



RAPE JUSTICE IN SOUTH AFRICA

RETROSPECTIVE STUDY OF THE INVESTIGATION, PROSECUTION AND
ADJUDICATION OF REPORTED RAPE CASES FROM 2012

MERCILENE MACHISA, RUXANA JINA, GERARD LABUSCHAGNE, LISA VETTEN, LIZLE LOOTS, SHEENA SWEMMER,
BONITA MEYERSFELD, RACHEL JEWKES



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**Gender and Health Research Unit
(Pretoria Office)**

Tel: +27 (0) 12 339-8526

Fax: +27 (0) 12 339-8582

Postal address:

Medical Research Council
Private Bag X385
Pretoria 0001
South Africa

Street address:

MRC Building
1 Soutpansberg Road
Pretoria

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Acronyms

AFIS	-	Automated Fingerprint Identification System
AIDS	-	Acquired Immune Deficiency Syndrome
CAS	-	Crime Administration Act
CMS	-	Court Management System
CJS	-	Criminal Justice System
CPA	-	Criminal Procedure Act
DBE	-	Department of Basic Education
DOJ&CD	-	The Department of Justice and Constitutional Development
DoH	-	National Department of Health
DSD	-	Department of Social Development
EC	-	Eastern Cape Province
FS	-	Free State Province
FSL	-	The Forensic Science Laboratory of the South African Police Service
GBH	-	Grievous Bodily Harm
GP	-	Gauteng Province
HIV	-	Human Immunodeficiency Virus
IO	-	Investigating officer
KZN	-	KwaZulu-Natal Province
LP	-	Limpopo Province
MP	-	Mpumalanga Province
NC	-	Northern Cape
NDPP	-	National Director of Public Prosecutions
NGO	-	Non-Governmental Organization
NPA/SOCA	-	The Sexual Offences and Community Affairs (SOCA) unit of the National Prosecuting Authority (NPA)
NRSO	-	National Register for Sexual Offenders
NW	-	North West Province
PEP	-	Post-Exposure Prophylaxis
SAECK	-	Sexual Assault Evidence Collection Kit
SAPS FCS	-	South African Police Service Family Violence, Child Protection and Sexual Offences Unit
STIs	-	Sexually-Transmitted Infections
TCC	-	Thuthuzela Care Centre
WC	-	Western Cape Province



Glossary

The definitions of key terms used frequently in this report are given below.

Attrition: the filtering process by which cases drop out of the criminal justice system.

Acquittal: this occurs at the end of the trial once both the state and the defence have both had a chance to present their cases and a judgement is passed that a person is not guilty of the crime with which the person has been charged. Acquittals also occur when the state has failed to prove its case beyond reasonable doubt or other circumstances lead to the case being discharged after trial has started

Appearance: in a criminal prosecution, an appearance is the initial court proceeding in which an accused person is first brought before a magistrate.

Bail: is the mechanism whereby an arrested person may be allowed to be outside custody pending trial. Bail can be refused when there is a chance that the release of the accused will endanger the safety of the public or any particular person; there is a chance that the accused will avoid his/her trial; there is a chance that the accused will attempt to influence or intimidate witnesses, or cover and/or destroy evidence; there is a chance that the accused will undermine or endanger the functioning of the justice system including the bail system; or there is a chance that the accused will disturb public order or undermine public peace and security.

CAS number: is a unique reference number allocated to the case by the SAPS Case Administration System. This is the number that the police will use to track and trace the docket on its journey through the criminal justice system.

Charge sheet: is a formal document prepared by the prosecutor, in which it is alleged that the accused is guilty of a specific crime or crimes.

Child: as set out in the Children's Act 38 of 2005, a child means a person under the age of 18 years.

Closed case: This means no more work to be done on the case, no outstanding suspects or leads that need tracking down.

Court Roll: the order of cases to be dealt with by the court in a specific day.

Complainant: as set out in the Sexual Offences Amendment Act (SOAA) this is an alleged victim of a sexual offence. When child victims are involved, the guardian or person who reports the rape is the complainant and the child is the victim.

Coercion: tactics used by perpetrators to exert power and control over another person. This may include a person intimidating, tricking, forcing or manipulating someone into engaging in sexual activity without the use of physical force. Perpetrators may also use threats of violence, blackmail, drugs, and/or alcohol to coerce someone into sexual activity. **Compelled rape:** as set out in the Sexual Offences Amendment Act (SOAA) this is when a person (A) who unlawfully and intentionally compels a third person (C) without the consent of C, to commit an act of sexual penetration with another person (B), without the consent of B.

Crime scene: the place, including where applicable, the vehicle or vessel at or in which an alleged rape or sexual offence took place.

Discharge (section 174): a section 174 application is brought once the state's case has closed and before the defence has begun. The defence will argue that there is no need to continue as the state has failed to make a *prima facie* case that needs to be defended.

Docket: an SAPS case file in which all record of documents and criminal case proceedings are stored.

FCS Unit: specialised unit within SAPS that deals with family violence, child protection and sexual offences cases.

First report witness: the first person the complainant told about the rape incident and who gives testimony in the trial.

Intermediary: the role of the intermediary is to convey the evidence-related questions from the prosecution or the defence to the child in a manner which is understandable to the child. In carrying out this duty, the intermediary has two specific functions: to protect the child against hostile cross-examination and to assist the child in understanding the questions posed. The child will, therefore, only talk to the intermediary during the court proceedings.

Intimate partner: a husband, cohabiting partner, boyfriend or lover, or ex-husband, ex-partner, ex-boyfriend or ex-lover.

Investigation is the procedure to gather facts about a rape incident.

Investigating officer: a member of the South African Police Service responsible for the investigation of an alleged sexual offence or any other offence.

J88: the standard medical examination form that is completed by a healthcare provider for medico-legal cases. The form is used during trials to provide evidence of findings during a medical examination after a general assault or rape.

Nolle prosequi: A prosecutor's decision to decline to prosecute.

National Prosecuting Authority: the Constitution and the National Prosecuting Authority Act provide the Prosecuting Authority with the power to institute criminal proceedings on behalf of the State and to perform the necessary tasks in support of this function. This includes supporting the investigation of a case, or discontinuing criminal proceedings where necessary.

Open case: a case where the investigation is ongoing.

Perpetrator: the person(s) accused of performing the sexual acts as set out in the Sexual Offences Amendment Act 32 of 2007. In this report the perpetrator is also interchangeably referred to as the offender.

Plea and sentence agreements: these are popularly termed 'plea bargains'. These agreements may be entered between the state and the accused. The accused pleads guilty to charges in exchange for a lesser sentence.

Plea: this refers to whether the accused pleads 'guilty' or 'not guilty' to the charge of rape. The criminal trial officially begins once the accused makes his/her plea.

Postponements: court cases do not always happen on the dates set aside. They may be postponed by the magistrate. Postponements may be requested when witnesses are sick, or do not arrive at court, or because the accused is unrepresented and needs to find a lawyer.

Prima facie: refers to evidence of the allegations that, on face value, appears to be enough to convict.

The prosecutor: refers to a person duly appointed as a prosecutor, and who is tasked by the state to present evidence in court as to the facts of a criminal case.

Rape: an incident reported to the police that is defined by the police in terms of the Sexual Offences Act as a rape (including attempted rape). This includes sections 15 and 16 of the Sexual Offences Act i.e. 'consensual' sexual penetration of a minor or person unable to give consent.

Rape case: an incident reported to the police that is defined by the police in terms of the Sexual Offences Act as a rape matter. This includes sections 15/16 of the Sexual Offences Act, i.e. 'consensual' sexual penetration of a minor or person unable to give consent.

Serial rape: two or more rapes perpetrated by one person on at least two separate occasions.

Sexual act: as set out in the Sexual Offences Amendment Act this refers to an act of sexual penetration or an act of sexual violation.

Sexual assault: as set out in the Sexual Offences Amendment Act this refers (1) A person ('A') who unlawfully and intentionally sexually violates a complainant ('B'), without the consent of B, is guilty of the offence of sexual assault. (2) A person ('A') who unlawfully and intentionally inspires the belief in a complainant ('B') that B will be sexually violated, is guilty of the offence of sexual assault.


Sexual coercion: the act of using pressure, force or other tactics or manipulation to have sexual contact with someone against his or her will. This includes persistent attempts to have sexual contact with someone who has already refused.

Sexual offence: as set out in the Sexual Offences Amendment Act this refers to any offence in terms of Chapters 2, 3 and 4 and sections 55 and 71 (1), (2) and (6) of the Act.

Sexual offences courts: these are specialist and dedicated courts that only deal with sexual offences.

Sexual penetration: as set out in the Sexual Offences Amendment Act, this means any act which causes penetration to any extent whatsoever by (a) the genital organs of one person into or beyond the genital organs, anus, or mouth of another person; (b) any other part of the body of one person or, any object, including any part of the body of an animal, into or beyond the genital organs or anus of another person; or (c) the genital organs of an animal, into or beyond the mouth of another person, and 'sexually penetrates' has a corresponding meaning.





Sexual violation: as set out in the Sexual Offences Amendment Act, 'sexual violation' includes any act which causes (a) direct or indirect contact between the (i) genital organs or anus of one person or, in the case of a female, her breasts, and any part of the body of another person or an animal, or any object, including any object resembling or representing the genital organs or anus of a person or an animal; (ii) mouth of one person and (aa) the genital organs or anus of another person or, in the case of a female, her breasts; (bb) the mouth of another person; (cc) any other part of the body of another person, other than the genital organs or anus of that person or, in the case of a female, her breasts, which could (aaa) be used in an act of sexual penetration; (bbb) cause sexual arousal or stimulation; or (ccc) be sexually aroused or stimulated thereby; or (dd) any object resembling the genital organs or anus of a person, and in the case of a female, her breasts, or an animal; or (iii) mouth of the complainant and the genital organs or anus of an animal; (b) the masturbation of one person by another person; or (c) the insertion of any object resembling or representing the genital organs of a person or animal, into or beyond the mouth of another person, but does not include an act of sexual penetration.

The Criminal Law (Sexual Offences and Related Matters) Amendment Act No. 32 of 2007: also referred to as the Sexual Offences Amendment Act): is an act that reformed and codified the law relating to sex offences. It expanded the definition of rape, previously limited to vaginal sex, to include all non-consensual penetration; and it equalised the age of consent for heterosexual and homosexual sex at 16. The act provides various services to the victims of sexual offences, including free post-exposure prophylaxis for HIV, and the ability to obtain a court order to compel HIV testing of the alleged offender. It also created the National Register for Sex Offenders, which records the details of those convicted of sexual offences against children or people who are mentally disabled.

Subpoenas: these are verbal evidence or documents given to anyone who is required to give evidence in court and indicates the court dates.

Warrant of Arrest: written authorization by a magistrate for the arrest of a person.

Withdrawal: this is when the prosecutor decides to retract a matter, this is not final and the matter can be re-enrolled. This can happen if there is insufficient evidence and the IO is required to complete further investigation. In the case of victims this means expression by the victim that they are no longer interested in pursuing a case for different reasons.

Witness: a person who gives testimony or affirmation under oath in a court of law.

Executive summary

Background

Rape is a significant societal and public health problem in South Africa. The Criminal Law (Sexual Offences and Related Matters) Amendment Act No. 32 of 2007 provides a legal framework for responding to sexual offences and an integrated response framework for victim-friendly service provision including the prescription of directives for the different actors within the criminal justice system. While the legislation was enacted to ensure recourse for victims and the retribution against rape perpetrators, not every reported case is concluded with a verdict from a trial and many of these are not guilty verdicts. Various factors influence the progression of cases within the criminal justice system, some of which may be amenable to intervention with positive effect. An understanding of these factors is critical for improving the effectiveness of the criminal justice system in securing justice for victims of rape.

Study aims

This national study aimed to describe patterns of attrition of rape cases during their progression through the criminal justice system and factors associated with this, and to generate recommendations for strengthening the investigation, prosecution and adjudication of cases. The study's additional objectives were to understand more about the decision making of prosecutors in taking cases to trial, using interviews and to understand how cases proceed in trial and how judgements are made, through an analysis of trial transcripts.

Methods

The main study was based on an analysis of a nationally representative, randomly selected sample of rape cases opened by the police in the year 2012. The sample was made up of 3 952 cases of rape reported in the year 2012 at 170 police stations across the country. The cases were selected through a multistage random sampling approach that involved first randomly selecting 170 police stations from 1 164 police stations in the nine provinces using probability proportionate to size. At the selected police stations, a maximum of 30 cases were systematically selected from the list of all rape cases reported at the station in 2012. The dockets for the selected cases were drawn from the docket stores and researchers abstracted data from them using structured data abstraction tools. Researchers also scanned copies of J88 forms where they were available in dockets. They captured the court case numbers of the cases, where available, and these were used to request charge sheets and transcripts at the respective courts where cases were referred for prosecution or heard. Data from the J88 forms and court transcripts were also abstracted using structured tools developed for the work. Researchers handed out questionnaires to Family Violence, Child Protection and Sexual Offences (FCS) unit members working with cases from the selected police stations to measure sociodemographic characteristics, availability of vehicles, specialist training, work stress and prevailing gender attitudes. Qualitative interviews were also conducted with 13 prosecutors and 6 Legal Aid Board attorneys working with rape cases in Gauteng province. Quantitative data analyses methods used included descriptive statistics and logistic regression modelling to test factors associated with different outcomes. Qualitative data analyses used content analysis.

Sample description

In total 3 952 cases were included in the study, 94.1% of complainants were female, 46% were children (under 18) and 4.9% were disabled. Child victims were more likely to live with their mother and less likely to live with both parents than children in the general population. 10% of the adult victims were students. The accused were mostly male (99%) and adults, but 13.9% were under the age of 18. Sixty-four percent of the perpetrators were known to the victim and 31% were strangers, but this proportion was 40% among adults. A third of adult perpetrators had previous convictions, 5% for rape. There were significant differences in the characteristics of complainants across provinces, including age and racial distribution as well as the circumstances surrounding the rape incidents. KZN had highest proportion of child rapes (both complainant and perpetrator) and rapes by relatives; Mpumalanga had the highest proportion of stranger rapes, the Western Cape had the highest proportions of rapes by intimate partners and North West Province had the highest proportion of multiple perpetrator rapes.

We obtained completed questionnaires from 292 FCS members. Of these, 66.4% were male, and 53% had been in service for over 10 years. Most (45%) were Constables and half (54%) had only completed secondary school. Eighty percent had been trained on the FCS training course.

Only 2 851 J88s (72.1%) were available and analysed for this study. Most (53%) of the examinations were done at hospitals, 30% were examined at TCCs or other specialised crises centres. Eighty-one percent of examinations were done by a doctor and 19% by a nurse.

Ninety-eight trial transcripts were analysed. All the recorded matters were heard in the Regional Division of the Magistrates' Court. In 28% of cases the accused pleaded guilty of the rape. Among these, 81% of the transcripts were complete and 35% had many (more than 10) inaudible parts in the transcript. Twenty percent of transcripts lacked vital information, including the complainants age, relationship with the accused, testimony of the complainant and accused, as well as swearing in of interpreters.

Key findings

Attrition in the criminal justice system

Of the 3 952 cases included in the study, an arrest was made in 2 283 (57%) cases and 2 579 (65%) were referred for prosecution. Prosecutors accepted 1 362 cases (34.4%) and these were enrolled for trial. Trials started in 731 (18.5%) cases and 340 (8.6%) cases were finalized, with a verdict of guilty of a sexual offence. In 80 of the 340 (23.5%) of cases the perpetrator pleaded guilty; 247/340 (72.6%) convicted perpetrators were imprisoned, 20.2% received suspended prison sentences, 2.4% were referred for correctional supervision and 4.1% were fined for lesser offences. Of the 247 who were sentenced to prison, 29 (11.7%) received a life sentence, 109 (44.1%) received the minimum sentence of 10 years, 91 (36.8%) received between 6 and 10 years, 62 (25.1%) received less than 5 years. Further analysis shows very little difference in the proportion of cases finalised with a conviction by victim age. However, cases where perpetrators were relatives and acquaintances were more frequently finalised with a guilty verdict.

In Gauteng Province 6.5% of cases were concluded with a verdict of guilty of a sexual offence. This compares with 6.2% of cases that were finalized with this verdict in 2003 in the Tracking Justice Study, which used directly comparable methodology. These findings show that there has been small and insignificant progress in attaining justice for rape victims in the 9 years between the two studies.

Rape incidents and reporting

Most adult and adolescent rapes occurred during weekends and in the evening, but rapes of 0-11 year olds occurred during weekdays. Children aged 0-11 were more likely to be raped during the hours coinciding with after school and when caregivers were at work, highlighting potential for rape prevention through subsidized aftercare and greater supervision. Most rapes by known perpetrators occurred in residences and most stranger rapes occurred in open spaces, by a road or in alleys. In two thirds of cases perpetrators used physical force, most commonly among adult victims. In 31% of cases perpetrators had weapons and this was a firearm in 7% of cases. In 16.6% of cases there were multiple perpetrators.

Most victims reported to the police fairly soon after the incident. Thirty-eight percent of victims reported the incident to police on the same day the incident occurred. The proportion was highest among adults (49.5%) and lowest among 0-11 year old victims (13.9%).

Police investigation

Case investigations were led by constables in half of the cases. In half the cases the perpetrator was fully named and in 70% of these cases his or her contact details were also supplied. There were many cases where the police investigation and documentation of this was deficient. In the dockets the address of the complainant was not always recorded (2.1% of cases), the complainant statement was not signed (13.4% of cases) and the complainant or guardian's telephone number was missing (21.5% of cases). In only 7% of cases was it noted that the IOs name and contact number had been given to the complainant.

