 5.

Table 21: *Reasons why the suspect was not arrested by the police, by age*

	TOTAL n = 996	0-11 YEARS n = 133	12-17 YEARS n = 220	18+ YEARS n = 643
<b>Suspect not known</b>	47.2%	32.3%	39.1%	53.2%
<b>Suspect disappeared</b>	16.9%	8.2%	19.5%	17.6%
<b>Suspect died</b>	0.1%	-	0.5%	-
<b>Suspect incarcerated</b>	0.1%	-	0.5%	-
<b>Victim died</b>	0.1%	-	0.5%	-
<b>Victim withdrew complaint</b>	11.0%	8.3%	14.5%	10.4%
<b>Victim disappeared</b>	15.1%	15.0%	16.4%	14.8%
<b>Suspect was a minor</b>	1.4%	9.8%	0.5%	-
<b>J88 said it was not rape -</b>	1.1%	6.8%	0.9%	-
<b>Victim/family not cooperating or moved</b>	0.9%	2.2%	-	0.9%
<b>False accusation</b>	0.1%	3.0%	2.7%	-
<b>Other</b>	2.2%	6.8%	1.8%	1.4%
<b>Unknown</b>	2.8%	7.5%	3.2%	1.7%

The above table shows reasons given for why suspects were not arrested. In almost half of the cases (48%), the suspect was unknown to the victim and therefore would have been much harder to trace. Other frequent categories were: the suspect disappeared (17%); the victim disappeared (15%); and the victim withdrew complaint (11%). It is important to note that the disappearance of the suspect warrants further questions as many 'disappeared' suspects could perhaps have been arrested if more effort had been made to trace them. It is impossible to know whether the fact that suspects are disappearing is due to negligence or delay on the part of the police (i.e. giving the suspect time to 'disappear'), or a genuine disappearing act on the part of the suspect to avoid arrest.

Information from the dockets illustrated some of the challenges involved in effecting arrests. In one case, despite the fact that the victim provided the police with an ID kit of the suspect, as well as his name and the details of his vehicle (he was a taxi driver whose name was written on the dashboard of his taxi), the suspect was not identified or arrested. In other cases, despite being given the names and contact details of suspects by victims and/or witnesses, the police did not follow-up on the information and no suspects were formally identified or arrested. Delays by police in following up on information about the suspect also led, in some cases, to the suspect disappearing. For example, in one case, the victim reported to the police that she had been threatened by the suspect the day before; the police only went to look for the suspect a month later, by which time he had disappeared.

### Disposal of Rape Cases by the Police

Overall, 45% of cases in our sample were disposed of by the police. In terms of the official SAPS standings orders, police may only finalise rape dockets for the following reasons: undetected; undetected – complainant not traced; withdrawn: no consequence; unfounded; and undetected – warrant issued.<sup>89</sup> How-

89. For descriptions of these categories according to the South African Police Service Standing Orders (G)325, see pg. 33 of this report.

ever, during the fieldwork phase of this research study it became apparent that the police did not adhere to these categories when closing rape cases and often simply wrote ‘withdrawn’ or ‘false report’ or ‘no evidence of rape’ on the docket to explain the closure of a case. The involvement of the prosecutor in the closure of cases at the police investigation stage differed by police station – in some stations the police finalised or withdrew the case without input from the prosecution, while in others the police finalised or withdrew the case in conjunction with the prosecution or sent the case to the NPA for a decision of ‘*nolle prosequi*’ by the prosecutor.

Table 22: *Reasons for case disposal by the police, according to the information available in the case dockets, by age*

	TOTAL n = 918	0-11 YEARS n = 104	12-17 YEARS n = 196	18+ YEARS n = 617
	44.7%	34.9%	38.1%	50.2%
<b>Suspect untraceable</b>	52.3%	36.3%	51.8%	55.4%
<b>Victim untraceable</b>	30.1%	32.3%	27.7%	30.2%
<b>No evidence of rape</b>	2.6%	17.6%	1.5%	0.5%
<b>False accusation</b>	4.4%	5.9%	9.7%	2.3%
<b>Victim too traumatised to continue</b>	0.1%	-	-	0.2%
<b>Pressure from victim's guardian/caregiver /parent</b>	0.4%	2.9%	0.5%	-
<b>Families of victim &amp; suspect have resolved matters</b>	0.9%	-	1.5%	0.8%
<b>Victim &amp; suspect have resolved matters</b>	2.3%	-	0.5%	3.3%
<b>Victim wants to get on with her life or otherwise uncooperative</b>	5.3%	2.0%	5.6%	5.9%
<b>Docket lost</b>	0.2%	-	-	0.3%
<b>Other</b>	1.3%	2.9%	1.0%	1.1%

Table 23: *Reasons for case disposal by the police, according to SAPS Standing Order (G) 325, by age*

	TOTAL n = 918	0-11 YEARS n = 104	12-17 YEARS n = 196	18+ YEARS n = 617
<b>Undetected/undetected: warrant issued</b>	52.3%	36.3%	51.8%	55.4%
<b>Undetected: complainant not traced</b>	30.1%	32.3%	27.7%	30.2%
<b>Withdrawn: no consequence</b>	9%	4.9%	8.1%	10%
<b>Unfounded</b>	7%	23.5%	11.2%	2.8%
<b>Other</b>	1.5%	2.9%	1.0%	1.4%

Table 22 sets out the factors leading to the police closure of dockets according to the information available in the case dockets, while Table 23 represents our attempt to re-categorise these closures in terms of the police Standing Orders. In over 80% of cases, the reason for the closure of the docket was because the suspect or the victim could not be traced (52.3% would fall under the ‘undetected’ category, and 30.1% would fall under the ‘undetected – complainant not traced’). In total, 9% of cases disposed of by the police would fall under the ‘withdrawn – no consequence’ category, whereby the complainant would have withdrawn the case herself (in Table 22, this would include: victim too traumatised to continue; pressure from victim’s guardian/caregiver /parent; families of victim and suspect have resolved matters; victim and suspect have resolved matters; victim wants to get on with her life or otherwise uncooperative). A further 7% of cases would be ‘unfounded’ cases, those that the dockets identified as having no evidence of rape or being false accusations. It is interesting that, contrary to popular perception, only 4.4% of cases were designated as false accusations – the most ‘false accusations’ fell into the 12 – 17 years age group (9.7%), a figure that reflects the number of parents of teenage girls who brought cases of rape against the girls’ boyfriends where, in fact, the sex was consensual.