In 17% of incidents involving victims older than 12 years of age no first report witness statement was taken. In only half the cases where another witness was present or near when the rape occurred, did the police take all the other witness statements. Police only visited the crime scene in about half of cases. The medical examination and sexual assault evidence collection kit (SAECK) was only appropriately collected in 76.7% of adult cases, 57.1% of cases with a 12-17 year old complainant and 33.8% of cases with a complainant under 12 years. Furthermore, over a fifth of SAECKs completed within the appropriate time were not sent to the FSL and so were never analysed. This was more common for the SAECKs of 0-11 year old complainants (30.3%). The police supervisory system was evidently not working well. In most cases instructions to take statements or visit the crime scene were not given or only given once. In many cases where the statements were not taken and the crime visits were not done, no instructions had been given.

Arrests were made in 57% of cases, and sometimes they were not made because soon after reporting the victim decided she or he did not want to pursue the case. However, in 23.7% of dockets without arrests, the perpetrator had been identified and the victim wanted to proceed with the case. It was therefore unclear why the police did not arrest the perpetrators. Analysis of case characteristics associated with arrest suggest that police energy and diligence varies and, importantly, influences this, as did incorrect ideas based on conservative gender norms about 'more serious' rape.

Work stress among the police

Access to police vehicles was a major issue. IOs reported an average of 3.5 persons per vehicle, instead of two, and sometimes very large numbers of staff share vehicles (20-28 IOs per car). Work stress levels were high and were significantly impacted by vehicle availability. In other words, not being able to do a good job due to lack of cars was stressful. Many of the IOs had conservative gender attitudes and supported rape myths. Such negative attitudes were more common among older and longer serving male officers. The FCS training course had not apparently made much difference to these attitudes. Inadequate vehicle access was associated with work stress. Higher work stress was associated with withholding generally less equitable and sympathetic attitudes to rape victims. This is likely to be reflected in interactions with complainants that may influence their willingness to proceed with cases. More attention to the basic conditions of work along with effective training that addresses rape myths and gender attitudes is needed to enable IOs to carry out duties more effectively and in a victim friendly manner.

Medico-legal examination

Almost all adult victims (92%) were examined within 3 days whereas two thirds of children aged 0-11 years were examined within 3 days. The presence of injuries was reported in two thirds of cases with no difference by age group of the victim. Twenty-six percent of victims had non-genital injuries recorded on the J88 and 56% had genital-anal injuries. The absence of injuries cannot be interpreted as absence of rape. Male victims were not examined as thoroughly as female victims, with relevant history more often missing from the J88s and some parts of the examination not done. This needs to be addressed in training. There were many areas in which the J88 form was inadequately completed and this impacts their evidentiary value and the ability of police to trace the health professional completing it. This should be improved with the 2017 revised J88 but further training for health professionals around victim examination, dealing with male victims in the same way as female victims and reporting findings is essential.

Prosecution

Prosecutors declined to prosecute in 1 217 of 2 579 cases (47.7 %) referred by police for prosecution, i.e. 34.4% of all cases included in the study. They placed the other cases on the court roll but before trial half of the enrolled cases were also withdrawn. Documented reasons for declining to prosecute were that the victim wanted to get on with their life (67.6%), followed by insufficient evidence (32.4%), and sometimes both. There was also some evidence of police inappropriately referring cases in which a suspect had not been identified to prosecutors. Prosecutor decisions not to prosecute were influenced by the rigor of the police investigation and collation of evidence, and perceived severity of the rape incident. Cases of victims aged under 12 years and disabled victims were more likely to be placed on the court roll and never go to trial than those of older than 12 and those without a disability.

At the start of trials, approximately 20% of stranger and relative perpetrators pleaded guilty, whilst only 7% of intimate partner perpetrators did so. Child perpetrators more often pleaded guilty than did adults. Cases in which there was isolation of DNA sample by the Forensic Science Laboratory had a 77% greater likelihood of having a guilty plea. Among the cases tried where perpetrators pleaded not guilty, there were marked interprovincial differences in the likelihood of a guilty verdict. Pleading guilty was less common where perpetrators had previous convictions and when adult victims were involved. Pleading guilty was twice more common if the perpetrator DNA had matched the control and if police had visited the crime scene. Overall the accused was found guilty of a sexual offence in 46.5% of all cases going to trial. Unfortunately, some DNA results may not have been available until after the trial, and this explains in part why, in nine cases with victims under age 12, the DNA matched the perpetrator but he was found not guilty of rape. Many of the sentences deviated from minimum sentences for rape and 53 appeared to be quite inappropriate, for example correctional supervision and suspended sentences given to adults for rape.

Court transcripts

The system of recording trial proceedings is deeply flawed. We could not obtain 80% of the requested transcripts, in many cases for reasons which potentially infringe the rights of convicted persons to appeal. Only 98 case transcripts were accessed. Nearly half of the accused in available transcripts were not informed about minimum sentencing which might apply or it was not recorded, rendering sentences vulnerable to appeal. Special measures were not routinely used in cases where they may apply and most requests for them were not acceded to. In 16 cases an intermediary was requested but it was only used in three cases. In only two cases was an anatomical doll used with a child witness. Courts could have been assisted in many cases by expert witnesses but these were not called. There was little evidence of use of additional witnesses such as a child psychologist or social worker to enable the court to better understand the circumstances of child rape and later reactions. Some of the court interpreters did a poor job and the interpretation by police officers in taking statements is a concern and was raised as such by one magistrate. There is considerable potential for courts to be misled due to poor interpretation.

There was evidence of rape myths and gender stereotypes having a bearing in cases. Some prosecutors led irrelevant evidence on the complainants' sexual history and failed to challenge the same from the defense. This was associated with some magistrates drawing inappropriate conclusions. There was also evidence of inappropriate weight given to the accused family's views in trials and sentencing. Further training on gender, the context of rape and the law is needed in this regard.

Prosecutors' interviews

The interviews showed that the decision to proceed with a rape case is said to be based on the evidence available to corroborate the complainant's version of events, however these legal and evidentiary requirements are not the only factor influencing prosecutors' decisions about rape cases. What is also important are the performance targets set for the number of cases finalised in a month, as well as the percentage of convictions secured for rape.

Although targets are important, they do not sufficiently take into account the court environment in which prosecutors work. They also underestimate the challenges to proving rape, which require time-consuming amounts of preparation. In relation to child complainants, more time may also be needed to lead their evidence. They disincentivise working for convictions in more difficult cases where, for example, more expert witnesses would be useful. If this is not recognised and accommodated by prosecutors' performance measures, this may result in cases being rushed through, being withdrawn or not being adequately prepared.

Conclusions

The rape cases studied are the 'tip of the ice berg' due to substantial under-reporting of rape to the police. Rape prevention overall is essential and we make recommendations for some interventions to strengthen this. The criminal justice system has an important role to play if it can work optimally and ensure that justice is a frequent outcome after rape for victims. At present this is not the case. The system is highly inefficient and requires a major overhaul. There needs to be more thorough and timeous case investigation, with more effective supervision of IOs. To do this morale in the SAPS needs to be addressed and the tools of the trade, such as vehicles, made available. Prosecutors need to be incentivized to pursue more challenging cases, ensure that all witnesses are identified to assist the court in trials and their working environment needs to take into consideration the time that is required to effectively prosecute rape. Specialised courts can greatly assist but were not available at the time of the research. Furthermore, organisation of case investigation and prosecution needs to be informed by evidence of what is effective. A programme of research is needed to greatly increase the knowledge base in the criminal justice system from which to make management decisions. Continued training for the different service providers needs to remain a priority.

Chapter 1

Introduction



Picture courtesy of: womeninandbeyond.org

Rape is a persistent, gendered, societal problem in South Africa. Women and children are most vulnerable. The context in which rape occurs varies by the victim-accused relationship, number of perpetrators and the dynamics of the rape. For example, rape occurs within violent intimate relationships. It is also perpetrated by other people who are known to the victim but who are not intimate partners, including acquaintances, family members and community members. Rape can be perpetrated by people in positions of power over the victim, including teachers and clergy. It is also perpetrated by strangers and sometimes by younger people, especially during the commission of other crimes (1). The dynamics of rape are also varied, as shown in the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007. It may involve abductions or kidnapping, non-violent methods such as threats or trickery, or physically violent acts to subdue the victim (2). Rape is predominantly an act of power or an accused's domination over the victim although, obviously, it is a sexual act.

Epidemiology and burden of rape in South Africa

Annually, the South African Police Services release national statistics on the incidence of rape and sexual offences, as reported by individuals at police stations. Between 2008 and 2015, 432 834 sexual offences were reported at police stations across the country. While there has been a general decline of reported cases, from 69 197 in 2008-2009 to 53 617 cases in 2014-2015 (SAPS Crime Statistics 2015), it remains unclear whether this is a true decline, or a decline in reporting.

Table 1.1. All sexual offences in RSA by province for April to March 2004/2005 to 2014/2015

Province	April 2007 to March 2008	April 2008 to March 2009	April 2009 to March 2010	April 2010 to March 2011	April 2011 to March 2012	April 2012 to March 2013	April 2013 to March 2014	April 2014 to March 2015
Gauteng	15 025	17 770	15 267	13 664	11 512	11 113	10 264	9 902
Eastern Cape	8 905	9 302	8 900	9 211	9 001	9 288	9 616	9 224
KwaZulu-Natal	11 129	13 058	12 980	12 480	11 034	10 964	9 889	9 079
Western Cape	8 425	8 583	9 477	9 179	8 809	8 440	7 760	7 369
North West	4 434	4 962	4 695	4 649	4 885	5 228	4 616	4 585
Limpopo	4 404	4 566	4 807	4 799	4 836	4 866	4 423	4 312
Free State	4 292	4 418	4 521	4 737	4 785	5 098	4 584	4 094
Mpumalanga	4 127	4 634	4 516	4 345	3 955	4 065	3 797	3 474
Northern Cape	1 743	1 904	1 829	1 857	1 722	1 826	1 731	1 578
South Africa	62 484	69 197	66 992	64 921	60 539	60 888	56 680	53 617

Source: SAPS (2016) *Crime Situation in South Africa*, accessed 9 April 2017.

Police crime statistics are, however, limited in that they underestimate the true population-level incidence of rape, due to underreporting of incidents by victims. Survey research conducted in Gauteng province in 2010 found that only 1 in 25 women who had ever been raped had reported their experience of rape to the police (3). Population-based surveys show that men report higher rates of rape perpetrated against women, and that women report less victimisation experiences (3-5). Prevailing patriarchal gender norms fuel non-disclosure by victims. Rape stigma makes victims feel ashamed, blame themselves and concede to family and/or community pressure not to report cases, and rather to handle the matter internally. Other barriers to reporting rape include discriminatory police attitudes, and the fear of secondary victimization experiences while accessing services (4-6). Rape victims will also be more likely to report the crime to the police when their experiences fall within popular notions of 'rape' or rape myths, and when they feel that their report will be believed, despite a background of police assertions that many women lie about rape (7). Another dynamic influencing reporting by victims is the belief that even if they report the incident, the police will not respond effectively or will turn them away, especially where the accused is known to the victim (8).

The incidence of rape in South Africa is higher than in other countries and is driven by a violent political history, as well as by structural and gender inequality. Research has shown that rape is more common in a social context of poverty where unemployment is high, men organise into social gangs and interpersonal violence is rife (9-12). The risk of rape perpetration is also higher among individuals who were abused as children, came from dysfunctional families, have hostile attitudes towards women or feel inadequate in male-female relationships (10, 11, 13, 14). Being a young woman, using drugs or drinking alcohol, agreeing to inequitable gender norms and feeling unable to refuse sex with a partner or acquaintances all increase a person's risk of experiencing rape (9, 15). For children, poor supervision or childcare arrangements and poverty exacerbate the risk of victimisation (11). Disabled children are at increased risk of abuse, especially when mentally impaired or physically dependent, and within institutions, which are intended to protect them (15).

Factors associated with rape perpetration

Population-based research with men has shown that between 28-37% of adult South African men disclose having ever raped (3, 14). Of the men who have ever raped, over half did so for the first time as teenagers. Furthermore, of men who have ever raped, more than half disclosed having raped more than once (14). Men were asked about their main motivations for rape. They reported having raped for entertainment (i.e. to have fun, to relieve boredom) (14) and for reasons stemming from ideas of sexual entitlement (e.g. sexual experimentation, or wanting to see if they could) (14) (10, 16). Rape from anger and a desire to punish the victim (or someone close to her) were also very commonly reported (13). Population research in South Africa has shown that nearly 1 in 10 men have been involved in a gang rape (16). Men accused may be intimate partners, relatives, acquaintances of, or strangers to the victim. Very often, the men accused of gang rape are younger than those accused of other rapes, and report joining a gang rape because they felt entitled and wanted to prove their virility to each other (10). Gang rape is a form of bonding for members, in which they share a female victim as a sexual object. Gang members may obtain sexual gratification through watching their peers raping and this makes it a form of voyeurism. Participating in gang rape also reflects the influence of negative peer pressure among young men (6). Motivations for selecting a victim differ, but reasons include wanting to humiliate or degrade or punish the victim. In a few cases, victims are merely incidentally selected objects for bonding (7, 8). In this sense, prevalence of gang rapes reflects on the relationships of men, their attitudes of sexual entitlement and the objectification of women.

¹ We use the term abduction to refer to circumstances in which perpetrator forcibly takes the complainant to another place against their will, and we recognise that in law this is referred to as kidnapping. Available from <https://www.saps.gov.za/services/crimestats.php>

Factors associated with rape victimization

Research into the vulnerability of children to being raped has shown girls to be more at risk. Between 7% and 39% of adult women in different studies reported forced sexual initiation, unwanted touching or rape as a child (17). Of the victims reporting cases to the police, children make up a large proportion. Research has also shown children are sometimes raped by older men, to settle a score or to punish their mothers, or another third party (6)(18).

About one in five women reported experiencing sexually intimate violence in their lifetime, and between 15-20% of men reported perpetrating sexual violence against a partner (17). In most instances, intimate partner rape only forms a fraction of other controlling behaviours and violent acts perpetrated by the partner, who feels sexually entitled (6). There is also evidence that non-violent sexual coercion in adolescent sexual relationships can result in unwanted sexual intercourse (7, 19).

Rape within marriage or dating relationships is the culmination of individual factors. The over-arching influences are patriarchal ideas about the ownership of women and desires to subjugate them, especially when they might be resisting this, such as when leaving a relationship or rejecting sex within a relationship. Intimate partner rape statistics from population based research show nearly similar rates disclosed by perpetrators compared to victimization studies. Societal factors perpetuating the incidence of rape include societal norms that reinforce patriarchy, male dominance and male sexual entitlement. A woman's right to refuse to have sex is deemed unacceptable, making it difficult for women to refuse sex. Thus, women often fail to disclose marital or partner rape. Similarly, men who hold strong patriarchal beliefs feel entitled to sex and are more likely to rape intimate partners.

Acquaintance rape is perpetrated by a person known to the victim, but with whom the victim is not involved intimately. The men accused may be seeking intimate involvement, or may simply be someone known to the victim who then rapes her. Acquaintance rape occurs mostly in residential settings, in hostels, or in entertainment environments such as parties and bars (20).

Stranger rapes are also prevalent and often involve other violent actions by perpetrators. Stranger rape can be perpetrated by a lone perpetrator, but it may also include multiple-perpetrator rapes and are often perpetrated by younger men engaged in other criminal behaviour (11). It can occur in the context of other crime, for example house breaking or car hijacking. Incidents of rape occurring in schools and institutions of care have also been reported in other research (20, 21).

Health impacts

Being a rape victim has negative health impacts, including increased risks of sexually transmitted infections (STIs) and HIV, unwanted pregnancy, physical injuries and mental health problems such as depression, anxiety, suicidality, post-traumatic stress disorder and attachment disorders (22). Childhood sexual abuse has also been associated with the development of hostile attitudes, alcohol and or drug abuse and having psychological disorders (23, 24). Sexually abused girls are more likely to develop risky sexual behaviours and are at greater risk for revictimization than other women (25). Sexually abused boys are also more likely to develop risky sexual behaviours and to perpetrate sexual violence against partners and non-partners later in life (16). Myths about rape, including the context in which rape occurs, lead to victim blaming, stigmatization and reduced support for victims of rape. A culture of silence where people do not openly discuss sexuality and sexual issues also impedes disclosure, even when victims are vulnerable to revictimization.

Legislative and policy framework

To respond to the scourge of sexual violence in the country, the Government of South Africa enacted the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 in 2007, and established operational and institutional mechanisms for its implementation. In the Sexual Offences Amendment Act, 'Rape is committing an unlawful and intentional act of sexual penetration with another person, without their consent' (2). This expanded definition of rape applies to all forms of sexual penetration without consent, irrespective of gender. It includes male complainants, the use of objects or body parts (other than penis), emphasizes the criminality of all forms of coercion including non-violent ones, the inability to consent when very drunk or unconscious, and criminalizes consensual sex with minors (under 16) and people with mental disabilities. The Sexual Offences Amendment Act also provides the post-rape response framework, and allocates responsibility to the different role players for handling procedures related to sexual offences.