According to SAPS Standing Order (G) 325, the complainant is required to sign a document requesting the withdrawal of the charge and providing reasons for this step. This is also to ensure that the victim has not been intimidated or pressured into withdrawing the case. The withdrawal statement is also important in order to document that proper procedures were followed, and to prove that the case was finalised for a valid reason. However, a withdrawal statement was included in less than half (48%) of the cases finalised as ‘withdrawn’ by the police.

Table 24: *Time lapse between reporting the rape to SAPS and the finalisation of the case by SAPS*

	RANGE (DAYS)	MEDIAN	25 PERCENTILE	75 PERCENTILE
<b>Time from reporting to SAPS and finalisation of case by SAPS</b>	0-1336	75	29	160

In most cases (75%), it took five months or less between the victim reporting the rape and the police finalising the case. However, in a quarter of cases (25%), it took just 29 days or less than one month for the police to finalise a case.

The information from the dockets provided further insight into the context of these victim-initiated withdrawals.

In some cases, family interference, resolution between the families of the suspect and the complainant, or resolution between the complainant and the suspect can lead to the victim withdrawing the case. In some cases, it appeared that maintaining a good relationship between the suspect and complainant’s families was more important than accessing justice for the complainant. In a few cases, inter-family relations took precedence over ensuring the complainant’s safety and well-being, illustrated by the case whereby, despite the fact that the suspect had been intimidating the victim while he was out on bail and had threatened to kill the victim and himself, the matter was withdrawn after the families reached an agreement. Similarly, another case was withdrawn to maintain peace within the family despite the fact that there was medical evidence of sexual abuse and penetration involving a child and her step-brother. Interestingly, in two cases involving resolution between the families, the mother of the complainant seemed more concerned with the well-being of the suspect than her daughter: in one case, the mother stated that the suspect was currently employed and she did not want to destroy his future by sending him to prison; in another case, the mother did not want to sour relations between two families related through marriage or destroy the suspect’s future by continuing with the case in the possibility that he might be sentenced to a jail term.

There were also a number of cases where the complainant’s family took charge by withdrawing the case in an effort to reduce the trauma experienced by the complainant: in these cases, the victim was usually a child and the complainant in the case was the mother of the victim, meaning that she could legally with-

draw the charges of behalf of the victim. One particular case stands out: despite the J88 showing evidence of injury, the mother of the victim insisted that the child would have told her if something had happened and wanted the case withdrawn because it was traumatising the child; the police wanted to send the child for an assessment but the mother refused. However, in some cases the complainant herself withdrew the charges due to trauma and psychological strain, or because she felt she had moved on with or wanted to move on with her life and the case would be a source of ongoing trauma.

Cases were also withdrawn by the complainant due to her economic dependence on the perpetrator. In a number of cases, the suspect was the intimate or ex-intimate partner of the complainant, they had children or (re)payment responsibilities together or the suspect was the primary breadwinner in the relationship and the complainant could not afford for him to be sent to prison.

There are therefore multiple reasons why victims initiate withdrawals in relation to a rape case. In some cases, pursuing a case through the criminal justice system is not in the best interests of the victim, especially if she is severely traumatised and prioritises emotional and psychological healing over her need for justice. Indeed, in some cases it is the pursuit of justice itself that can become too taxing emotionally and precipitate a victim's withdrawal. In other cases, victims may withdraw their cases due to threats and/or tactics of intimidation by the perpetrator or the friends and family of the perpetrator – this is more likely in cases where the perpetrator (and his family/friends) is known to or acquainted with the victim. And in still other cases, the withdrawal of a rape case by parents or guardians when the victim is a child, especially when the case has not yet been fully investigated and against the advice of the police, may amount in the best case to irresponsibility and in the worst case to a breach of legislation.

Despite good police work, there were some cases whereby the complainant proved 'uncooperative' and did not want to assist the police with their investigations. This behaviour ranged from victims refusing to positively identify the suspect to not answering or returning the phone calls of the police. In one case, despite confessions from three suspects, five used condoms in evidence and a J88 that was positive for rape, the complainant did not want to continue with the case.

## General

### Communication between the Police and the Victim

Good communication between the police and the victim is crucial for the completion of the investigation.

Table 25: *Reasons why the victim was considered 'untraceable', by age*

	TOTAL n = 319	0-11 YEARS n = 34	12-17 YEARS n = 57	18+ YEARS n = 213
<b>Provided inadequate contact details</b>	39.0%	32.4%	49.1%	37.1%
<b>Moved without leaving new address</b>	36.7%	50.0%	33.3%	35.2%
<b>Doesn't return calls &amp; moved without leaving new address</b>	13.6%	11.8%	12.2%	14.6%
<b>Doesn't return calls &amp; provided inadequate contact details</b>	4.9%	2.9%	1.8%	6.1%
<b>Doesn't return calls</b>	3.9%	-	1.8%	5.2%
<b>Went missing or was never at home</b>	1.9%	2.9%	1.8%	1.9%

The main reasons recorded by the police for the victim being untraceable were that the victim provided inadequate contact details. This highlights the importance of contact details: clearly, it is the duty of the police to ensure that the contact details they record for the victim are adequate and accurate. Where the victim moved without leaving a new address it is more difficult to see how she could have been traced, but had details of work or school or other family been taken, some of these victims would not have disappeared. In some cases the move could have been because the victim wanted to move on with her life and deliberately ‘disappeared’, or because the victim was mobile or looking for employment

Table 26: *Time lapse between first and last attempt of the police to contact the victim*

	RANGE (DAYS)	MEDIAN	25 PERCENTILE	75 PERCENTILE
<b>Time lapse between first and last attempt to contact victim</b>	0-1278	30	4	107

For the most part, only 3 attempts were made to contact the complainant after she disappeared. In half of cases, the police spent one month trying to contact the victim; however, in 25% of cases, the police spent only four days or less looking for her. There are two ways to look at this information: if, on the one hand, the victim has truly ‘disappeared’, then spending police time and money looking for the victim in these circumstances would constitute a ‘waste’ of limited police resources; if, on the other hand, some basic police investigation could help to locate the victim, then spending only 4 days to one month looking for the victim could be considered negligible on the part of the police, especially as victims are particularly vulnerable in the post-rape period. At this time, anxiety may provoke in victims a desire to flee the situation of the rape, and some women may return to their rural homes or go to stay with relatives for an indefinite period. If comprehensive contact details for the victim and/or her next of kin/friends had been taken, perhaps the victim would have been contactable. These findings are directly related to the quality of the victim’s statement (discussed above), where insufficient contact details are recorded in a majority of the cases. Considering that 30% of cases finalised by the police were as a result of the complainant becoming untraceable, it would seem that this is an area where the police need to make some improvements.

Some cases in this study were finalised as *undetected – complainant not traced* after considerable effort by the police to find the victim. In these cases, it seemed that the victim did not want to be found: for instance, in one case the victim told the police that she was moving because she was afraid of her husband and his family, but did not supply the police with her new address; in another case, the victim had been evicted from her house five days after the rape incident and did not inform anyone, including the police, of her new whereabouts; while in another case, the complainant moved house without informing the police despite overwhelming evidence that the two children in her care had been sexually assaulted. In other cases, bureaucratic or procedural bungling on the part of the police, such as different addresses for the victim being recorded on the statement and the J88, as well as the victim providing her home address to the police but no entry in the docket suggesting that the police had physically looked for her at her home address, led to the victim being declared untraceable. In some cases, while the police gave the victim a lift home after she had reported the rape, they did not walk the victim to her door thereby not establishing exactly where her dwelling was, which could have prevented the police being unable to find the victim’s home when trying to trace her, especially if there was an inaccurate or absent recording of the victim’s address in the docket. We also cannot exclude the possibility that the victim could have been hurt or even killed, unbeknownst to the police, following her report of the rape incident, especially in light of the fact that some of the victims in this study were subject to threats and intimidation by suspects and/or their friends and families.

Delays in the police investigation can happen for a number of reasons, leading to the withdrawal of the case, either by the complainant or by the court, in a number of instances. There were a number of instances in this study where the case was delayed (and ultimately withdrawn) because the police had initially lost the docket, only to find it months later when the victim, suspect or witnesses were no longer traceable. In one

particular case, the case docket was missing for almost 18 months (December 2003 to April 2006). When it was found, the victim withdrew the case stating that she was no longer interested in pursuing it because she was now married and did not want her husband to find out about the case. In some cases, a number of factors compounded a delay thereby resulting in the closure of the case: for instance, one case involved a slow police investigation (in terms of witness statement collection), state witnesses not appearing in court on the relevant dates, the doctor being off sick and unable to testify, and the child victim being declared incompetent to testify. There is cognisance on the part of the police that delays can result in a miscarriage of justice: one superior officer noted in the Investigation Diary of a rape case that, 'It is truly sad that since 15 April 2003 to 20 June 2005 nothing was done with regard to investigating this case. This mother and child have no faith left in the police and justice system. 15 instructions were issued to arrest suspect but none was complied with. Investigating Officer's conduct is completely not acceptable'.

### **Police Attitudes**

It is often argued that police attitudes towards rape and rape complainants have a bearing not only on the victim's propensity to withdraw her case, but also on the quality of the police investigation into the rape case. Misperceptions about rape were certainly present in the dockets, as illustrated by the cases below.

In a number of cases in this study, the victims were discounted because of mental or physical disabilities that made their cases more difficult to investigate. Two cases were similar in this regard: in the one case, despite the fact that the victim's mother had witnessed sexual sessions between the victim and the suspect on a number of occasions, the case was withdrawn because the victim, who suffered from Downs Syndrome, refused to talk. In the other case, the child victim did not respond to a police interview. As a result, instructions were given to take the child to a social worker in order to facilitate the interview process, but these instructions were ignored. In the end, despite physical evidence of older anal penetration found by the doctor, the case was finalised due to the failure to get the child's statement. In yet another case, the docket was finalised as undetected after the mentally disabled victim gave contradictory statements about the suspects to the police – a social worker was supposed to assist the victim to give a statement but this never happened. In terms of other disability, in one case the victim could not speak and her sign language was so poor that she could not relate what had happened to her: the case was finalised on the basis of the investigating officer's statement outlining the communication difficulties with the victim, after it emerged that the victim's mother could only communicate with the child using gestures. This inability on the part of the criminal justice system to respond to the particular needs of victims with disabilities is discriminatory in that it seriously limits the access to justice for women with disabilities. There are no specific guidelines for the police in handling especially vulnerable victims, such as those with communication and mental disabilities. This is an obvious gap in police training and procedure that needs to be addressed.