National Directives for the South African Police Service in terms of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007

Section 66 of the Sexual Offences Amendment Act outlines the role of The National Commissioner of the South African Police Service, in consultation with the specified key stakeholders, to issue and publish national instructions to be followed by all police officials who are tasked with receiving reports of and the investigation of sexual offence cases (2). The SAPS National Instruction 3/2008: Sexual Offences contains guidelines for police to provide victim-friendly services to victims of sexual offences, with respect to their role in the investigation of such offences. It is the duty of IOs to conduct a thorough and professional investigation of every reported case in an appropriate, efficient and sensitive manner. Investigation includes informing the victim of investigative procedures, making support available including taking the victim to a healthcare centre for the medical examination and ensuring the safety of child victims, and obtaining information from the victim through a preliminary and in-depth handwritten statement in private. The in-depth statement of the victim should be taken as soon as the victim has recuperated and is fit to give a good statement. It is the responsibility of the IO to capture all the victim's and next of kin's contact details, and to keep the victim informed of the progress of the investigation. IOs are also expected to visit the crime scene, collect forensic evidence and compile a detailed account of the crime scene, handling the evidence while ensuring non-contamination and sending it to the Forensic Science Laboratory for analysis. In addition to collecting forensic evidence from the crime scene, IOs should contact all witnesses to whom the victim statement refers, and follow procedures to apprehend known suspects or trace unidentified suspects. The IOs are responsible for obtaining the accused person's warning statement and for liaising with the prosecutor with regard to starting of pre-trial proceedings. The police also have a duty to protect the complainant from further victimization by the accused person and to secondary victimisation when utilising services

National Directives on the Prosecution of Sexual Offences cases in terms of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007

Section 66 of the Sexual Offences Amendment Act describes the way that sexual offence cases should be dealt with in general, including the circumstances in which a charge may be withdrawn or a prosecution stopped. According to the directives:

- Child complainants should give evidence by means of closed circuit television, as provided for in section 158 of the Criminal Procedure Act, 1977;
- The court should appoint a competent person as an intermediary, through whom evidence can be accepted for child victim cases, as provided for in section 170A of the Criminal Procedure Act, 1977;
- In respect of witnesses and child complainants below the age of 16 years, the identity of the complainant in the case, or of the complainant's family, should be protected from publication, as provided for in section 154 of the Criminal Procedure Act, 1977. This includes the publication of information that may lead to the identification of the complainant or the complainant's family.

The National Prosecuting Authority has responsibility for witness preparation, prosecution of the offender and court-support referrals to health and social support services. The IOs should hand over a docket, in which they have linked an accused person and evidence, to a prosecutor. The prosecutor should then decide whether the evidence is sufficient to be heard in court. If the accused person has been arrested by police, the docket should be handed to the prosecutor within 48 hours, so that they are charged. When evidence is inadequate, the prosecutor may advise the IO to collect the missing evidence and in such a way support the investigation. Based on the available evidence, the prosecutor may decline to prosecute. A prosecutor may also withdraw cases prior to the start of the trial. The prosecutor's decision to enrol a case is discretionary, but they must ensure that a prima facie case exists, and that evidence is available in the docket that links the suspect to the crime. If the prosecutor proceeds with the case, they should present it to the court on behalf of the state, cross-examine defence witnesses and assist the court in arriving at a just verdict. The prosecutor's role also includes influencing the delivery of a fair sentence, based on the evidence presented and the sentencing standards in the Sexual Offences Amendment Act.

National Directives to be followed by all medical practitioners when dealing with sexual offence cases

The Health Directives outlined in Section 66 provide uniform and standard procedures for health establishments in dealing with survivors of sexual offences. The Health Directives include treatment of survivors and the provision of post-exposure prophylaxis (PEP), duties of healthcare professionals in terms of the forensic examination, and compulsory HIV testing. The National Directives and Instructions on Conducting a Forensic Examination on Survivors of Sexual Offence Cases in terms of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 2007, provide for standardized procedures for conducting forensic examination on sexual offence survivors in all health establishments. Together with the National Sexual Assault Policy and the National Management Guidelines for Sexual Assault Care (26), the Health Directives provide for a full range of comprehensive services for victims (11).

According to the Health Directives, PEP can only be given to patients who go to the healthcare facility within 72 hours of the rape (Section 4(a) of the Health Directives). Before PEP can be administered, the rape survivor needs to be tested for HIV, as PEP can only be given to rape survivors who are HIV-negative (Section 3 (a), (b) of the Health Directives). The HIV test requires the healthcare worker to undertake pre- and post-test counselling, which includes obtaining informed consent either from the rape survivor or, if the rape survivor is a child, from their parent or guardian (3(d) of the Health Directives).

Reflecting the changes introduced by the Children's Act 38 of 2005, children over the age of 12 years and younger children with sufficient maturity to understand the benefits, risks and implications of an HIV test, can legally consent to being tested for HIV (Section 3 (g) of the Health Directives).

In accordance with these Health Directives, victims reporting cases at police stations should be referred to a public health facility. The healthcare provider should undertake a medical examination and document findings on a J88 form. The healthcare provider can also serve as an expert witness in court, giving an account of their observations and their interpretation. The Sexual Assault Evidence Collection Kit (SAECK) for children or adults must be used to collect samples for DNA analysis during the medical examination. The forensic kit is a standard part of medical evidence collection, chiefly for genotyping, and has been in use in various forms in South Africa since 2000 [9,10]. At the health facility, victims should also be treated for injuries, be given access to emergency contraception, HIV diagnostic testing and HIV PEP, and be referred for psychosocial support and intervention. Other provisions include the compulsory HIV testing of persons accused of a sexual offence, and mandatory reporting of sexual offences against children and persons who are mentally disabled.

Integrated and multi-disciplinary response

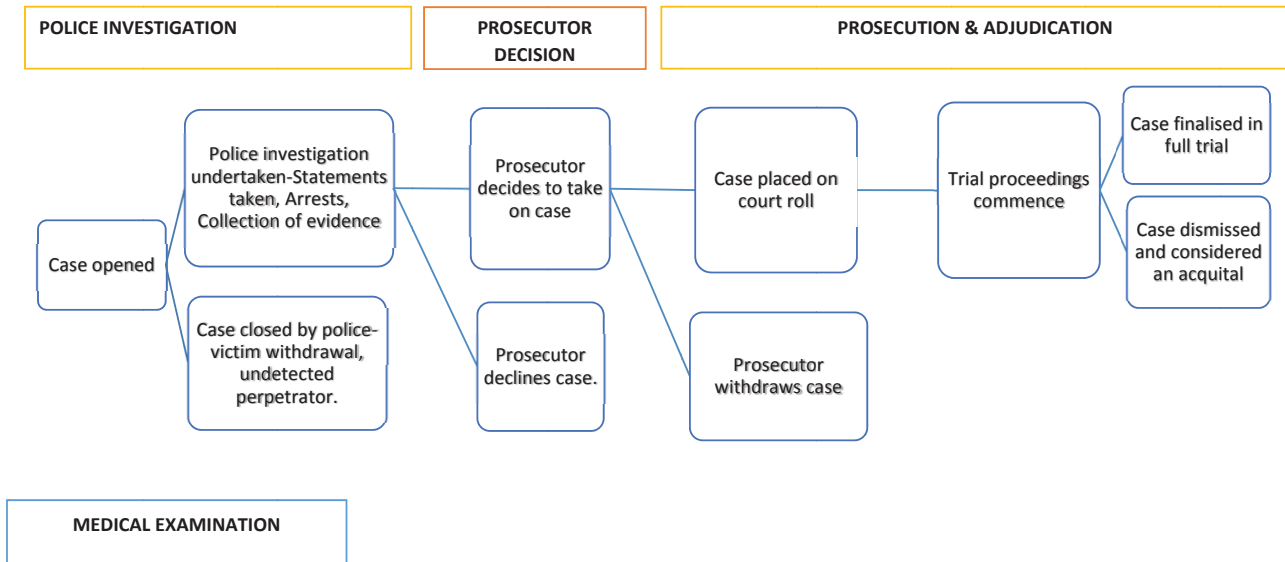
The National Prosecuting Authority's Sexual Offences and Community Affairs Unit has a mandate to manage a national network of 52 Thuthuzela Care Centres (TCCs), which provide a one-stop service to survivors and establish Sexual Offences Courts that specialise in allegations of rape. The TCCs are either located at public health facilities or are stand-alone facilities, and are operational to varying degrees across the country (27). The TCCs were established to reduce secondary victimization, increase conviction rates and reduce the length of time taken to finalise sexual offence cases. Essential services in TCCs include emergency medical care, HIV PEP, counselling and follow-up support. Each TCC is staffed by prosecutors, who play a role in case management and preparing victims for court. Other support staff include social workers and intermediaries. The Departments of Health (DoH), Social Development (DSD) and Correctional Services (DCS) play auxiliary roles in the operations of the TCCs. Non-governmental organisations (NGOs) have also been contracted to offer counselling and a range of emotional support services in TCCs. NGOs deliver psychosocial support services in 70% of the TCCs and these are mainly 24-hour services (27).

Rape case progression and attrition in South Africa

Some attrition of rape cases within the criminal justice system is inevitable. Some cases cannot feasibly progress to an arrest, as there are no clues to the accused's identity. For other cases, the case opened by a complainant is assessed at various points on its merits, both by the complainant or by officials. A decision is taken either to proceed within the system, or if the benefits of this are doubtful, a decision is made not to proceed. **Figure 1** shows the attrition points which include:

- At the reporting stage, where a police officer may use their discretion not to open a case if they are not convinced of the reliability of the complainant's statement;
- At the investigation stage, when either the suspect remains unidentified and chances of locating or arresting the suspect are deemed nil or very low, or when the victim is subsequently untraceable or expresses disinterest in pursuing the case;
- At the prosecution stage, when the prosecutors decline to prosecute for different reasons, including the low strength of evidence collected;
- Prior to the start of trial, the prosecutor may withdrawal the case due to lack of co-operation from the complainant, the disappearance of perpetrators or other reasons.
- After the trial has started the failure to establish a *prima facie* case or other reasons leads to the case being discharged by the court.

Figure 1. Rape case progression in criminal justice system



Attrition at the police investigation stage

While attrition rates differ at the different stages, most studies show that the highest attrition occurs at the police investigation phase, and most reported cases never make it to trial (5, 20, 28-30). Factors associated with rape case attrition in the police investigation stage include the victim characteristics and circumstances of the incident, investigative rigor, police member attitudes towards gender norms and acceptance of rape myths, availability of resources and staffing in police stations, and cooperation between different police clusters and other actors in the criminal justice system (31). A major challenge in processing cases is the arrest of suspects when they are strangers to the complainant, or the complainant cannot identify them. This is possible, however, through DNA analysis. Research has shown that most men who rape do so more than once (4), and many rapists, particularly men who rape strangers, do so on many occasions. There is thus a reasonable chance of linking cases through DNA, and of hoping that enough information is available from one of the cases to enable an arrest to be made. Cases in which the police fail to identify perpetrators are closed as 'undetected', and constitute unsuccessful investigations (8).

Attrition at the prosecution stage

Attrition is the culmination of processes, actions or decisions made at the different stages within the criminal justice system. Misogynistic stereotypes may be held by all involved, including prosecutors and judicial officers, who can blame victims or be skeptical of complainants' reports, and may negate the progression of cases. Specific beliefs regarding rape victims and their behaviour during and following rape, also referred to as rape myths, may form a basis for not proceeding with cases. Prosecutors may err towards selecting cases that fit into the stereotypical 'real rapes' with 'genuine victims' (32). In this way, the victim characteristics, circumstances of the rape and rape stereotypes are key to prosecutors' views about the cases' chances of conviction. Prosecutors may tend, thus, to screen out cases that are unlikely to result in a conviction due to questions about the victim's character, the victim's behaviour at the time of the incident, and the victim's credibility. While victim characteristics play a role in attrition at the prosecution stage, the decision about whether to institute criminal proceedings depends on the investigative rigor and the strength of evidence collected by police. The strength of a case depends on the extent to which there is sufficient and admissible evidence to provide a reasonable prospect of successful prosecution (31). Another key factor is investigative rigor. Cases where procedural requirements for trial are not met will be struck off the court roll, and will only be placed back when the defects have been addressed. If defects cannot be addressed, cases will be permanently dismissed.

Attrition due to victim withdrawal

Victim withdrawals occur at any stage of the process, often when the case is prolonged. Victims often withdraw cases when they have less confidence in the system to deliver justice and hence wish to 'carry on with their lives' (6, 8). Many victims also experience social pressure from family members, the community and those known to the accused, which can render the cost of pursuing cases very high for victims.

Comparable quantitative attrition research study in South Africa

The Tracking Justice study was conducted in Gauteng in 2007 with a representative sample of rape dockets opened by the police in 2003. In this study, it was found that of 100 rape complaints, 50 arrests were made, 43 accused were charged, 17 trials started and six perpetrators found guilty (20). This showed substantial rape case attrition within the criminal justice system. The Tracking Justice study results also showed that DNA results were only available for 2% of cases and made no difference to trial outcomes. Half of the cases were closed because an arrest was never made, either because of failure to identify a suspect (47%) or to locate a suspect and retain contact with him (17%). One in four cases had 'insufficient evidence' and were declined by prosecutors. Thirty percent of cases were withdrawn by the police as the victim was no longer traceable (20). Sixteen percent of the cases were struck off the court roll. A conviction for any crime resulted in just over 1 in 20 cases (6.2%). Some convictions were for lesser charges such as indecent assault, and only 4.1% of cases reported as rape resulted in conviction for rape. Of the convictions, 15.7% of the perpetrators received less than the mandated 10-year minimum sentence. Forty-one percent of the perpetrators were eligible for life sentences but only three received this sentence (20). Finding injuries and documenting them on J88s significantly enhanced the likelihood of conviction, even after adjusting for other factors (33).

Study rationale

Rape continues to be a societal problem in South Africa driven by different factors at the societal, relationships, family and individual level. A key legislative response to the problem was the enactment of the Sexual Offences Amendment Act that sets out definitions of sexual offences and provides directives for an integrated and multi-sectoral approach in handling of sexual offences within the criminal justice system and ensures justice for victims in a supportive victim-friendly environment. Previous research conducted in Gauteng only, prior to the enactment of the law, showed significant attrition of rape cases within the criminal justice system (20). In more recent years, the rates of attrition in the criminal justice system are unclear and there are no documented studies of rape case attrition in the criminal justice system at a national scale. The prevailing key drivers of attrition and the amenable factors are also unclear. Studying rape case attrition at national and provincial levels is critical to understanding the progression of cases in the system, but is also an opportunity to reflect on the implementation of the Sexual Offences Amendment Act by the different actors or service providers. Using study methods that were used in a previous study allows for comparison and assessing temporal changes in the attrition of cases within the criminal justice system. It is also an opportunity to assess whether the advances and efforts to strengthen the criminal justice system over the last decade are alleviating the problem of case attrition and are leading to better case outcomes.

Study aims

To answer these critical questions, we undertook a national study of the prosecution and adjudication of rape matters (including attempted rape) as reported to the police (including sections 15 and 16 of the Sexual Offences Act, i.e. consensual sexual penetration), with the aim of generating evidence-based recommendations for strengthening the prosecution and adjudication thereof. More specifically the objectives of the study were to:

- Describe the pattern of rape case attrition, reasons for it and how it varies between provinces;
- Describe the factors associated with successful prosecution in rape cases, including medico-legal evidence, and the factors associated with attrition at each stage;
- Describe the role of administrative problems, including with expert witnesses, gender issues, misunderstandings of the context of rape, and misapplication of the law in failure of cases in court;
- Describe the contribution of DNA to solving unsolved cases, and to the successful prosecution of all cases;
- Describe the contribution of gender attitudes and work stress of police members to case investigation; and,
- Describe the contribution of prosecutor decision making to case outcomes.

Chapter 2

Methods



Picture courtesy of: AFP / Anna Zieminski

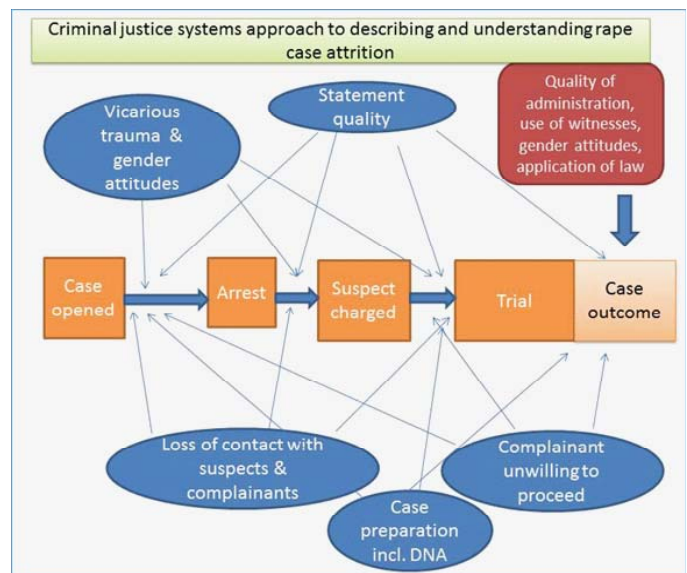


Rape case attrition in the criminal justice system occurs because of a range of different factors stemming from many different actors, processes and motivations, which can influence the success, or otherwise, of a case. These issues have influenced the research methods used in this study. The overall research design was a combination of approaches, to ensure a system-wide understanding of attrition, by tracking cases from when they were opened to their points of conclusion, both during a trial or at the various points where attrition can occur. This chapter provides details of the different research methods employed within the study.