Cases were also compromised if the police suspected the victim of being 'unreliable'. In one case this was apparently a moral judgement. The victim was considered unreliable because she was 17 years of age and had been hanging out at a shebeen late at night on the date of the incident. When the investigating officer informed the victim about the closure of her case, he warned her not to walk at night as she is still a young girl. In the second case, there was medical evidence of rape and the victim showed a social worker with anatomical dolls what had happened, but because the victim changed her mind and seemed confused about the suspect, the investigating officer withdrew the case saying it was 'useless' to continue the police investigation.

### **Practical Issues Noted during the Fieldwork**

#### **Docket storage:**

Police case dockets are the only record of a reported crime – in addition, they contain important and confidential documentation that is crucial to the prosecution of the crime (at the time of the offence or in the future if new evidence comes to light), provide a record of the steps taken in the investigation, and allow for the periodic review of undetected or unsolved cases. As such, dockets are valuable sources of information. However, it became apparent during the course of our fieldwork that docket store rooms at police stations

in Gauteng are often in disarray: dockets are kept in undesirable conditions that may lead to their destruction or deterioration; dockets are often stored in a haphazard fashion, either not filed at all or filed according to no discernable system. The personnel in charge of the docket stores were often disorganised, could not locate the required dockets, or did not know where the dockets were. Some police stations could only produce a fraction of the dockets we asked for, and had no idea what had happened to the rest of the dockets or where they were. At Johannesburg Central police station, the docket store room was very disorganised and there were insufficient personnel staffing the docket room (one was sleeping the whole day, one was off sick and the third went home early on the second day of our fieldwork).

#### **Lost and incomplete dockets:**

There were also cases where one or more pieces of documentation (such as witness statements, J88s etc) were missing from the docket. While missing documentation does not necessarily mean that the case will be *nollied* or finalised, it will contribute to delays in the processing of that case by the police and/or the prosecution of the case by the NPA (for example, the prosecutor will need to take another statement from the complainant in the case of a missing witness statement, or in the case of a missing J88, the court would need to subpoena the medical officer to testify on the basis of his/her clinical notes or the patient's file). Delays, in turn, often contribute to a victim not accessing the justice that she deserves. In addition, there were cases where the entire docket had been lost: in these cases, a skeleton docket had been opened in its place, often with simply a note inside to say that the original had been lost. In one case, the police lost the docket for over two years – when they found it again (it 'appeared' in Tsakane's filing system), the victim was no longer interested in pursuing it. It needs to be ascertained whether these incomplete and lost dockets are the result of mere disorganisation and misfiling, or if corruption is a contributing factor.

## **Discussion**

One of the problems that we encountered during this study was the inconsistency with which the police classify the outcomes of the cases that they finalise – it is often difficult to know or compare exactly why cases are finalised by the police. Moreover, the categorisation of cases finalised by the police was internally inconsistent within and between areas of jurisdiction. In some jurisdictions, police discretion was used much more widely than in others – in other words, the police in some jurisdictions tended to finalise cases without consulting with the prosecution to determine whether or not the case would stand up in court. This makes it difficult to analyse the finalisation of cases, especially within the framework of the progress of cases through the criminal justice system.

Over 80% of the cases finalised by the police in this study were done so because either the suspect or the victim was untraceable. As 43.6% of the suspects were either strangers, known by sight only or someone the victim had just met, it is to some extent understandable that 52.3% of cases finalised by the police were as a result of an untraceable suspect. That being said, however, 29% of strangers were indeed arrested, as well as the fact that, and this refers back to the inconsistency with which the police classify the outcomes of the cases they finalise, a portion of these 'suspect untraceable' cases would have been suspects known to the victim who subsequently disappeared. The dockets we analysed did not consistently or even often differentiate between 'undetected' and 'undetected – warrant issued': we do know, however, that in terms of the reasons for which suspects were not arrested, 47% were unknown and 17% were known but had disappeared. In addition, in light of the information above that illustrates the shortcomings of the police in terms of asking for descriptions of suspects from the complainant, using all possible means of identifying suspects and making contact with suspects whose contact details and/or name has been given to the police, it is clear that more needs to be done to reduce the number of cases that are finalised because the suspect is untraceable.

Much more worrying, however, is the number of complainants who became untraceable. Almost a third (30%) of complainants in our study was untraceable. We have no means of ascertaining the reasons for this 'disappearance', but can speculate that an explanation may lie in some of the following: that police lacked

sufficient information to follow-up with the complainants; that the victims lived in informal settlements and their whereabouts was difficult to trace; that they moved away (back to their home in another part of South Africa or to another part of Gauteng); that they were intimidated or otherwise threatened as vulnerable witnesses and therefore deliberately disappeared; and that something worse happened to them, such as murder. The first three explanations relate directly to the failure of the police to collect and record sufficient contact details for the complainant – this should include exact details of the whereabouts of the complainant's dwelling (especially if she lives in an informal settlement or township), a contact number, a work address and contact number if relevant, contact details for the next of kin or close friend, as well as giving the complainant the investigating officer's cell phone number, direct line and station phone number so that the complainant can contact the investigating officer if she needs information or is moving. The police should be at pains to explain to the complainant that if she should move or otherwise change her contact details, she must inform the investigating officer. Another cause for concern is the lack of effort invested by the police in finding complainants that have disappeared. While this is another consequence of the lack of resources (both human and material) at the disposal of investigating officers, it is also indicative of the more insidious problem of police attitudes regarding the importance and veracity of many rape cases.

Although not measured in this study, a decision not to investigate a rape case thoroughly may just as easily be linked to subjective assumptions made by police officers regarding the merits of the case and the credibility of the complainant. These assumptions are often based on misplaced beliefs on the part of the police that are inextricably linked to rape myths. The information available in dockets on police attitudes indicates that a culture of disbelief and scepticism towards sexual assault victims does exist within the SAPS and needs to be dealt with.