Study design

The study was a retrospective cohort of cases of rape reported to the police in 2012 from across South Africa. We employed a mixed methods approach and used multiple data sources, needed to understand the complex system. Data were collected from several sources including police dockets, J88 medical examination forms, charge sheets, trial transcripts, interviews with police officers and prosecutors. The data were triangulated to provide information on the progression of cases within the different sections of the criminal justice system. These approaches have culminated in overarching and comprehensive recommendations for handling rape cases in the South Africa. **Figure 2.1** summarizes the conceptual framework for this study. We took a criminal justice system-wide approach to studying both the progression of cases through the system, and reasons for rape cases initially opened at a police station failing to result in a conviction. The formal pathway followed after a rape case is opened (the orange rectangles) is central to the framework. When a case is opened, victim and witness statements should be taken, the crime scene should be investigated, DNA or other evidence should be collected, and a suspect should be identified and arrested by police. Within 48 hours of arrest, the suspect should be charged. The prosecutors should review the docket and decide whether to proceed in taking the case on trial. At each of these attrition points (rectangles) there are factors (blue ovals) that can influence the progression of cases and their outcomes. We investigated some of the modifiable factors that can influence loss from the system. Factors of importance in the trial are presented in the red rectangle.

Figure 2.1. Systems approach of the study



Population and sampling

The study population was made up of cases of rape opened by complainants at a police station in South Africa during the year 2012. We used a list of rape cases reported at all the 1 134 police stations in the country in 2012 as the primary sampling frame for the study. We employed a multi-stage sampling approach, with the first stage selecting a random sample of police stations using a strategy of probability proportionate to size, stratified by province and police station case load. At the second stage, we obtained a list of all cases reported in each selected police station between 1 January 2012 and 31 December 2012. We then systematically sampled 30 cases from the case list at each police station. In police stations where the total rape cases for 2012 were less than 30, all cases were included into the study.

Sample size calculation

The sample size calculation was based on selection of a sample of 500 cases per province, with 300 cases for the Northern Cape. After allowing for 30% of probable missing dockets, 6% precision for arrests (in eight provinces and 8% in Northern Cape) and a design effect of 2, we targeted 600 cases per province (20 police stations per province) and 360 in the Northern Cape (12 police stations).

Inclusion criteria

For this study, we included only cases opened at a selected police station between 1 January 2012 and 31 December 2012 as a “rape matter”. Rape refers to the definition of rape in the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 as “an act of sexual penetration of a victim, without their consent”. This includes someone inserting their genital organ into the mouth, anus or genital organs of a victim; insertion of a part of someone’s body, such as a finger, into the anus or genital organs of the victim; insertion of any object, like a stick or a bottle, into the anus or genital organs of the victim, or the insertion of genital organs of an animal into the mouth of the victim. This definition includes rape or attempted rape, as well as compelled rape, of a male or female and a person of any age. Sexual offences that are not classified as “rape matters” were excluded (2).

Data collection

Trained research assistants visited docket stores in the relevant police stations, reviewed the selected docket files and abstracted data through a structured data abstraction tool. From the docket files, researchers also collected the associated medical examination forms and charge sheets. While visiting the police stations, the researchers also conducted interviews with FCS officers working on the cases and took note of cases that went to trial. The researchers then liaised with the relevant court managers to obtain available court recordings for the identified cases. The managers provided the court recordings and passed them on to the Department of Justice’s transcription vendors. In addition to tracking of the cohort of cases, we also conducted qualitative studies to investigate prosecutorial decision-making and court preparation processes in selected courts in Gauteng province where some of the cases in the study were heard.

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Data sources and tools

In keeping with the systems approach and the multiple data sources, different quantitative tools were used to abstract data for this study. Researchers used a structured data abstraction tool prepared in English to abstract data from the selected case dockets. The information collected through these forms included:

- Socio-demographic information on the complainant and suspect(s) including age, race, occupation, relationship with each other;
- The circumstances of the rape: when it occurred, where, what the victim was doing, whether force and weapons were used, victim responses after the rape;
- Case management within the police investigation: when the case was reported, collection of victim and witness statements, SAECKs, DNA evidence; detection and arrests of suspects, withdrawal of cases and reasons for this;
- Processing of SAECKs and DNA evidence by the Forensic Science Laboratory;
- Case management at prosecution stage including the decision to prosecute, progression of cases through court and trial outcomes.

Medicolegal tool

From all the selected dockets, J88 forms were scanned where available. J88 forms were coded by three experienced medical doctors. A data collection tool, previously used in the Tracking Justice study in Gauteng province, was revised to include some measures of quality, and to better distinguish between normal findings and missing information. Each of the doctors coded 30 forms and met thereafter to review their coding, after which the tool was refined and coding was undertaken for the remaining forms. During this period, the doctors consulted with each other if they had any challenges with coding, so that consensus was reached. The data collection tool was used to collect data on the healthcare provider who completed the form, the medical and gynaecological history of the victims, the findings on physical, genital and anal examinations, and on the completion of the J88 form itself.

The data were captured into EpiData and imported into Stata 12 for cleaning and analysis. During the cleaning process, duplicates were identified and deleted, all variables were checked for errors and were corrected after the original scans were checked. The dataset was imported into the main dataset, using a code for the police station and a specific CAS number for each case. More than one entry was linked to a case on the main dataset if J88 forms were completed for more than one victim. Basic descriptive statistics described frequency and percentage distributions for categorical variables, and means and standard deviations for normally distributed continuous data. Chi square tests were used to test for associations between two categorical variables. All data analysis took into account the clustered nature of the sample (using Taylor linearization).

Police officer questionnaire

FCS IOs servicing the stations included in the study were asked to complete a structured questionnaire that measured sociodemographic characteristics, training experience, availability of resources for IO work, and the prevailing gender attitudes and rape myths among members. Socio-demographic variables included member sex, age, rank, police station name, length of service in the force and the length of stay at the current station. Members were also asked whether they had received specialist FCS training and how long ago this had taken place. Resource sharing questions included the number of members allocated to a vehicle, whether they had failed to work on a case due to the unavailability of a vehicle and the frequency of that happening. The gender attitudes and rape myths scales were adaptations of the South African Adaptation of the Gender Equitable men scale (6 items, Cronbach's = 0.62) and South African Adaptation of the attitudes toward rape victims scale (5 items, Cronbach's = 0.80). The scales were treated as continuous, and constructed through summing up scores from the items. Case numbers assigned to each participating officer were also captured, and used to link with cases included in the study.

Occupational stress of IOs was measured through 13 Likert scale questions. Occupational stress scores of 39 (out of 65) and more were considered as high occupational stress experienced by IOs. Rape myths were measured through 5 Likert scale type questions totalling a score of 20. Scores 15 and lower were considered more conservative in rape myth beliefs. Questions addressing gender equality included statements on household decision-making, women's agency and women's rights over her life once married. Four Likert scale type questions on gender equality were asked, with a total score of 16. IOs scoring 12 and lower on the gender equality questions were considered to hold gender inequitable views. Two questions in the survey asked about men's rights over a female partner's body, coded as male sexual entitlement with a total score of 8. Participants scoring 6 and lower out of 8 were considered to hold conservative attitudes on male sexual entitlement.

As it was not possible to involve all FCS IOs in completing the questionnaire, a convenience sampling method was employed. Thus, all FCS IOs that were available at the time that the researchers visited the stations, were opportunistically sought to complete the questionnaire. Information from 800 investigating officers was anticipated. However, due to various challenges in the field, including officers not being available, distrust of researchers taking information, and refusal of station commanders to allow staff to participate, 292 questionnaires were completed for final analysis. Eight provinces took part in the survey with Northern Cape Province choosing to be excluded from the study.

Prosecutor decision-making interviews

In-depth interviews were conducted with eight prosecutors and public defenders, drawn from the Legal Aid Board, working in six Gauteng courts. Selection of courts and participants was convenient and purposive, and informed by the study's key themes. Several days were spent in courts over a period of one year, either following the progress of cases, or observing all the different matters dealt with by a court on any day. This allowed the researcher to observe different aspects of trials, ranging from the complainant and accused's evidence-in-chief and cross examination, to arguments in mitigation and aggravation of sentence. Spending time at court in this way also allowed the interviewer to engage prosecutors, public defenders and magistrates in informal discussion about court workings.

The broad themes explored during the interviews, further supplemented by questions raised by analysis of the attrition data, included the following:

- How do prosecutors define "convictability"? What are the elements of strong rape cases versus weak cases? What sorts of cases are prosecutors more likely to decline to prosecute or withdraw?
- What is the type of evidence that prosecutors perceive to strengthen cases, and how do they prepare it for trial? What are the factors that prosecutors consider when arguing for a particular sentence?
- What is the nature of relationships with local investigating officers, including the strengths and challenges to prosecutor-led investigations?
- What is the nature of relationships with local healthcare providers?
- What knowledge, skills, qualities and experience are prosecutors perceived to require, to take matters to trial? How do they learn to prosecute rape cases? Who and what guides prosecutors in the management of rape cases? What constitutes specialisation?
- What perceived features of the court environment, practices and processes hinder or enhance the management and prosecution of rape matters?
- What is the perceived effect of the magistrate upon case outcomes? How do prosecutors go about deciding which magistrate will hear particular rape matters?
- When do prosecutors propose the use of special measures? When do they not promote the use of these measures?

In keeping with the application of grounded theory, some prosecutors were re-interviewed about new themes emerging from initial analysis of the data.

Observation of court proceedings

In the same courts in which prosecutor interviews were conducted, systematic observation of the daily business of courts was undertaken. The focus for the observations were the management and administration of cases, such as reasons provided for delays in cases and requests for postponements, reasons advanced for denying or granting postponements, reasons provided for withdrawing or striking matters from the court roll, and the presence or absence of witnesses, with the reasons provided for their absence. The observations also included attending proceedings where rape complainant's evidence in chief and/or cross-examination were being heard, having earlier informed the prosecutors. Observations focused on themes including application of the various rules of evidence, applications for in-camera hearings and other special measures, the introduction and handling of questions relevant to previous sexual history, the introduction of expert testimony, key lines of questioning pursued by the defence, and comments or interventions by the magistrates.

Court transcripts analysis

Researchers recorded the court case numbers of dockets that were referred for prosecution. The court case numbers were then used to request trial transcripts from the relevant courts. The courts then made the recordings available to the routine transcribers. The researchers then liaised with the transcribers and paid for the transcriptions on delivery. A trained legal researcher read through the transcripts and abstracted data using a structured tool that focused on the expected trial procedures including charging, pleading, application of special measures, examination and cross-examination of complainants and witnesses, accused's examination-in-chief, cross-examination of the accused, dismissals or discharging matters, closing arguments, judgment. The tool was also used to abstract data on the application of the law of evidence, gender biases and the reliance on gender stereotypes by parties or the courts. The researcher also isolated a series of vignettes from the transcripts to support the quantitative data and further illustrate the settings of the trials and expressions used by the prosecutors, and presiding judges. The qualitative vignettes were also used to introduce a broader discussion, which arose from the transcripts. Quantitative data were captured through an excel spreadsheet and imported into Stata 13 for analysis. Cross tabulations were used for bivariate analyses.

Ethical considerations

The MRC Ethics Committee gave approval for the study and its complementary sub-studies. Permission was obtained from SAPS National and Provincial Commissioners, for access to police stations and dockets. At station level, researchers first engaged with the Station Commander, prior to commencing data collection and obtaining case lists. Each selected case was allocated a study ID, and only the CAS number was captured on the data abstraction form. Thus, the data were anonymous and could not be tracked back to a complainant or suspect by name. When cases were still open, researchers had limited access to the dockets and relied on information provided by investigation officers.

Police officers were informed about the study and gave written consent to participate. Permission to interview prosecutors and conduct observations at court was obtained from the National Director of Public Prosecutions. Participation by prosecutors was voluntary, with written informed consent sought prior to the interview. The Chief Magistrate of the criminal section of the regional court was informed of the study and gave permission for observation of court proceedings. Participants were assured of their confidentiality and that their responses would be anonymous. Participants were given the option to decline or withdraw from the interviews at any time. No incentives were provided to participants. Researcher debriefing and psychologist sessions were conducted weekly to reduce vicarious trauma.

Data management and analysis

The main dataset with docket information was combined with data from police officers and from J88 forms, using the CAS number and police station as the linking variables. All the quantitative data were analysed using Stata version 13, taking the survey sampling design and the sampling weights into account. For descriptive analyses, we first calculated the proportion of cases by the different circumstances and typologies of rape. We also used cross tabulations to describe the attrition at different stages: the proportion of cases in which the accused was arrested (or asked to appear in court), charged, declined by the prosecutor or brought to trial, found guilty of a sexual offence and imprisoned. We also determined the proportion of cases in which standard procedures for investigation were followed: the proportion of the cases for which victim and witness statements were taken, a forensic evidence kit completed, this kit sent to the FSL, the suspect's blood drawn, and a report on DNA made available from the FSL. We compared the proportion of cases reaching each stage by age group, provincial distribution and other circumstance, by assessing the p-value associated with chi-square tests for association. We used age groups 0-11 years, 12-17 years and 18 years and older, consistent with the age groups of routine reporting by the police. Multiple regression analysis was used to test for associations between case characteristics and attrition, or case outcomes. Characteristics tested for having impacts on case outcomes included the circumstances of the rape, the characteristics of the complainant or suspect, the management of the case at the police investigation or prosecutorial stages, the evidence of injuries from the medical examination, and the attitudes of police members. Variables were tested in multivariable models if associated at a bi-variable level with a probability of $p=0.2$ or less. Backwards elimination was used with model building, with a final set of variables retained at $p=0.05$. In addition, some variables are presented in the models where the prevalence of the variable was relatively low and the effect size large, with a p value of less than 0.1, as these may be important relationships that we had limited power to detect conclusively.

Limitations and data collection challenges

It is important to note, however, that there are limitations to the depth of information abstracted, which is mainly due to the unavailability or incompleteness of the data sources. We cannot be certain if this would have impacted on the findings overall and their generalizability, but the overall number of dockets from which we took information was over 90% of the intended sample. We therefore believe that generalizability is likely to be high. The cases described here reflect cases of rape reported to the police, and should not be interpreted as providing information on levels of rape in the general population, due to the high levels of under-reporting and many biases that influence reporting behaviour. The information we present and have analysed is that which was available for the study, and there may be many dynamics driving behaviour of the complainant, police, judicial officers and prosecutors that were not visible to the research team.

Police data sources

Overall, the SAPS provided enormous assistance with the research. However, there were occasional problems encountered when collecting data at police stations. We found that some of the cases we selected for the sample were still open even in 2014, for reasons including awaiting DNA results, suspect still at large, or cases provisionally withdrawn due to IOs not complying with instructions on the docket. These cases could not be included in the sample and were not replaced.

Some of the selected dockets could not be found as the docket stores filing was not in order, and some parts of dockets were missing. This was especially true for completed J88 forms. Some of the docket stores have experienced problems with records being damaged, for example if there were water or sewage leaks. Although we had permission to look at records in each police station, we occasionally experienced limited cooperation, for example being told that store keys were not available because the clerk was on leave. Sometimes the data collection took longer than anticipated because, for example, the station commander was not available, and the people being unaware of the study. Some of the IOs were reluctant to participate in the study and there was poor response rate in completing questionnaire. The poor response rate was associated with scepticism about how the data they would provide would be used. Some IOs were cagey towards researchers as they perceived the study to be an investigation into their performance in cases. Linking dockets, J88s and court records was not as easy as it should have been, due to incorrect CAS numbers and missing information.

Court records and transcripts

We encountered significant challenges tracing transcripts and obtained only 108 out of 542 (20%) transcripts anticipated by the time of writing of this report. Reasons for failure to locate recordings included unavailable or missing audio recordings, records that had been destroyed or they were unable to provide the recordings unless further details about the perpetrators were availed. Of the transcripts made available by the courts, 19.4% were incomplete. The incompleteness of the transcripts made it impossible for the research tool to be completed fully in those instances.

We also experienced many difficulties linking dockets to trial records. Some of the charge sheets had gone missing and could not be traced, and some charge sheets may have been destroyed but there was no disposal list saying which of those cases were destroyed and when. We found a court store room that had flooded, and generally there was no easy way of tracing cases from the district court to the regional court. At times, multiple cases had the same court case number but different charges.

Other challenges with accessing transcripts included lack of co-operation from court personnel, for reasons such as, old cases that could not be found in storage, cases that could not be retrieved using their new system and cases that could not be found using ICMS without the researchers providing names of accused and complainant. In some instances, newly appointed staff said they were unable to assist with cases processed before their arrival.

Prosecutor interviews

In conducting the prosecutorial decision-making qualitative study, potential interviewees were provided with an information sheet about the study, and a form consenting both to the interview and its recording, if they agreed to participate in the study. Securing interviews has proved challenging. Court personnel are extremely busy and have little spare time. Even when interviews have been secured, these have had to be rescheduled due to the prosecutor unexpectedly needing to appear in court on behalf of ill/absent colleagues. In some instances, the Chief Prosecutor refused to grant permission for the interviews, stating that prosecutors are too busy. At other courts, it proved extremely difficult to contact the Chief Prosecutor either by phone or email – or even by going to the court and waiting. Without this permission, it was not possible to approach either the control prosecutor for an interview, or the prosecutors working in court. Legal Aid personnel have proved easier to approach, even if they are also busy.

Medical examination forms

The J88 analysis was limited to cases where J88 forms were completed and retrieved from the dockets. J88 forms may not have been completed if victims reported the rape a long time after the assault, and in some cases, J88 forms were missing. In some instances, parts of the form were not clear due to illegible handwriting, faint copies, poor quality scanning of the form, and missing pages. Efforts were made to try to distinguish between information that was left blank by healthcare providers, versus negative findings, as we could not assume that missing information was equivalent to normal findings. Similarly, injuries recorded were not necessarily indicative of actual injuries, and in only a small proportion of victims was toluidine blue used during the genital examination (n=76, 2%), which would help to identify micro-injuries.

Non-participation of the survivors

Another limitation of this study is that the data from victims was administrative and retrospective. The study was not approved to track the victims in cases and obtain information of their experiences in the criminal justice system. The experiences of victims would have added valuable information on the effectiveness of the system and the quality of service provided that would not be possible with documentary reviews.

Stakeholder consultations

The project also involved stakeholder engagements at the conceptual and report writing phase to ensure the inputs from actors in the field in both shaping the research and formulating evidence based conclusions and recommendations that can be implemented to ameliorate the attrition of rape cases in the criminal justice system. Stakeholders consulted at different stages of the project included: members of SAPS, NPA SOCA, Department of Justice and Constitutional Development, FSL, Department of Social Development and representatives from Ministry in the Presidency responsible for Women.

Chapter 3

Case attrition in progression through the criminal justice system



Picture courtesy of european knightsproject.com

Introduction

Our sample consisted of 3 952 docketed opened at police stations in South Africa in 2012 in response to a complaint of an incident of rape or other rape matters. When each case was opened, it was the goal of the complainant to see justice done and presumably to have the perpetrator or perpetrators of the offence punished after being found guilty in a court of law.

Before this outcome can be reached, there are several stages that must be successfully completed.

- First the police must investigate a case and a suspect must be identified and arrested (or much more unusually asked to appear in court without an arrest). If this stage is not completed, the case cannot proceed to the next stage.
- The docket with findings of the investigation must be reviewed by the prosecutor and a decision made to or not to place the case on the court roll. If the case cannot result in a guilty verdict in court the prosecutor will decide not to prosecute (and declare *nolle prosequi*).
- The trial does not start immediately, but only after a phase of further investigation and preparation of evidence (including any forensic evidence), and arranging for the appearance of the accused and witnesses for the main trial. During these stages of review of evidence and preparation a range of circumstances may result in a decision from the prosecution that the trial should not be started. Thus, the number of cases starting trial is lower than the number initially accepted for prosecution.
- After a trial starts it must be concluded with a verdict, but in only a proportion of cases will the verdict be “guilty of a sexual offence”.

In this chapter of the report, we present evidence for the proportion of cases initially opened that successfully pass each of these hurdles and show the proportion that do not do so. We use the term attrition to refer to the process by which cases fail to clear each hurdle and thus are not taken to trial and the perpetrator found guilty. In the subsequent chapters of the report, we describe the characteristics of the cases in the sample which clear or fail to clear each of the hurdles, describe the reasons given for this, and discuss the implications for enhancing the success of investigation and prosecution of rape matters.

National and provincial attrition

In the sample as a whole, in 42.2% of cases there was no arrest (or equivalent) of a suspect, thus only 57.8% of the cases opened were considered for prosecution (**Table 3.1**). Of the cases reviewed for prosecution, it was decided by prosecutors not to proceed with a further 23.3% of the initial cases, thus only 34.5% of cases were accepted and placed on the court roll. A further 16% of the initial cases were dropped before the trial started and so in only 18.5% of the initial cases had a trial start. In 8.6% of the initial cases, the trial concluded with a verdict of guilty of a sexual offence.

Table 3.1. National and Provincial attrition rates

	Total cases		Accused arrested or charged at court*		Cases accepted for prosecution **		Trial started		Guilty of sexual offence***	
	N	%	N	%	N	%	N	%	N	
National	3952	57.8	2283	34.5	1362	18.5	731	8.6	340	
Province :										
KwaZulu-Natal	481	54.5	262	33.9	163	16.1	76	10.2	49	
Mpumalanga	480	49.4	237	31.5	151	18.0	87	6.9	33	
Eastern Cape	503	61.2	308	41.7	210	21.4	107	9.9	50	
Western Cape	463	61.3	284	28.9	134	18.0	83	9.9	46	
Limpopo	409	63.8	261	38.4	157	16.2	65	6.4	26	
Free State	444	55.2	245	35.8	159	22.7	109	12.6	56	
North West	443	62.3	276	31.6	140	9.9	42	4.5	20	
Northern Cape	253	68.0	172	48.2	122	35.7	87	11.5	29	
Gauteng	476	50.0	238	26.5	126	16.3	75	6.5	31	
Tracking Justice study: Gauteng 2003	2 064	50.5	1036	33.4	690	17.3	358	6.2	127	

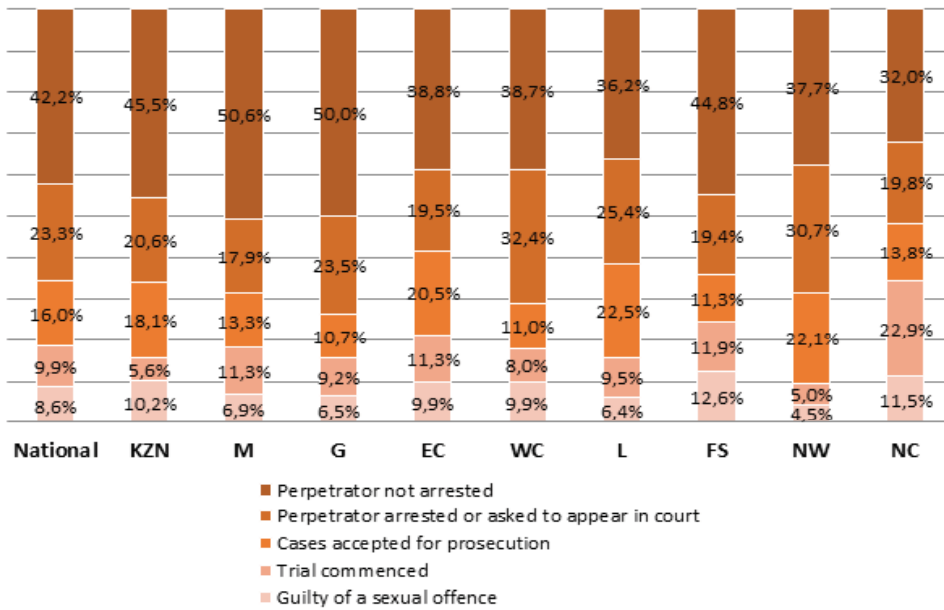
Tests for statistical significance of difference among provinces: * $p=0.002$, ** $p=0.008$, *** $p=0.06$

Table 3.1 shows the number of cases in the sample by province and the proportion of the initial cases that are successful at each stage. There were substantial differences in the proportion successful at each stage between the provinces. Thus, the lowest proportion of cases in which there was an arrest or the perpetrator is asked to appear to be charged in court was 49.4% in Mpumalanga and was highest at 68% in the Northern Cape. The pattern overall showed significant differences between provinces.

The lowest proportion of cases accepted for prosecution was 26.5% of cases in Gauteng and the highest at 48.2%, was also in the Northern Cape. Other provinces ranged between these and showed significant differences in proportions. The lowest proportion of cases in which a trial started was seen in the North West province where just 6.3% of the initial cases went to trial. The highest was in the Northern Cape where 21.7% went to trial. At the final stage, North West Province had the lowest proportion of cases in which there was a conviction at 4.5% and the highest was in the Free State at 12.6%, closely followed by the Northern Cape at 11.5%. The difference between provinces in guilty convictions was statistically significant. This patterning is also shown in **Figure 3.1**.

The most important stage in any case progression pathway is the first one, as it is impossible to proceed if a suspect is not identified and arrested. Our findings are that many cases do not have suspects identified and arrested, but the proportion of cases overall in which there was no arrest was less than half (42.2%) in all provinces except Mpumalanga. A greater proportion of cases nationally and in the Eastern Cape, Western Cape, Northern Cape, North West and Limpopo had an identified suspect who was charged, but the cases were closed by the prosecutor before a trial started. This indicates that it is essential, if we are to understand case attrition, that we consider both the police services' role in identifying a suspect and proceeding to charge him (usually) or her, and how evidence is prepared within a case and a decision is made that a case has the potential to secure a guilty verdict in a trial.

Figure 3.1. Attrition in cases nationally and by province



Comparison with Tracking Justice

The Tracking Justice Study was conducted in Gauteng on cases of rape and attempted rape opened at Gauteng police stations in 2003(20). It used a very similar methodology to the present study and therefore provides a suitable comparison to our results. The study was undertaken by some of the report’s authors and so data have been re-analyzed from Tracking Justice to ensure that figures are directly comparable. In the Tracking Justice study, arrests were made or subpoenas to appear in court issued in 50.5% of cases opened in a police station, a trial started in 17.3% of cases, and a verdict of “guilty of a sexual offence” was made in 6.3% of cases (34.6% of those in which a trial started) (Table 3.1).

If we compared the two time periods, using the data from Table 3.1, we can see that there was no change in the proportion of cases in which there was an arrest (50.5% v. 50.0%). There was a marked decrease in the proportion of cases that prosecutors were willing to take to trial (33.4% v. 26.5%). This decrease was paralleled by a reduction in the proportion of cases in which trials started (17.3% v. 11.6%) and there was a small change in the proportion of cases that ended in a verdict of guilty of a sexual offence (6.2% v. 6.5%). We are not able to compare the findings from the rest of the country as data were not collected for this in 2003.

Thus, we see that there was an increase in the conviction rate for rape if this is calculated as the proportion of cases in which a trial resulted in a guilty verdict. However, in Gauteng province it appears that this was not due to greater skill of prosecutors or better training of Magistrates, but rather to more rigorous selection of cases to take to trial. There is no evidence that investigation of cases or preparation of cases for trial in Gauteng has improved over the 9 years between 2003 and 2012. This failure to improve is not due to the system being flooded with cases as it has been seen against a backdrop of a modest overall national decline in the numbers of rape matters reported to the police. In terms of cost effectiveness, the current system performs extremely poorly, as the clear majority of resources deployed in the investigation of rape cases are of little use, when effectiveness is regarded as a verdict of guilty of a sexual offence.

Given that the proportion of cases that result in a guilty conviction is a very small proportion of those initially reported to the police, and that current personnel and systems in the police and prosecuting services have failed to bring about improvement to these proportions, we suggest that there needs to be radical changes in how rape cases are investigated and prepared for trial. We suggest that there needs to be a concerted process of drawing on and applying evidence of best practice from the international arena as well as more successful parts of South Africa, such as the Northern Cape. A programme of research is needed to build evidence on the relative effectiveness and cost effectiveness of different models of management and deployment of detectives (and their resources) and of prosecutors in overseeing investigation and deciding which cases can be taken to court.

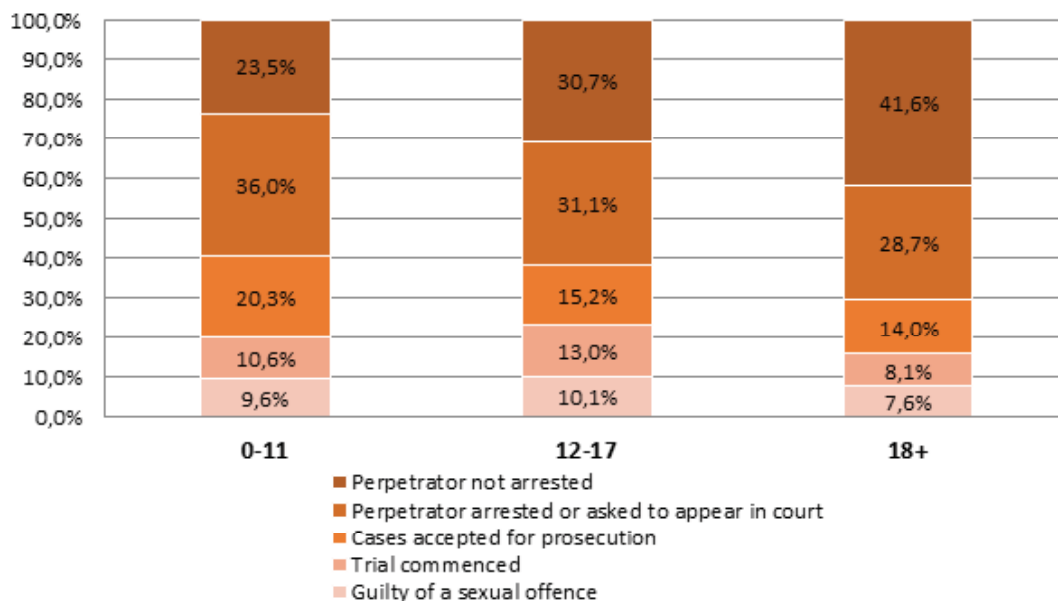
Case attrition by case characteristics

Age group

Examining attrition by age group, Figure 3.2 shows that there was a much higher arrest rate for perpetrators of offences against children, especially those under 12 years, than of offences against adults. However even if there was an arrest, there was a much greater likelihood that cases involving children under 12 were declined prosecution on initial assessment by a prosecutor, than cases involving adults, although overall more adult cases were rejected at this stage than child cases. A greater proportion of cases involving children under 12 than adults were also dropped during the stages of preparing for trial, so that by the time the trial started, a slightly higher proportion of teenager (12-17 years) cases went to trial than those involving children under 12, and the proportion of adult cases was only a little lower. There was no difference by age group in the proportion of cases with a guilty verdict.

This suggests that, although cases involving children under 12 start with an initial advantage as more perpetrators are known, and indeed it should be easier to prove the offence of rape as consent is not an element of the crime in this age group, in fact this advantage is lost during the investigation and in prosecutorial consideration of whether there is sufficient evidence for a trial. Given the figures for rape of young children in South Africa it is of considerable importance that perpetrators are convicted and that the problems in preparing cases for trial be effectively resolved. Chapter 10 illustrates how expert witnesses, such as child psychologists, can be used with good effect in child cases to assist the court in understanding child behaviour, and discusses the use of special measures such as intermediaries and anatomical dolls, which are still relatively restricted in availability in courts.

Figure 3.2. Attrition of cases by complainant age group

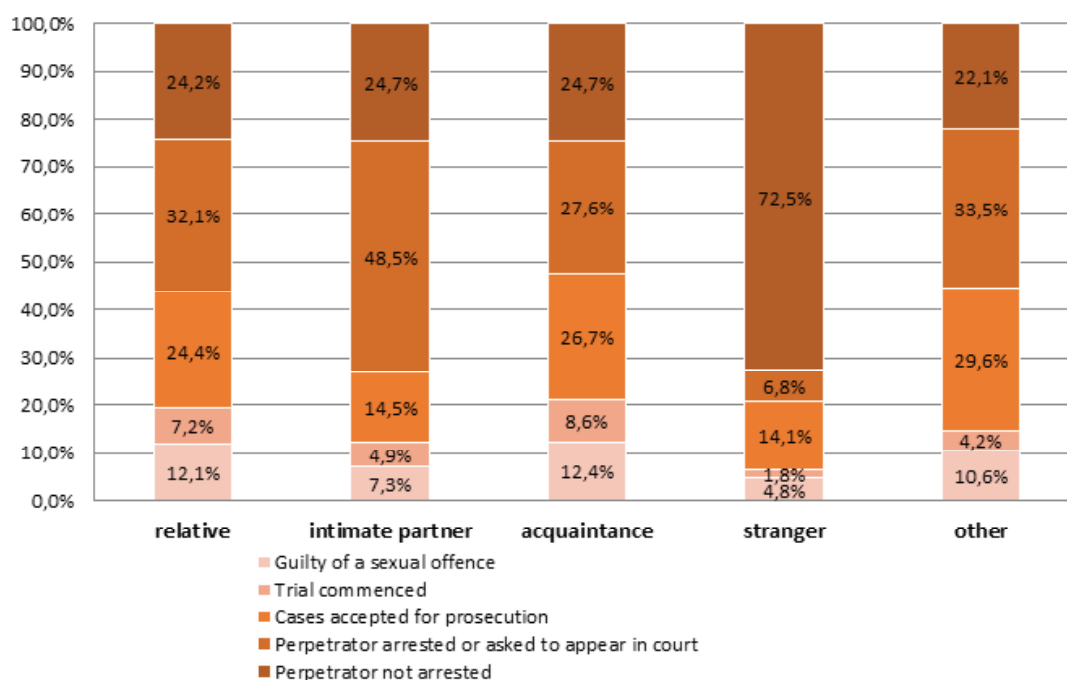


Victim perpetrator relationship

Examination of attrition by victim perpetrator relationship shows that a remarkable number of relatives and intimate partners were not arrested, despite the cases being reported to the police (Figure 3.3). Chapter 6 discusses further the reasons for non-arrest of known perpetrators. Strangers were much less often arrested than all other perpetrator groups. This is a group in which DNA can be crucial in identifying suspects and the general offender DNA database can enable cases to be solved. The proper contribution of samples to this database is very important for identifying stranger rapists because many men who rape have committed another offence previously, or may do so subsequently and enable later case resolution.

Figure 3.3 shows that if strangers were arrested, prosecutors were much more likely to support their cases going to trial than with any other relationship group. In contrast, despite South African law clearly not giving marital and intimate partners “rights” to sexual intercourse, prosecutors generally do not take these cases to trial. The findings also show reduced chances of convictions in these cases compared to cases involving stranger perpetrators. Convictions were obtained in 7.3% of cases, which is only slightly below the national average of 8.6%. Cases involving relative and acquaintance perpetrators were much more likely to go to trial, and more often resulted in a guilty verdict.