The non-co-operation of the complainant and the early withdrawal of the case by the complainant make up 9% of the cases finalised by the police in this study. Complainants may withdraw their case for any number of reasons, including: emotional and financial dependence on abusive partners; pressure from families and groups, especially in communities where a cultural influence is strong; and where the complainant feels there is no or little likelihood that the case would succeed in court (in these cases, there is a high probability that the complainant was influenced by police officers' appraisal of the case). The unsympathetic treatment of a complainant by the police officers dealing with her case may influence her to withdraw her cases early or become otherwise uncooperative. There certainly are cases where complainants voluntarily withdraw their cases because they are too traumatised to continue or because they do not want to further traumatise themselves by accessing justice through the criminal justice system: this is largely because the criminal justice system, especially in the case of rape complainants, is neither victim-friendly nor victim-supportive.

It is obvious that a case is more likely to be properly prosecuted if there is a predominance of objective data or evidence that clearly demonstrates the indications of sexual assault – that is, injury, the use of a weapon, an eyewitness, the suspect's confession, the suspect is a stranger, complete medical evidence, the suspect is known to the criminal justice system and the victim's willingness and ability to assist with the prosecutor's case. Where there is not enough evidence collected during the police investigation stage of the process, the prosecution are likely to *nolle prosequi* the case as having insufficient evidence to warrant a prosecution and little chance of collecting more evidence. In addition to the 45% of cases closed by the police, the *Tracking Justice* study found that a further 16.1% of cases were finalised as a result of a decision by the prosecution to *nolle prosequi*.<sup>90</sup> In 26% of cases this decision was based on an assessment of there being insufficient evidence to pursue a prosecution, which may partly be a reflection of those cases where there is genuinely not enough evidence for a case to proceed, or in some cases it may also be a reflection of the fact that the police sometimes do not collect sufficient evidence: as is illustrated above by the infrequency with which police routinely check the scene of the crime, maintain the chain of evidence, and take adequate statements from the complainant and witnesses.<sup>91</sup>

Some of the problems outlined above are directly related to a lack of resources within the SAPS. A dearth

90. Vetten et. al. *op. cit.* note 1.

91. *Ibid.*

of human resources means that investigating officers deal with very heavy caseloads: while the ideal caseload for an investigating officer is 10 cases, it has been estimated that a SAPS investigating officer has an average of between 50 – 70 serious crimes on his/her desk at any one time.<sup>92</sup> A lack of material resources (such as vehicles, working photocopiers and fax machines) also hampers swift and effective investigations.

Tight resources can impede the prompt completion of collecting evidence and the completion of the investigation. Ideally in a rape case, as in any other violent crime, as few delays as possible should be tolerated – delays result in the loss of evidence, the disappearance or loss of co-operation of witnesses, and even the disappearance or loss of co-operation of the complainant. However, we found that delays in all aspects of the investigation of rape cases were frequent. For instance, as mentioned above, it took investigating officers over two weeks to send forensic specimens to the FSL (after an average of two instructions to do so). In 75% of cases, it took 9 days for the police to take the first report statement; the longest time taken to obtain the first report statement was a staggering 18 months. Similarly, despite being furnished with his contact details, it took the police six days to make contact with a suspect in 75% of cases. In one case, over two years elapsed between the police being provided with the suspect's contact details and them making contact with him.

Ongoing communication between the complainant and the investigating officer is vital if cases are to be pursued effectively. However, communication can be hampered by inadequate human and material resources, as well as negative attitudes towards rape complainants or rape cases. One-third of the cases in our sample finalised by the police were because the complainant had disappeared – this speaks directly to a failure of communication between the police and the complainant. Many of these disappearances could probably have been avoided if more care had been taken over the recording of contact details (the problems with which are outlined above). In more than a third of cases involving 'disappeared' complainants, the reason for their untraceability was that they had provided 'inadequate contact details' to the police: however, it must be argued that considering the psychological state of a woman who has just been raped, it should be up to the police taking her statement to ensure that she is asked for, and therefore provides, adequate and comprehensive contact details.

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92. 'Detective Services needs urgent attention to win the fight against crime', available at: <http://www.da.org.za/?p=431>; Minnaar, A. (June 2008), 'The Scorpions Lose Their Sting: Challenges to incorporation of the DSO into the SAPS', *Crime Quarterly*, 24; Redpath, J. (2002). 'Leaner and Meaner: Restructuring the Detective Service', *ISS Monograph*, 73.

# Recommendations

In our previous report on the attrition of rape cases we proposed recommendations aimed at addressing some of the problems identified in this report. Those specific to the police have been repeated here, and supplemented with more detailed recommendations.<sup>93</sup>

## The Police Investigation

- **Recording basic information:** all possible contact details (including work addresses and phone numbers as well as the contact details of family members and friends) must be recorded and verified for each rape complainant. Police officers who do not routinely collect this information should be questioned and disciplined if necessary. All complainants must be taken directly to the front door of their homes after reporting the rape case so that their address can be confirmed and notes taken on how to find the residence in future. Systems for keeping accurate records should be designed and implemented in police stations across the country. The systems could include computer software to capture 'objective' data (such as basic information on victims' and suspects' identification) in an easy 'click of a button' way, so as to provide more time for the descriptive part of the statements.
- **Statement taking:** the quality of statement-taking needs to be improved considerably. It is recommended that SAPS develop a pro forma statement for rape cases (similar to that used in road traffic accidents) so that adequate details are recorded for each aspect of the rape incident in line with the guidelines already set out in the National Guidelines. The possibility of tape-recording complainants' statements should be considered. There is a need to strengthen the motivation and supervision of police officers when it comes to statement-taking and record-keeping.
- **Considering the number of victims who disappeared in the course of the police investigation** (discussed below), it would seem imperative for the police to record a contact person.
- **Collection and the chain of evidence:** it must be made mandatory for police officers to sign for the receipt and dispatch of forensic evidence to ensure and maintain the chain of evidence. Again, if this is not done, the relevant officer must be questioned and disciplined if necessary. Systems and regular training for members of SAPS should be put in place to improve the gathering of data and evidence crucial for the prosecution of sexual offences.
- **Delays:** as few delays as possible should be tolerated in the investigation of sexual assaults. Police officers must be made aware of the consequences of delaying investigations and must be supervised

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93. See Vetten et. al. *op. cit.* note 1, pp. 56 – 57.

more closely to ensure that instructions are being carried out in an effective and timely manner.