Figure 3.3 Attrition of cases by victim perpetrator relationship



Chapter 4

Victim and Perpetrator Characteristics



Picture courtesy of: AFP / Anna Zieminski

CHAPTER AT A GLANCE

About the victims

- 94.1% were female and 5% were male
- Children comprised 46% of victims
- Child victims were much more likely live with their mother, and much less likely to live with both parents, compared to children in the general population
- 4.9% were disabled and rape is probably under-reported among disabled children
- Most victims were of the same racial group as the perpetrators
- 10% of victims over age 18 were students.

About the perpetrators

- Perpetrators were 99% male, 1% female (N=2810)
- 14% of perpetrators were aged under 18 years
- 30% adult perpetrators had a previous conviction, 5% had previously rape convictions
- Perpetrators under age 12 raped victims who were also under 12, most teenage perpetrators (aged 12-17) also raped children
- Victims below the age of 11 were mostly raped by an acquaintance or relative
- 40% of adults were raped by a stranger.

Provincial differences

- KwaZulu-Natal had the highest number of reports of young victims and young perpetrators compared to the other provinces. The highest rate of rape by a relative also occurred in KwaZulu-Natal
- North West province had the highest rate of multiple-perpetrator rapes.
- Mpumalanga had the highest rate of stranger rapes.
- Western Cape had the highest rate of intimate partner rapes.
- Eastern Cape had the highest rate of acquaintance rapes.



Socio-demographic characteristics of victims

Understanding the characteristics of victims and perpetrators in reported rape cases is critical for identifying key at-risk groups and patterns of rape that can inform sexual violence responses and prevention strategies. This chapter outlines the socio-demographic characteristics of victims and perpetrators in the study sample, disaggregated by age and by the provincial divide.

Most victims (94.1%) were female and 46.4% were children. Compared to the Census 2011 data, the sample had a significantly higher proportion of female, Black African (86.9%) and child victims (46.4%). It also had more child victims who lived only with their mother (47.1% v. 39.3% in the census) and fewer living with both parents (17.9% v. 32.6%) (**Table 4.1**). Dockets did not contain the race of the victim in 28 cases (0.7%). There was a higher proportion of Coloured victims (10.9%) than in the Census. White or Indian victims were a much lower proportion (2.2%) than in the Census. Four percent of victims were Black African males, 1.1 % were Coloured males and 0.7 % were White or Indian males. These racial differences suggest differences in rape risk by racial group, but we cannot exclude differential under-reporting by the victim's race and circumstances (i.e. a greater reluctance of one racial group to report cases than others).

The sample included 170 (4.9%) victims who had a disability; 150 victims (4.4%) had a mental disability, and 12 (0.3%) had a physical disability. One victim was visually impaired, another had a hearing impairment and three had speech impairment. Three victims had multiple disabilities. The proportion of disabled victims with a disability in this sample is lower than the Census prevalence of 7.5%, and is surprising in view of research that generally suggests that disabled people are a higher risk of sexual offences against them than the general population. A significantly higher proportion of male victims (17.6%) were disabled than female victims (4.1%). A significantly higher proportion of White or Indian victims (23.9%) were disabled compared to Coloured (2.9%) and Black African victims (4.7 %) (**Table 4.1**).

Table 4.1. Sample characteristics of victims and comparative figures from the 2011 Census

	Census 2011	Sample			
	Percentage	Number	Percentage	95 %CI	
Sex					
Male	48.7	211	5.9	4.7	7.5
Female	51.4	3726	94.1	92.6	95.3
Children <18	34	1802	46.4	44.3	48.6
Children lives with					
Both parents	32.6	267	17.9	15.9	20.1
Mother only	39.3	824	54.3	51.4	57.1
Father only	3.7	47	3.8	2.8	5.1
Neither Parents	24.4	368	24.0	21.7	26.5
Race					
Black African	79.2	3 392	86.9	84.4	89.0
Coloured	8.9	472	10.9	9.1	13.0
White, Indian and Other	11.4	68	2.2	1.5	3.4
Disability					
None	92.5	3 762	95.1	94.0	95.9
One or more	7.5	170	4.9	4.1	6.0
Unemployed adults	29.8	1 305	60.3	57.5	63.0

There were 2 152 (53.9%) adults and 1 781 (46.4%) children (<18 years): 19.4% were 0-11 year old victims and 26.9% were 12-17 year old victims. The dockets did not contain details of the victims' age in 27 of the cases (0.7%). The mean age of victims was 21.1 years. The mean age of victims differed significantly by sex, disability and province (Table 4.2). The proportion of male victims among 0-11 year olds (9.8%) was twice that found among older age groups. Only 1.6% of victims under age 12 had a disability, and this is likely to reflect under-reporting of rape among young disabled children (Table 4.2). Of all reported cases, 27.6% involved victims who were girls aged 12-17 years, with little inter-provincial variation in this proportion. There was no significant difference in the racial distribution of victims by age group. Dockets often did not contain information on the parent or guardian of 12-17 year old victims. It was absent for 19.8% of this age group and also absent for 2.4% of the 0-11 year old victims (Table 4.2).

Table 4.2. Socio demographic characteristics by victim age group

	Mean Age	0-11 years N=728	12-17 years N=1 053	18+ years N=2 152	P Value
Sex		%	%	%	
Male	18.5	9.8	4.9	5.1	0.0026
Female	21.1	90.3	95.1	94.9	
Race					
Black African	20.9	88.5	86.8	86.4	0.7215
Coloured	21.3	9.1	10.9	11.5	
White and Indian	21.7	2.4	2.3	2.1	
Disability					
None	20.7	98.4	94.3	94.2	0.0004
Any disability	25.4	1.6	5.7	5.8	

There were significant differences in the age distribution across provinces. The youngest victims were found in KwaZulu-Natal (mean age=17.8 years). Northern Cape had the highest mean age of victims (23.4 years) (Table 4.3). The mean age of male victims was lower than for females in all provinces except for the Eastern Cape Province. Apart from KwaZulu-Natal, the proportions of adult victims were higher than child victims. In all the provinces except the Eastern Cape (where it was lower) and KwaZulu-Natal (where it was very similar), the proportion of 12-17 year olds victims was higher than the 0-11 year old victims (Table 4.3).

Table 4.3. Provincial distribution by victim age group²

	Mean Age	0-11 years N=728	12-17 years N=1 053	18+ years N=2 152	P Value
Province		%	%	%	
KwaZulu-Natal	17.8	29.0	29.6	41.5	<0.0001
Mpumalanga	20.4	21.4	27.8	50.7	
Gauteng	20.6	14.2	25.4	60.4	
Eastern Cape	21.5	24.5	22.9	52.5	
Western Cape	21.6	19.8	26.1	54.1	
Limpopo	21.9	15.9	29.0	55.1	
Free State	22.1	12.4	26.9	60.7	
North West	22.1	13.0	28.2	58.8	
Northern Cape	23.4	12.4	26.3	61.4	

Dockets did not contain information about employment status in 200 (10.2%) of the adult victim cases. In 18 of these cases (0.8%) it was unclear whether the victim was employed. In 9.8% the work addresses were given but the occupation not stated. Sixty percent of victims were unemployed at the time of the rape. One in ten (10.3%) victims were studying and the proportion of adult female victims who were students (10.6%) was higher than that of adult male students (3.3%) (Table 4.4). A total of 7.8% of victims had blue collar jobs³, 4% were employed as domestic workers, 2.2% were female farmworkers, and 1.9% had white collar jobs⁴. 7.8% of male victims worked in the security industry. Of the adult victims, 1.2% were professionals and 0.3% disclosed that they were sex workers (Table 4.4).

² This includes complainants whose age details were available

³ Blue collar here refers to having a job that entails manual labour, e.g factory worker, waitress, construction work

⁴ White collar refers to having a job in an administrative setting, e.g secretary, office, bank worker, sales

Table 4.4. Adult victim occupation by sex

	Male N=91	Females N=2029	Total
		%	%
Unemployed	70.8	60.2	60.7
Student	3.3	10.6	10.3
Blue Collar	3.8	8.1	7.8
Domestic work	3.2	4.3	4.3
Farm worker	0.0	2.2	2.1
White collar	1.5	1.9	1.9
Security job	7.8	0.9	1.2
Professional	1.1	1.2	1.2
Self employed	0.0	0.7	0.6
Sex worker	0.5	0.3	0.3
Missing	8.0	9.6	9.7

Sociodemographic characteristics of perpetrators

Among the reported cases, there were 4 873 perpetrators mentioned in the investigation, but data were partially or fully available for only 2 810 perpetrators (57.7%). Age details were available for only 2 477 perpetrators. The age of perpetrators ranged from 4 to 87 years and the average age of perpetrators was 28.1 years. Most perpetrators were adults (86.1%), 11.7% were 12-17 years and 2.3% were 0-11 years old. About 40% of rapes of 0-11 year olds involved young perpetrators under 18: 10.5% were 0-11 years and 29.0% were 12-17 years. Young perpetrators were involved in 14.5% of cases with 12-17 year old victims and 85.6% of cases involved adult perpetrators (Table 4.5).

The majority (99%) of perpetrators were male, but there were 44 cases (1.0%) with female perpetrators, who were often charged in these cases alongside male perpetrators (Table 4.5). In most female perpetrator cases the victims were female (35) and only nine involved male victims. Women colluded with male perpetrators in an incident in 23 of the 35 female victim cases. In 24 of the 44 cases, the female perpetrators participated in the sexual act (9 male and 15 female victims) (Table 4.5).

Thirty percent of adult perpetrators had a recorded previous criminal conviction: 1.5% had been convicted for murder; 4.4% had been convicted for rape or another sexual offence and 13.7% had been convicted for housebreaking, robbery, hijacking or theft. A much lower proportion of perpetrators with previous convictions were involved in rape of children, and only 7% of perpetrators of victims aged 12-17 years had been previously convicted, and none of the perpetrators of rape of victims under 12 years (Table 4.5).

Perpetrators were most likely to be adults, of the same race as the victim, known to the victim and older or of the same age group as the victim.

Table 4.5. Distribution of perpetrator age and sex by victim age

	Victim age				P value
	0-11years	12-17 years	18+ years	Total	
	%	%	%	%	
Perpetrator age					
0-11 years	10.5	0.1	0.0	2.3	<0.0001
12-17 years	29.0	14.4	2.5	11.7	
18+years	60.5	85.5	97.5	86.1	
Perpetrator sex					
Male	98.7	98.7	99.3	99.0	
Female	1.3	1.3	0.7	1.0	
Previously convicted	0	7.0	30.7	17.3	0.3
Any disability	25.4	1.6	5.7	5.8	<0.0001

Eighty-two percent of perpetrators were Black African, 8.8% were Coloured, 2.3% were White or Indian. There was no record of the race of 6.6% of the perpetrators. A higher proportion of White or Indian or other race perpetrators raped children under 18 years (58.4%) compared to Black African (44.7%) and Coloured perpetrators (44.9%). Perpetrator race was associated with victim race: 97.3% of cases with Black African perpetrators had Black African victims; 91.4% of Coloured perpetrators had Coloured victims, but only 69.8% of White or Indian perpetrators had White, Indian or Other race victims (Table 4.6). Nearly one in four victims of White or Indian perpetrators were Black African. These findings show that rape victims are most likely to be raped by perpetrators from their own race group.

Table 4.6. Distribution of perpetrator race by victim age and race

	Perpetrator race				Total
	Black African	Coloured	White or Indian or other	Missing	
Victim age					
0-11 years	17.9	18.0	25.3	28.7	18.9
12-17 years	26.8	26.8	33.0	20.7	26.5
18+ years	54.1	54.7	41.6	47.8	53.4
Missing	1.2	0.4	0.0	2.8	1.2
Victim race					
Black African	97.3	7.7	24.1	75.8	86.3
Coloured	1.8	91.4	6.1	18.9	11.0
White or Indian or Other	0.6	0.7	69.8	3.5	2.4
Missing	0.3	0.1	0.0	1.8	0.4

Details of employment was not in the docket for 41.1% of the perpetrators. About 27.7% of perpetrators were unemployed; 10.3% held blue-collar jobs, 8.5% were studying, 3.5% were self-employed, 1.3% worked in security and 1.2% were professionals.

Perpetrator's relationship to the victim

In 31% of cases the rape perpetrators were strangers, but 69% were people known to the victim. 30.4% were acquaintances, 13.9% were current or ex-intimate partners, 10.8% were relatives or family members, while a further 9% did not fall into these categories (e.g. they were a teacher, fellow employee, prospective employer) but were still known to the victim. The relationship was not known in 173 cases (4.7%), mostly in the cases of children under 12 where the circumstances of the rape were unclear. The proportion of stranger rapes increased with age: 12.1% of 0-11 year old victims, 24.1% of 12-17 year olds and 41.1% of adults were raped by a stranger (Table 4.7). The proportion of rape by acquaintances decreased with age: 38.5% of 0-11 victims, 33.1% of 12-17 years and 26.4% of adults (Table 4.7). Seventeen percent of rapes of teenagers and adults were perpetrated by intimate partners (Table 4.7). The proportion of rapes by relatives (Table 4.7). The proportion of rapes by relatives decreased by age: 28.1% of 0-11 year-olds, 11.8% of 12-17 year-olds and 3.9% of adults (Table 4.7).

In comparison, children were more likely to have been raped by known perpetrators. Adults were more likely to have been raped by strangers

There was significant difference in the relationship with perpetrator by victim race group. A higher proportion of White or Indian or other race victims were raped by relatives (24.1%) and acquaintances (39.3%). Rapes by relatives was lowest among the Black African victims (10.1%). A higher proportion of Coloured victims were raped by intimate partners, and this was lowest among White or Indian or other race group victims (4.9%). Rape by strangers was highest among Black African victims (33.3%). Almost similar proportions of Coloured (16%) and White or Indian or other race victims (17%) were raped by strangers.

Table 4.7. Distribution of perpetrator-victim relationship by victim age and victim race

	Relatives	Intimate partner	Acquaintance	Stranger	Other	Missing	P value
	%	%	%	%	%	%	
Age							
0-11 years	28.1	0.2	38.5	12.1	9.7	11.3	<0.0001
12-17 years	11.8	17.5	33.1	24.1	10.0	3.5	
18+ years	3.9	17.1	26.4	41.1	8.5	3.0	
Missing	19.7	0.0	22.1	39.6	6.5	12.2	
Victim race							
Black African	10.1	13.4	30.1	33.3	8.8	4.3	0.0001
Coloured	12.8	20.3	31.5	16.0	10.8	8.6	
White Indian or Other	24.1	4.9	39.3	17.0	13.5	1.2	
Missing	15.1	16.5	7.0	30.0	11.6	20.0	
Total	10.8	13.9	30.4	31.1	9.1	4.7	

Provincial distribution by perpetrator characteristics

There was also a significant difference in the characteristics of perpetrators across provinces. KwaZulu-Natal had the lowest mean perpetrator age and the highest proportion of young perpetrators: the proportions of 0-11 years and 12-17 year-old (22.5%) perpetrators were the highest of all provinces. This observation also correlates with the higher proportion of child victims from the province. Western Cape had the highest mean perpetrator age and Free State had the lowest proportion of perpetrators under 18 (Table 4.8).

There was a significant difference in the proportions of perpetrators by race, in keeping with the provincial population demographics. Like the distribution of victim race, Free State also had the highest proportion of White or Indian perpetrators compared to the other provinces and the Coloured perpetrators were higher in the Western Cape and Northern Cape provinces (Table 4.8).

There was significant difference in the victim-perpetrator relationship across the provinces. Mpumalanga (42.3%) had the highest proportion of stranger rapes and this was lowest in the Northern Cape (22.1%). The proportion of acquaintance rape was highest in the Eastern Cape (44.4%) and the Northern Cape (43.3%) and lowest in Mpumalanga (22.8%). Western Cape had the highest proportion of intimate partner rapes (20.0%) and this was lowest in Mpumalanga (9.5%). KwaZulu-Natal had the highest proportion of rapes perpetrated by a relative or family member (17.8%) and this was least common in Limpopo (7.0%) (Table 4.8).

The proportion of previously convicted adult perpetrators was highest in Eastern Cape (42.5%) followed by Northern Cape (41.8%) and was lowest in Free State (15.7%). In one in six cases (16.7%) more than one perpetrator had sexual contact with the victim. The proportions of multiple perpetrator rapes differed significantly by provinces and this was highest in North West (23%) and lowest in KwaZulu-Natal (12%) (Table 4.8).