- Identification and arrest: investigating officers must be encouraged and supported to use more of the suspect identification measures available to them – superior officers should question those investigating officers who do not put the maximum effort into identifying and tracing suspects. Victims must be asked for all the information that they may have about the suspect(s) in their case: if the suspect was unknown to the victim, accurate and full descriptions of the suspect recorded in the complainant's statement will assist the process of identification. Efforts need to be strengthened to ensure that, when in possession of identifying and contact information about the suspect(s), police officers can and do arrest suspect(s) promptly, rather than waiting to be ordered to do so by their commanding officers.

## SAPS General

- Resources: a number of the recommendations above depend on the investigating officers and their superiors having access to adequate and sufficient resources. The above recommendations need to be costed and included in the SAPS budget for the focused investigation of rape cases. The necessary resources need to be made available to investigating officers to ensure that they can do their job effectively. The police should develop guidelines for tracing victims and suspects to establish the minimum effort to be expended in this regard.
- The distribution and implementation of the revised Guidelines for the Management of Survivors of Sexual Violence should be expedited: each police station and each investigating officer charged with investigating a case of sexual assault must have a copy of the Guidelines. In addition, investigating officers and front-office police officers must be trained on the Guidelines so that they know what to expect and do when confronted with a sexual assault case.
- Docket storage: in many of the police stations we visited, the docket storeroom was in disarray and many dockets were missing. An audit of all police stations docket stores in Gauteng must be conducted and those stations with substandard and disorganised docket storage facilities must be tasked with refurbishing and re-filing their dockets.
- Training for SAPS officers:
  - Victims of sexual violence often feel intimidated and unwelcome by members of SAPS, who in many instances are perceived as judgmental and non-cooperative. Training on the nature of sexual violence and the special needs of victims of sexual violence should be designed and rolled-out to all the members of SAPS, on a regular basis. Capacity-building programmes on sexual violence should be developed and implemented for SAPS officers.
  - The training materials and the training itself should be offered in several official languages.
  - Resources for comprehensive and on-going training (as well the monitoring and evaluation of the training) for police officers on sexual violence must be allocated to SAPS.
  - Training on the substantial and procedural aspects of the new Sexual Offences Act should also be designed and rolled-out to all the members of SAPS.
  - Interdepartmental training of CJS officials in rape and sexual offences should be developed and rolled out, in order to give CJS officials knowledge of how the different phases of the CJS are integral to each other and the success of one depends heavily on the thorough work of the other.
- Specialised units: in 2006, the Ministry of Safety and Security announced a number of measures to improve the service delivery of the SAPS. One of the measures was the decentralisation of the FCS Units. This decision should be reviewed in light of the fact the international best practice advocates for the use of specialised services in sexual assault cases. FCS Units should be re-established with specialised individuals trained to investigate and manage sexual assault cases. Specialised individuals should be awarded the appropriate status, including the development of unique career paths, within SAPS and given proper incentives to work in this area (this should include regular debriefing and counselling services for the officers). Sufficient resources should be allocated to strengthen the FCS Units.

## **Victims of Sexual Assault**

- Entering the criminal justice system to pursue a sexual offence, particularly rape, is an overwhelming exercise. The high attrition rates in these cases can be attributed in many instances to a lack of support for the victims, particularly those in more vulnerable situations. Research should be conducted on the best practice for services that could be provided to support victims in the system. The experience of non-governmental organisations which are already providing these services is invaluable and should form the basis of the exploratory research. Special attention should be given to the design and roll-out of programmes to support children victims of sexual violence entering the criminal justice system.
- Further in-depth research needs to be conducted into why complainants are becoming untraceable during the police investigation and the findings used to develop measures that ensure the reduction of untraceable complainants, including measures that could be taken to make the police and CJS as a whole more responsive to their needs.
- Information brochures explaining criminal justice system processes to victims, informing them of their rights and reminding them to inform the police of any change in their contact details must be made available to all complainants reporting a case of rape. These should be available in all 11 official languages of South Africa.

# Conclusion

It is undeniable that each stage of the criminal justice system (the police, the prosecution and the medico-legal services) is interlinked and interdependent when it comes to the successful prosecution of rape. As pointed out by Artz and Smythe, the relationships between these various stages of the criminal justice system are ‘mediated not only by different institutional incentives (for example, when it comes to the way in which performance is measured) but also by different functional responsibilities (the investigation or prosecution of a crime versus the comprehensive care and treatment of a patient, who also happens to be a crime victim)’, creating disjunctures that ‘complicate both the exercise of criminal justice discretion and, subsequently, any study of how this discretion is exercised.’<sup>94</sup>

Although the police investigation stage is but one element in securing a conviction for rape, it is crucial to the process for a number of reasons: the police reception of and attitude towards a rape complainant will determine her commitment to seeking justice; the documentation of correct and complete contact details for the complainant and her next of kin will ensure that the complainant can be kept informed of the progress of the case and will not lose interest in or faith in the criminal justice system; and the effective investigation of the case, including the collection and safety of physical evidence as well as taking a comprehensive statement from the complainant and tracing the suspect, will impact on the prosecution’s decision and ability to prosecute the case.

There are various problems with the police investigation of rape cases in Gauteng, all outlined in the above report, the domino effect of which threatens the successful operation of the rest of the criminal justice system. However, the problems faced by SAPS in Gauteng are not insurmountable: given the necessary training, human and material resources, and supervision, the success of the police in investigating rape cases could be enhanced greatly. What is needed is the political will and institutional commitment to making the changes required to improve the service of the SAPS to those who have fallen victim to sexual offences.

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94. Artz & Smythe, *op. cit.* note 33, p. 181.

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# Appendix A

## United Kingdom

In 2002, the Metropolitan Police Authority (MPA) undertook an investigation into the processing of rape cases within the different police forces under its jurisdiction. As a result of this investigation, they made a number of observations and recommendations for rape case investigation and management by police.

1. **First response:** it is crucially important for the first officer to be encountered by the rape victim provides an appropriate response, as this will affect the victim's willingness to pursue the case. In addition, the timely gathering of certain evidence such as samples for drug testing is vital and therefore it is important that first response officers are aware of this type of evidence and the procedures to be carried out.

**Recommendations:**

- *All officers and staff who may take a call, take a front counter report or respond to a call for assistance from a victim of rape have received basic training and guidance on dealing with victims appropriately and on early evidence procedures;*
- *Information leaflets detailing the services provided to victims of rape and explaining what will happen next should be available at all victim examination suites and police station front counters.*

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2. **Sexual offence investigation (SOIT) officers:** the importance of the specialist SOIT officers trained in victim care was recognised and it was felt there should be a person for the victim's needs as distinct from the investigator who has to take a wider view of the whole case.

- *SOIT officers should receive basic training in investigation skills but the SOIT officer role should remain distinct from the investigator role;*
- *SOIT officers should all be offered regular support as a matter of course – if this cannot be provided within the MPS, counselling should be delivered by a recognised and accredited outside counselling agency.*

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3. **Sexual offence examiners (SOE):** it was acknowledged that there is a problem with the availability of and quality of care that SOEs provide to victims of rape.

- *An updated database of SOEs, including their availability, geographical areas covered, ethnicity, gender, costs and level of skills, should be kept at all police stations;*
- *Contracts for SOEs should be developed, to include how their performance should be assessed and how the quality of care provided is to be monitored;*

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- *A system of updating SOEs on the progress of a case and the outcome of investigations should be developed;*
  - *The use of forensic nurses to examine rape complainants should be piloted and evaluated.*
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4. **Counselling:** it was acknowledged that counselling and support for the rape victim is a key service.
- *The MPS should work with victim support organisations and voluntary agencies to ensure that victims are provided with appropriate and validated counselling.*
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5. **The Crown Prosecution Service:** there was evidence of cultural problems with the treatment of victims by the CPS.
- *Working relationships between the police and the CPS should be improved and the system of file exchange for rape cases should be examined. Relationships could be improved if dedicated sexual offence case clerks were in place in MPA Criminal Justice Units and if the CPS were to consider specialist sexual offence staff;*
  - *A joint police/CPS review of support provided to victims attending court should be carried out, including the information given to victims and pre-trial visits organised, in co-ordination with victim support and the witness protection service.*
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6. **Rape investigation units:** teams dedicated to the investigation of rape were felt to provide best practice, helping gain expertise in rape investigation, ensuring continuity of investigative officers, providing a management structure for SOIT officers, providing a central place for victims to contact, improving relations with investigative and SOIT officers and ensuring a corporate approach to the investigation of rape.
- *Minimum standards should be developed for the investigation of rape and victim care;*
  - *Dedicated sexual offence investigation teams should be developed for all jurisdictions including dedicated investigative officers wherever possible. Where areas do not have enough rape crimes reported to warrant a dedicated team, there should be brigading with other areas.*
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7. **Performance monitoring:** it was felt that the ability to monitor current levels of performance was key to improving rape investigations and victim care.
- *Measures of attrition should be developed for rape cases, to put the judicial disposal rate measurement into context, including conviction rate measurement;*
  - *Case trackers should be introduced to the police force in order to monitor attrition rates and ensure feedback to victims and other agencies.<sup>95</sup>*
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In July 2002, an Action Plan<sup>96</sup> was developed by the Home Office to implement the recommendations of the joint investigation into the investigation and prosecution of cases involving allegations of rape by Her Majesty's Inspectorate of Constabulary and Her Majesty's Crown Prosecution Service Inspectorate. The main findings of the joint investigation were that:

- The training available to the police does not currently conform to a minimum standard and the availability of staff trained to receive rape victims is problematic across the police service.

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95. Metropolitan Police Authority, (April 2002), *Scrutiny Report: Rape Investigation and Victim Care*. London.

96. Action Plan to implement the recommendations of the HMCP/HCPSI/HMIC joint investigation into the investigation and prosecution of cases involving allegations of rape (July 2002), Home Office.

- The environment into which a victim is taken is not always conducive to securing the confidence of the victim.
- There are inconsistencies in the recording and processing of reported offences. Different standards are currently applied across the police service.
- The investigation of cases by the police is not always as robust as it could be. Variations in the level of forensic knowledge are apparent across the force.
- There is inconsistency in the information provided to victims about the progress of the case.

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**Key good practice points and recommendations were developed to roll out across the different police forces.**

**Victim care**

*Good practice points:*

- the monitoring of all incidents of rape and development of crime pattern analysis on intelligence referrals;
- only officers who have completed their probationary period and been trained in cognitive interview techniques undertaking chaperone/sexual offences investigation technique training;
- the introduction of a forum for police chaperones to share their experience and build up good practice.