In comparison, children were more likely to have been raped by known perpetrators. Adults were more likely to have been raped by strangers

Table 4.8. Description of perpetrators' characteristics by province

	KZN N=548	MP N=558	GP N=599	EC N=664	WC N=534	LP N=503	FS N=552	NW N=597	NC N=315	SA N=4873	P Value
Perpetrator's mean age, (95% CI)	25.9 (24.7;27.2)	28.9 (27.0;30.7)	27.6 (26.1;29.1)	26.0 (24.8;27.1)	29.7 (28.0;31.3)	27.1 (25.4;29.5)	27.4 (25.4;29.5)	27.1 (25.9;28.3)	27.3 (26.2;28.5)	27.2 (26.7; 27.7)	0.0001
Perpetrator Age group (%)											
0-11 years	6.0	1.7	2.4	3.2	2.7	3.9	0.8	2.1	4.8	3.2	0.2
12-17 years	16.5	11.5	14.3	14.7	13.4	10.3	10.2	10.7	14.4	13.4	
18+	77.6	86.8	83.4	82.2	83.9	85.9	89.1	87.3	80.8	83.4	
Sex (%)											
Male	98.9	98.1	99.8	99.6	98.6	99.6	98.1	97.6	98.8	99.0	<0.0001
Female	1.1	1.9	0.2	0.4	1.5	0.4	1.9	2.4	1.2	1.0	
Race (%)											
Black African	89.5	93.3	89.0	92.4	37.3	95.9	84.0	89.3	33.8	82.7	<0.0001
Coloured	4.1	0.2	3.3	1.6	49.3	0.0	2.1	1.0	51.7	8.9	
White or Indian or Other	0.4	1.4	2.2	0.3	1.6	0.8	6.6	1.1	2.2	1.6	
Unknown	5.9	5.2	5.4	5.7	11.9	3.3	7.3	8.6	12.4	6.8	
Relationship (%)											
Stranger	26.6	42.3	38.5	24.8	25.1	35.6	29.7	34.6	22.1	31.1	<0.0001
Acquaintance	31.0	22.8	23.6	44.4	27.6	28.2	32.8	29.0	43.3	30.4	
Current or Ex-intimate partner	11.4	9.5	15.7	10.3	20.0	13.3	16.4	15.0	14.3	13.8	
Any relative	17.8	9.1	9.3	9.3	11.1	7.0	8.4	8.6	14.2	10.7	
Other	8.4	11.6	8.8	7.0	9.9	12.7	7.9	8.9	4.5	9.1	
Unknown	4.8	4.7	4.2	4.1	6.3	3.2	4.7	3.9	1.6	4.8	
Previously convicted adults (%)	25.7	24.4	28.8	42.5	38.8	29.7	15.7	27.1	41.8	30.7	<0.0001
Multiple perpetrators	12.1	14.4	18.5	17.6	14.3	18.0	19.7	23.0	14.0	16.7	0.0049

Discussion

We found that most of the victims were female and most perpetrators were male. Among the 1% of cases with female perpetrators, we have shown that more than half of these involved women colluding with male rape perpetrators when victims were female. In just 0.5% of cases did the female perpetrator have sex with the victim. This is consistent with the notion of rape being a gendered social problem.

Overall one in 20 of the sample were male victims, but this was 1 in 10 among those aged 0-11 years. We have shown that in nine cases the perpetrator was female. While rape is overwhelmingly a problem of women and girls, there is an important sub-group of offences experienced by men and boys and the problem with female perpetrators has been explored previously in research and it is important not to overlook this in rape prevention (34).

The vulnerability of disabled persons is also apparent as 1 in 20 cases of rapes reported included a disabled victim, although a comparison with the Census suggests there may be under-reporting, particularly by age group. A systematic review and meta-analysis of the global prevalence and risk of violence against adults with disabilities published in the *Lancet* found that overall they are 1.5 times more likely to be victims of violence than those without a disability, while adults with mental health conditions are at nearly four times the risk of experiencing violence (35). Further research also found that children with disabilities are almost four times more likely to experience violence than non-disabled children (36). Of concern is the possibility that a great deal of sexual violence against disabled children and adults, especially those with mental impairments, is undetected and thus not drawn to the attention of the police and social workers. The extent of under-reporting is also unknown among vulnerable persons that are resident in facilities and institutions.

The commonness of father-child residential separation has been highlighted by many other researchers in South Africa (37). We have shown again the vulnerability of children living without both parents, and especially living only with their mothers, which is likely to be related to the greater poverty of mother-only households and difficult in arranging child supervision. Our findings again confirm the protective effect on children of living with two parents (38) and the importance of having prevention interventions, such as afterschool child care and ECD, targeting mother-only families as a key vulnerable group.

The findings show significant provincial differences in profiles of victims by sociodemographic characteristics. KwaZulu-Natal had the lowest victim mean age and the highest proportion of child victims (58.5%) and perpetrators (16.5%). Although KwaZulu-Natal is among the provinces with the greatest proportion of children in the population, the scale of the difference between this and other provinces strongly suggests that the problem is one of lower levels of reporting in KwaZulu-Natal by adult victims. KwaZulu-Natal is a very conservative, patriarchal province, and it is not plausible that it has a true underlying rate of adult rape that is much lower than other provinces, as patriarchy places women at greater risk and other research has shown very high levels of rape in the population (39). The most likely explanation is that women either themselves internalize male sexual entitlement and so they blame themselves for rape or else they perceive the police and community will do so and not respond positively to their trying to make a complaint of rape. This needs to be addressed in the course of work to build gender equity and rape prevention in South Africa.

While this study did not measure effects of rape on children, literature has shown the short and long term detrimental effects of child sexual abuse, including physical injuries, mental ill health, school dropout, increased risk of re-victimization, and increased risk of male victims later becoming perpetrators (13, 24, 33, 40, 41). The findings reinforce the need for more efforts to prevent and respond effectively to all rape, including child rape. There is a critical need to invest in making post-rape care child and adolescent friendly and to orientate case investigators and prosecutors to child developmental stages and needs.

We have shown that one in seven perpetrators (14%) were children, mainly 12-17 year olds. However, one in 10 of the perpetrators of child victims aged 0-11 were children of the same age. The child perpetrators below age 12 are below the age of criminal culpability, and often perpetrate after being abused themselves or witnessing rape at home or in the community (16, 42). They also often perpetrate in groups that may include older boys or men (16). The police are obliged to open cases in response to all rape complaints, even if the perpetrator is very young, but these cases should then be handled through referral to a social worker for investigation in terms of section 150(1) (b) of the Children's Act (No 38 of 2005), rather than the normal criminal justice process. The relative frequency of child perpetration highlights the need for rape prevention that focuses on school age children, the widespread social norms of male sexual entitlement that are internalized at a young age and problems with child supervision. Working with boys to change social norms around gender relations is a key component for effective rape prevention.

Almost one in five of the known perpetrators had a previous conviction, and this was almost a third among cases with adult victims. These findings are similar to previous research showing that rape is only one among many forms of interpersonal violence and that perpetrators of rape are more likely to engage in delinquent behaviours and to commit other crimes (14, 20). This highlights the potential value of DNA databases constructed from specimens collected after perpetration of all crimes, not just rape, and the role that this can play in identifying perpetrators, particularly of stranger rape, or otherwise unknown perpetrator rape.

Fewer than one in five cases involving adolescent and adult victims also involved perpetrators with whom the victims were currently or had been previously intimately involved. This was more common in the Western Cape. Research among the general population has shown that rape by an intimate partner is the most common form of rape of women, and that this is least often reported to the police (3). The problem of partner rape is an important part of women's experience of sexual violence in South Africa and one that needs more attention in rape prevention and responses.

Chapter 5

Factors and circumstances associated with the rape



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CHAPTER AT A GLANCE

Timing

- Most adult and adolescent rapes occurred during weekends, but rapes of 0-11 year olds occurred during weekdays
- Children aged 0-11 are vulnerable during the afternoon after school and during time parents are working, as well as in the evening, highlighting potential for prevention through aftercare and greater supervision.

Location

- Most rapes by known perpetrators occurred in residences and most stranger rapes occurred in open spaces, by a road or in alleys.

Subduing victims

- In two thirds of cases perpetrators used physical force. The use of physical force was highest among adult victims.
- In 30.9% of cases perpetrators had weapons and in 7.3% of cases this was a firearm. The possession of firearms was highest in Gauteng province (13.9%).
- In 35% of incidents, victims were abducted. Adult victims were more likely to be abducted.
- In 16.6% of cases multiple perpetrators were involved; 61.7% of multiple-perpetrator rapes involved strangers.

Victim resistance

- Victims resisted in 52.3% of cases using physical, verbal or non-verbal methods.
- Teen and adult victims were less likely to resist intimate partners and multiple perpetrator rapes and those with non-violent coercion, which highlights potential for prevention using self-defense methods.

Victim reporting

- Thirty-eight percent of victims reported the incident to police on the same day it occurred. The proportion of victims reporting on the same day was highest among the adults (49.5%) and lowest among the 0-11 year old victims (13.9%).

Circumstances leading to the rape

This chapter describes the circumstances surrounding the rapes, including the timing and location of the rape, what the victim was doing, tactics used by the perpetrators to subdue victims, and efforts by victims to resist or break away. The circumstances are disaggregated by victim age and province to explore how circumstances differ. The circumstances provide useful information on opportunities for preventing rape.

We captured details of the circumstances leading to the rape from the initial and follow-up detailed handwritten victim statements. Eight percent of rapes occurred over more than one day. Forty eight percent of rapes happened over weekends (between Saturday and Sunday) with a quarter of rapes occurring on Saturday (25.9%) (**Table 5.1**). There was a significant difference in the proportion of reported rapes by the day on which the rape occurred and victim age group. The proportions of cases occurring with 12-17 year-old and adult victims were higher on Saturday and Sunday compared to those of younger children. A significantly higher proportion of child rapes occurred during week days (**Table 5.1**). There were no significant differences in the proportions of rapes occurring on different days in different provinces.

Table 5.1. Day of the week on which the rape occurred by victim age

	0-11 years N=728	12-17 years N=1 053	18+ years N=2 152	Total	P Value
	%	%	%	%	
Monday	15.1	11.7	11.1	12.0	<0.0001
Tuesday	10.1	8.7	7.0	8.0	
Wednesday	13.4	11.5	7.4	9.5	
Thursday	11.2	8.4	8.2	8.8	
Friday	17.3	13.5	12.2	13.4	
Saturday	17.2	23.9	29.5	25.9	
Sunday	15.7	22.4	24.5	22.4	

Most rapes occurred at night between 6pm and 6am (68%) with the proportions peaking between 9pm and 12am. There was a difference in the proportion of rapes by time and victim age group. Among rapes of 0-11 year-olds, 39.6% occurred during the afternoon (12 noon – 6pm) compared to adolescents (24.6%) and adults (13.8%). This contrasted with adults and adolescents where nearly half of all rapes occurred between 6pm and midnight. The 0-11 year-olds had a second peak of rape, between 9pm and 12pm, when 29.7% occurred (**Table 5.2**). This has important implications for rape prevention as it suggests that rape of young children could be prevented if there was better child supervision in the afternoons, for example ECD and afterschool care.

Table 5.2. Time of day when rape happened

	0-11 years N=728	12-17 years N=1 053	18+ years N=2 152	Total	P Value
	%	%	%	%	<0.0001
00.00-02.59	2.1	10.5	20.8	14.5	
03.00-05.59	0.7	5.6	11.8	8.0	
06.00-08.59	6.6	5.4	4.5	5.1	
09.00-11.59	8.5	4.9	3.9	5.0	
12.00-14.59	16.5	8.1	4.5	7.8	
15.00-17.59	23.1	16.5	9.3	13.9	
18.00-20.59	12.8	25.5	20.5	20.4	
21.00-23.59	29.7	23.5	24.8	25.4	

In 20.0% of cases, the victim was a young child and the events leading to the rape were unclear. In 17.6% of cases, the victim was either walking or sitting alone just before the rape. In 13.1% of cases the victim or perpetrator were visiting the home. It was more common for the victim (8.6%) to have been visiting the perpetrator's home than for the perpetrator (4.5%) to have been visiting the victim's home. In 12.1% of cases, the perpetrator broke into the home, or was trespassing. In 10.4% of cases, the victim was walking or sitting with others prior to the rape incident (**Table 5.3**).

Some of the rapes occurred during a social event (8.6%) and 4.0% of rapes occurred during relationship conflict, split up or as punishment. In 3.8%, the perpetrator expected consensual sex but the victim refused or the perpetrator blackmailed the victim. In 2.7% of cases the victim was given a lift by the perpetrator and 1.0% of rapes occurred as the victim was using public transport. In 0.3% of cases the victim gave a lift to the perpetrator and in a similar percentage a victim was hijacked (0.3%). In 3.4% of cases, the victim went with the perpetrator under false pretexts such as after an offer of a job, an approach often used by serial rapists (43, 44). Of the sample, 2.2% of victims were raped when detained in police cells, in hospital or prison and 0.8% were raped at work including while baby sitting or working in someone's home (**Table 5.3**).

For the majority of 0-11 year-old victims, the circumstances leading to the rape were unclear (72.3%). A higher proportion of adult victims than the 0-11 years or 12-17 year-old victims were alone, were at a social event or using transport when the rape occurred. It was common for adult victims to be raped during the course of a housebreaking. A higher proportion of the 12-17 year-old victims were with someone else or went with the perpetrator under a false pretext compared to adult victims. There was little variation in the proportion of victims across age groups who were raped when either the perpetrator or victim was visiting or when they were in an institution (**Table 5.3**). In 7.0% of cases the rape incident involved more than one victim. The proportion of multiple victims was highest among the 0-11 year old victims (14.4%) (**Table 5.3**).

Table 5.3. Circumstances leading to rape by victim age group

	0-11 years N=728	12-17 years N=1 053	18+ years N=2 152	Total	P Value
	%	%	%	%	
Child/minor and circumstances are unclear	72.3	22.6	0	20	<0.0001
Walking or sitting alone	5.4	19.5	21.1	17.6	
Either victim or perpetrator visiting	11.8	14.9	12.8	13.1	
House breaking	3.7	8.6	16.8	12.1	
In the company of other(s)	4.5	13.5	11.0	10.4	
Social event	0.4	7.7	12.0	8.6	
Transport	0.3	3.1	5.8	4.0	
Partner rape in relationship conflict/split up or as punishment	0	1.0	6.9	4.0	
Consensual sex expected and rape perpetrated when victim refused, or was blackmailed	0	2.8	5.7	3.8	
Went with perpetrator(s) under pretext	1.1	4.3	3.7	3.4	
Raped when in an institution	0.5	2	2.9	2.2	
Victim's workplace settings	0	0.1	1.4	0.8	
Number of victims involved					
One victim only	84.8	91.3	95.1	92.1	
Multiple victims	14.4	7.8	3.9	7.0	
Unknown	0.8	0.9	1.0	0.9	

Location of the rapes

Three in every five (61.6%) reported rapes occurred in residential settings: in 25.2% of cases the rape occurred in the perpetrator's residence, 20.7% of cases occurred in the victim's residence, 9.8% of cases occurred in someone else's residence, and 5.0% of cases occurred in a shared residence of the perpetrator and victim. Twenty-four percent of rapes occurred in open spaces such as veld, bush, park, parking area, farm land, sports grounds or cemeteries. About 3.0% of rapes occurred in a road or alley, 1.6% occurred on school premises, 1.5% occurred in abandoned buildings, 1.3% occurred in a car or vehicle and 1.3% of rapes occurred in an institution that included a health facility or children's home (Table 5.4).

Most rapes by known perpetrators occurred in residential settings and most stranger rapes occurred in open spaces.

Table 5.4. Location of the rape by victim's age

	0-11 years N=728	12-17 years N=1 053	18+ years N=2 152	Total	P Value
	%	%	%	%	
Perpetrator's residence	21.8	34.0	22.1	25.2	<0.0001
Open space	14.6	21.8	28.0	23.8	
Victim's residence	21.2	15.3	23.2	20.7	
Someone else's residence	8.2	11.5	9.6	9.8	
Perpetrator and victim's residence	12.1	5.1	2.4	5.0	
Unknown	12.3	2.8	1.4	3.8	
Road or alley way	0.4	2.1	3.7	2.6	
Educational/school premises	4.6	2.2	0.3	1.6	
Abandoned building	1.6	1.4	1.5	1.5	
In a car or vehicle	0.6	1.4	1.6	1.3	
Health facility or children's home	0.5	0.7	1.8	1.3	
Public toilet	1.0	0.3	0.6	0.6	
Police station or prison	0.0	0.2	1.1	0.6	
Perpetrator's workplace	0.3	0.5	0.6	0.5	
Victim's workplace	0.0	0.0	1.0	0.5	
Taxi ranks or shops	0.6	0.4	0.5	0.5	
Bar, disco or night club	0.1	0.2	0.8	0.5	

Perpetrator's use of force or coercion to subdue victims

Thirty-five percent of cases involved the perpetrator forcibly taking the victim to another place against her will. The proportion of cases with abductions⁵ was much lower among young children than among older children and adults, and 18.6% of 0-11 year-old victims were abducted compared to older victims (38-40%) (Table 5.5).

Table 5.5. Subduing victims by age group

	0-11 years N=728	12-17 years N=1 053	18+ years N=2 152	Total	P Value
	%	%	%	%	
Perpetrator abducted victim	18.6	37.8	39.9	35.3	<0.0001
Perpetrator (s) used physical force	42.3	63.1	76.9	66.6	<0.0001

Use of physical force

In two-thirds of cases, the perpetrators used physical force. The proportion of cases where perpetrators used forced increased with the victim's age group (Table 5.5). In 53.8% of cases physical force⁶ was used only during the rape, in 35.7% of the cases the physical force was used during both the rape and abduction and in 8.9% of cases physical force was only used during the abduction. In most cases (83.4%), the victim was grabbed. In 32.6% of cases the victim was hit with fists or hands, in 14.9% of cases the victim was strangled, in 17.2% of the cases the perpetrator held a hand over the mouth or nose of the victim, and in 9% of cases the perpetrator kicked the victim.