*Recommendations:*

- all forces carry out an immediate review of existing facilities for victim examination so that both victim care and the integrity of evidence are maximised.

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**Investigation**

*Good practice points:*

- the use by the Senior Investigating Officer of a decision log documenting the rationale behind the lines of investigation and other management issues;
- the practice of equipping first response staff with mouth swab and urine kits, to prevent loss of evidence;
- the provision of the statement of complaint to the Forensic Science Service, to inform the analysis of forensic submissions.

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**Review and Decision-Making**

*Good practice points:*

- the practice by prosecutors of exploring the issues behind retractions, and asking the officer in the case to offer the victim further support and advice.

*Recommendations:*

- all decisions to drop or substantially reduce the prosecution case, or to advise the police to take no further action, be discussed with a second specialist lawyer before a final decision is taken.
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## Recording and Filing Procedures

### *Good practice points:*

- the development of guidelines on the referral of cases to the CPS for advice.

### *Recommendations:*

- the Home Office must revisit the criteria for the classification of ‘detected’ and ‘undetected’ offences, specifically in those cases where an alleged offender is named but there is insufficient evidence to support the victim’s testimony.

## Australia

The Victoria Police have developed a ‘Code of Practice for the Investigation of Sexual Assault’<sup>97</sup> that outlines the steps to be taken by police in the investigation of cases of rape. A number of their guidelines are worth noting.

- **Dealing with Culturally and Linguistically Diverse (CALD) communities:**
  - An effective police response to sexual assault victims from the CALD community must take into account their diverse needs.
  - Police must ensure that the victim fully understands the investigative process.
  - When taking statements from victims from non-English speaking backgrounds, police should not alter the victim’s words or phrases in an attempt to produce a ‘grammatically correct’ statement: statements should be in the victim’s own words.
  - In cases where the victim does not speak English, or is not comfortable or proficient with English, an interpreter of the same sex as the victim should be provided as soon as possible. An interpreter should be involved from the time of the initial report, throughout the taking of the statement and during the investigative process. Family members, including children, should never be used as interpreters.
- **Police who receive the initial report of a sexual assault:**
  - Listen carefully and be supportive: a recent sexual assault victim is likely to be distraught and any description of events given by the victim may appear confused. Quickly obtain brief details about what has happened. Find out, if possible: the nature of the offence; the victim’s current location and contact number; the victim’s name, residential address and residential telephone number; the time and place of the offence; the number of offenders; the name (if known) and a description of each offender; the direction and means of departure of the offender; any weapons used.
  - Contact relevant police and emergency units. Inform the victim about retaining forensic evidence.
  - Protect and support the victim: the victim may be in shock or experiencing extreme trauma. Tell the victim your name and assure the person they are safe. Request an ambulance if appropriate. Be mindful that a victim may feel they are to blame. Reassure the victim that they should not blame themselves for the assault. Show your concern about the events.
  - Take steps to preserve the crime scene and any physical evidence until an investigator can take charge. When attending to the victim, make sure another member is responsible for preserving the crime scene. When the crime scene involves a dwelling, include the complete dwelling and its surrounds. Restrict non essential entry to the crime scene.
  - Allow the victim as much control as possible over their situation. Reassure the victim that they do not have to make an immediate decision about their involvement with a police investigation.

97. Victoria Police (2005). *Code of Practice for the Investigation of Sexual Assault*.

Explain to the victim that police may proceed with an investigation without the evidence of a medical examination, but an examination is an important way for evidence to be gathered should the victim wish to proceed further.

- Explain the investigation steps that are likely to follow. Detailed information will assist the victim to make informed decisions and will enable them to regain a sense of control. Victims are far more likely to agree to be involved in police investigations if they understand the process and are treated as a priority.
- Check all possible evidence has been secured. This includes evidence at the crime scene, any medical evidence and the victim's clothing. Make sure exhibits are properly labelled and taken to the Victoria Police Forensic Services Centre without delay. All drug, blood and urine samples must be forwarded to VIFM.
- Make notes of the victim's physical condition. With the consent of the victim, photographs may be taken of any injuries sustained by the victim. It is preferable that photographs are taken by the FMO. Provide the victim with information about support services
- **Police interviewing a sexual assault victim:**
  - Unless the victim otherwise requests, a specialised police member of the same sex should conduct the interview and take a full statement.
  - Conduct the interview in a private and comfortable setting. Take a detailed and accurate statement
  - Video and Audio Taping of Evidence (VATE) is the video recording of a person's evidence in chief. VATE statements can only be taken by a suitably qualified member of Victoria Police. In all circumstances where the legislative criteria of VATE are met, the use of VATE should be considered in the first instance.
- **Investigators:**
  - Make an initial assessment: make sure the crime scene is identified. The crime scene should be adequately protected from contamination and guarded. If it has already been contaminated, find out what has been touched. Find out if any witnesses have been located. Ensure their details have been recorded, they are isolated and are awaiting interview
  - Consider the victim: remember that people react differently to traumatic events. A victim may appear very composed and be able to calmly discuss the incident. You should not infer from this that the victim is unaffected by the assault or that they are lying.
  - Monitor the progress of the victim's statement. Keep the victim informed about the investigation. Regardless of the outcome, you must inform the victim if the alleged offender is interviewed.
  - It is the responsibility of the investigator to keep the victim informed of the status of the investigation and any subsequent criminal proceedings. Regularly speak with the victim regardless of what investigation progress, if any, has been made.
- **Withdrawal of complaint:**
  - Under no circumstances should police encourage a victim to request no further action or to sign a statement of no complaint.
  - If, at the time of making the initial report, the victim indicates that they desire no further police action, that fact must be included in their statement. The victim's statement must set out: the fact that the victim desires no further police action in the matter and the reasons why; that the request is made in the exercise of free will and not under any duress or intimidation.