In comparison, children were more likely to have been raped by known perpetrators. Adults were more likely to have been raped by strangers

Non-violent tactics

Rape perpetrators also used non-violent tactics to pressure victims to have sexual contact against their will. This included making a person feel as though they owed the perpetrator, for example because the perpetrator bought the victim a gift or gave money, by badgering, persistent attempts to have sexual contact when the victim had already refused, by making the victim feel threatened or afraid of what might happen if they refused, by using drugs or alcohol to lower the other person's inhibitions or react negatively to refusal. These might be used alone or combined with physical force. In 78.1% of cases the perpetrators also used non-violent methods to coerce victims (Table 5.6). The most common form of coercion was where perpetrators exercised power or control over victims (66.9%). This was most common when perpetrators were a family member, intimate partner or an acquaintance. Examples include adult relatives instructing children to participate in sexual acts and children obliging because it is the norm for them to take instructions from elders.

Perpetrators also abused the victim's trust, for example through impersonation or tricking (23.1%). Other non-violent methods employed by suspects included badgering or pleading with the victim (9.6%), being offered food or being bought something (4.8%), being offered a lift (3.1%), being blackmailed (2.8%), by forced collusion based on special treatment to the victim (2.7%), being offered money (2.6%), and the perpetrator threatening to harm others (2.5%). Victims were also enticed with and offered accommodation (1.3%), a job, or promotion (0.5%) by perpetrators. Fewer than 1.0% of 12-17 year-old and adult victims had their drinks spiked (0.6%)

The abuse of power and the victim's trust were highest for 0-11 year-old victims and were least common with adult victims. Forms of coercion that were also highest among 0-11 year-olds were convincing the victim to co-operate by, for example saying the victim was special, providing food or buying a gift, or giving money. A higher proportion of perpetrators against 12-17 year-old victims and adult victims badgered or pleaded with the victim (Table 5.6)

About a quarter of perpetrators used nonviolent methods only, without using physical force. This was more common for the 0-11 year old victims.

In almost a quarter of cases (22.4%), perpetrators used only non-violent methods. Perpetrators were more likely to use only non-violent methods with 0-11 year-old victims (37.5%) and this decreased significantly among 12-17 year-old (26.1%) and adult victims (15.1%) (Table 5.6). In 66.8% of cases where the perpetrator convinced the victim to co-operate by telling the victim they were special, the perpetrator did not use any physical force. In 44.8% of cases where the perpetrator offered money or claimed the victim owed money, the perpetrator did not use physical force. In 35.9% of cases where the perpetrator offered food or gifts, they did not use physical force.

⁵ We use the term abduction to refer to circumstances in which perpetrator forcibly takes the complainant to another place against their will, and we recognise that in law this is referred to as kidnapping.
⁶ Physical force refers to the perpetrator using strangulation, hitting with fists, kicking, grabbing, holding a hand over mouth or nose or any other actions to physically overpower the complainant.

Table 5.6. Non-violent tactics employed by perpetrators by victim age group

	0-11 years N=728	12-17 years N=1 053	18+ years N=2 152	Total	P Value
	%	%	%	%	
Perpetrator employed non-violent tactics	77.1	79.4	77.8	78.1	0.5
Abuse of power or authority	72.4	67.2	64.8	66.9	0.002
Abuse of trust or impersonation or trickery by perpetrator	36.7	21.8	19.0	23.1	<0.0001
Badgering, pleading or verbal coercion by the perpetrator	3.1	10.9	11.3	9.6	<0.0001
Perpetrator provided food or gifts	6.1	5.6	4.0	4.8	0.03
Perpetrator offered a lift	0.3	3.0	4.1	3.1	<0.0001
Blackmail	3.0	2.7	2.7	2.8	0.9
Perpetrator convinced victim to co-operate through telling them they were special or that it would be "our secret"	7.5	2.1	1.2	2.7	0.001
Perpetrator offered money or claimed victim owed money	4.4	3.1	1.8	2.6	0.0001
Perpetrator threatened to harm others	3.2	2.4	2.4	2.5	0.6
Perpetrator offered accommodation	0.3	1.7	1.4	1.3	0.02
Perpetrator spiked drink	0	0.6	0.6	0.5	0.3
Perpetrator offered a job or promotion	0	0.3	0.6	0.4	0.06
Perpetrator used nonviolent tactics only with no physical force	37.5	26.1	15.1	22.2	<0.0001

Presence of weapons

In 30.9% of cases the perpetrator(s) had a weapon and the proportion of rapes where weapons were used increased by the victim's age group. The perpetrator displayed a weapon in 8.2% of cases of 0-11 year-old victims, 28% of cases of 12-17 years victims and 40.4% of cases of adult victims (Table 5.7). Weapons were mainly used to threaten (83.4%). However, in 12.9% of cases the perpetrator used the weapon against the victim and in 3.8% of cases a weapon was present, but it was not clear how it was used. The most common form of weapon was a knife or panga (17.9%) followed by firearms (7.3%). Perpetrators also had sharp instruments, e.g. blades, (1.1%), rope, metal wire or chain (0.7%) and other blunt objects, e.g. a club or knobkerrie (0.1%). In 2.5% of cases other objects were used that could not be classified in the given categories and in 0.7% the victim assumed that the perpetrator had a weapon or was made to believe a weapon existed, but did not see it (Table 5.7). When knives, firearms and sharp implements were present they were used more to threaten than to hurt the victims. In contrast, blunt objects, e.g. knobkerries and sticks, ropes or metal wires were more likely to be used to hurt the victims rather than just threaten them.

Table 5.7. Presence of a weapon by victim's age

	0-11 years N=728	12-17 years N=1 053	18+ years N=2 152	Total	P Value
	%	%	%	%	
Perpetrator (s) had a weapon	8.2	28.0	40.4	30.9	<0.0001
Firearm	0.5	5.5	10.6	7.3	
Knife or panga	4.4	18.6	22.3	17.9	
Rope, metal wire or chain	0.0	0.6	0.9	0.7	
Sharp tools or instrument	0.6	0.6	1.6	1.1	
Club or blunt object	0.0	0.4	0.1	0.2	
Other	0.9	0.5	1.9	1.3	
Unknown	1.9	1.7	3.1	2.5	
No weapon	91.8	72.0	59.6	69.1	<0.0001

The presence of a weapon during the rape increased with the age of the victim. Weapons were hardly ever used in cases involving victims in the 0-11 age category (91.8%), while in the adult victim category they were a feature of 40.4% of the rapes. This is probably because of potential resistance by older victims who are perceived to be more capable of fighting back, while in younger victims the mere physical presence of the perpetrator could be sufficient to ensure compliance. It may also reflect the greater proportion of stranger rapes among adults. Bladed weapons such as knives and pangas are commonly owned and were by far the most commonly used weapons.

Perpetrators were more likely to have weapons in rapes of adult victims. Weapons were mostly used to threaten victims.

Threats to kill and declaration of love

In 34.1% of cases, the perpetrator(s) threatened to kill the victim. The proportion of this increased with victim's age and threats were most common for adult victims (37.9%) (Table 5.8). Nearly a third of all child victims (29%) were threatened by perpetrators. This would clearly have potentially influenced victim behaviour. In 8.5% of cases, the perpetrators declared love to the victim and the proportion of this was highest among 12-17 year old victims (Table 5.8). These cases are indicative of the prevalence of ideas about male sexual entitlement. During the course of the rape incident the declaration of love would have been used by the perpetrator as a justification for the sexual act.

Table 5.8. Perpetrator behaviour by victim's age group

	0-11 years N=728	12-17 years N=1 053	18+ years N=2 152	Total	P Value
	%	%	%	%	
Threats to kill	28.9	29.8	37.9	34.1	<0.0001
Perpetrator (s) declared love	1.5	15.3	7.6	8.5	<0.0001

Differences in tactics used to subdue victims by province

While there was no difference in the application of physical force by perpetrators across provinces, there were significant differences in the tactics used to subdue victims across provinces. These may relate to either victim or perpetrator characteristics. Abductions were most common in North West (41.5%) and Limpopo provinces (40.2%), and least common in the Western Cape (26.7%) (Table 5.9). The presence and use of weapons by perpetrators was most common in Limpopo Province (40.4%) followed by the North West (36.3%) and least common in the Western Cape (21.2%) (Table 5.9). The proportion of incidents where the perpetrators had firearms also differed by province and were highest in Gauteng (13.9%), Mpumalanga (10.6%) and North West (10.4%). A higher proportion of perpetrators threatened to kill victims in Limpopo (41.9%) and Mpumalanga (40.1%) and this was least likely to happen in the Western Cape (23.8%) (Table 5.9). The use of threats to kill overlapped with the use of weapons. In 64.3% of cases where threats to kill were made by the perpetrator, a weapon was present.

Table 5.9. Perpetrator subduing tactics by province

	KZN N=548	MP N=558	GP N=599	EC N=664	WC N=534	LP N=503	FS N=552	NW N=597	NC N=315	SA N=4873	P Value
	%	%	%	%	%	%	%	%	%	%	0.2
Perpetrator used physical force	67.1	65.5	65.4	70.9	64.0	68.3	62.8	67.3	75.4	66.9	0.2
Victim abducted	31.7	35.5	39.0	37.4	26.7	40.2	30.6	41.5	32.1	35.1	0.003
Perpetrator(s) had a weapon	27.1	33.6	30.4	33.5	21.2	40.4	31.2	36.3	28.3	30.7	<0.0001
Perpetrator had firearm	4.0	10.6	13.9	3.9	4.4	7.6	5.0	10.4	0.5	7.3	<0.0001
Perpetrator threatened to kill or harm	37.8	40.1	33.7	34.5	23.8	41.9	32.9	31.0	22.7	34.0	<0.0001

Victim resistance

Fifty-two percent of victims resisted the perpetrator(s) at some time during the abduction or the rape: 23.1% resisted physically⁷, 32.7% resisted verbally⁸ and 27.3% resisted non-verbally⁹. A higher proportion of adult victims compared to the other age groups resisted physically (29.7%) and verbally (32.9%). There was no difference in the proportion of victims that used non-verbal resistance by age group (Table 5.10). It is important to understand victim resistance as professionals within the criminal justice system often equate non-resistance as a sign that it was not "real rape".

⁷This includes hitting, scratching, pushing away, kicking

⁸This includes screaming, shouting for help

⁹This includes crying, turning head away, closing legs

Table 5.10. Victim resistance by age group

	0-11 years N=728	12-17 years N=1 053	18+ years N=2 152	Total	P Value
	%	%	%	%	
Victim resisted	38.3	51.5	57.5	52.3	<0.0001
Physically resisted	6.7	21.6	29.7	23.2	<0.0001
Verbally	18.9	32.5	37.8	32.9	<0.0001
Non-verbal	25.1	30.0	27.0	27.4	0.09

The finding that only half of victims did resist suggests that there are many complex reasons for not resisting. In order to understand this, we used logistic regression to examine the independent contribution of different factors. The results are presented in **Table 5.11**. This analysis shows that the age of victim only accounts for about 30% of resistance to rape. Victims were less likely to resist if there were multiple perpetrators. This nearly halved the likelihood of resistance. Victims were less likely to resist intimate partners compared to relatives (**Table 5.11**). Victims were four times as likely to resist if there was combined physical force and non-violent coercion than non-violent coercion alone. Victims were 40% more likely to resist if there was a weapon and 20% more likely to resist if the perpetrator threatened to kill them. The limited resistance against non-violent coercion points to considerable potential for rape prevention through teaching girls and women strategies for physically and verbally resisting rape(45).

Table 5.11. Factors associated with victim resistance

	Adjusted odds ratio aOR	95% Confidence Interval		P Value
0-11 years	1.0			
12-17 years	1.2	0.9	1.5	0.22
18 + years	1.3	1.0	1.6	0.044
Multiple perpetrators	0.6	0.5	0.8	<0.0001
Relationship				
Relative	1.0			
Intimate partner	0.7	0.5	0.9	0.016
Acquaintance	1.0	0.8	1.4	0.894
Stranger	0.9	0.7	1.2	0.485
Other	1.2	0.8	1.7	0.387
Force and coercion				
Non-violent methods only	1.0			
Non-violent method and physical force	4.2	3.5	5.1	<0.0001
Perpetrator displayed weapon	1.4	1.2	1.8	<0.0001
Perpetrator threatened to kill victim	1.2	1.0	1.5	0.03

Circumstances of rape by victim relationship

Rapes perpetrated by relatives occurred mainly in the victim's home (36.8%) or in homes shared by perpetrator and victim (30.5%). In most cases (81.3%) perpetrators who were relatives of the victim used non-violent coercion, but physical force was used in 44.9% of these cases. Fewer of these cases involved abductions (6.1%), weapons (9.6%) and the involvement of colluders (1.6%) compared with cases of rape perpetrated by non-relatives. Colluders refer to people who were present and involved in the rape incident, or conspiring with the perpetrator but not participating in the sexual acts. Twenty-nine percent of the perpetrators who were relatives threatened to kill the victims and in 3.8% of cases the perpetrators told victims that they loved them. Victims resisted the perpetrator in 42.4% of cases involving relatives (**Table 5.12**).

Known perpetrators used both violent and non-physically violent methods in rape incidents. The use of non-physical methods was higher among known perpetrators compared to strangers.

The closer the relationship between perpetrator and victim (relatives and intimate partners) the more likely it is that the rape will occur in a home, and that non-violent coercion will be used.

Rape by intimate partners occurred mainly in the perpetrators' homes (54.5%) and this proportion was higher than for any of the other relationship categories. In 79.7% of cases the intimate partners used non-violent coercion, with physical force used in 72.5% of cases. One in three rapes of intimate partners (34.1%) involved the perpetrator forcefully taking the victim to another location. In 21.7% of cases the perpetrator had a weapon, a firearm in 1.7% of these cases. Intimate partner perpetrators threatened to kill in 21.5% of cases and declared their love in 18.9% of cases. About half of the victims raped by an intimate partner resisted (50.5%) (**Table 5.12**). The results suggest that the closer the relationship between perpetrator and victim (relatives and intimate partners) the more likely it is that the rape will occur in a home, and that non-violent coercion will be used

Table 5.12. Circumstances of rape by victim-perpetrator relationship

	Relative N=411	Partner N=549	Acquaintance N=1 195	Stranger N=1 275	Other N=353	P value
	%	%	%	%	%	
Use of physical force	44.9	72.5	65.2	79.4	61.5	<0.0001
Perpetrator used non-violent coercion only without physical force	39.1	16.1	25.9	14.3	29.1	<0.0001
Perpetrator abducted victim	6.1	34.1	32.3	54.0	24.2	<0.0001
Presence of weapons	9.6	21.7	23.1	55.2	22.0	<0.0001
Presence of a firearm	0.3	1.7	3.2	17.8	3.6	<0.0001
Perpetrator threatened to kill	28.8	21.5	25.8	49.3	36.5	<0.0001
Perpetrator declared love	3.8	18.9	9.7	4.4	8.9	<0.0001
Colluders involved	1.6	2.3	7.5	20.3	9.4	<0.0001
Victim resisted	42.4	50.5	52.0	56.1	55.6	<0.0001

Acquaintance rapes more often occurred in the homes of perpetrators (32%). In 65.2% of the acquaintance rapes, the perpetrator used physical force and in 80.9% of cases, the perpetrator used non-violent coercion. A higher proportion of acquaintance rapes involved colluders. Twenty-three percent of cases involved the use of weapons, a firearm in 3.2% of cases. The proportion of acquaintance rapes with weapons was lower than in stranger rapes, but higher than in rapes by relatives or intimate partners. Victims resisted the perpetrator in about half of the cases (52.0%), a higher proportion than in rape by relatives or intimate partners, but lower than in the rape by strangers (Table 5.12).

Nearly half of stranger rapes occurred in isolated open spaces (48.1%). Eighteen percent of stranger rapes occurred in the homes of the victims. Weapons were more common in rape perpetrated by strangers was higher (55.2%) than in the other relationship categories. A significantly higher proportion of stranger cases involved the use of physical force (79.4%), abductions (54.0%), presence of firearms (17.8%), threats to kill the victim (49.3%), colluding with others (20.3%) and resistance by the victim (56.1%) compared to rapes by relatives, intimate partners or acquaintances (Table 5.12). A relatively lower proportion of stranger cases involved the use of other non-violent coercion (75.5%) compared to the relative, intimate partner or acquaintance perpetrators. Declaration of love was least common among the stranger rapes (4.4%) compared to the other relationship categories (Table 5.12).

More strangers used physical force, had weapons, abducted victims and threatened to kill compared to known perpetrators.

Circumstances of multiple-perpetrator rapes

About one in six cases (16.6%) involved more than one perpetrator having sexual contact with the victim. There was a difference in the proportions of victims involved in reporting multiple-perpetrator rape by age group. Of the single perpetrator rape cases, 52.9% involved adults compared to 59.4% of multiple perpetrator rape cases. However, for no age group was the difference in the proportion of cases very large and 15.8% of cases involving children aged 0-11 years were perpetrated by more than one person. A higher proportion of perpetrators under 18 years were much more likely to be involved in multiple perpetrator rapes. Overall, only 2.4% of cases involved a perpetrator under 12 years, but children under 12 were involved in 8.3% of multiple perpetrator rape cases and 1.6% of single perpetrator ones. For teenagers, overall 11.7% of all cases involved a 12-17 year-old perpetrator but this rose to 18.2% in rapes involving multiple perpetrator (Table 5.13). In 10.6% of reported rapes, the perpetrators colluded with others who participated in the abduction or rape but did not have sexual contact with the victim. However, this proportion was nearly a third in rapes involving multiple perpetrators.

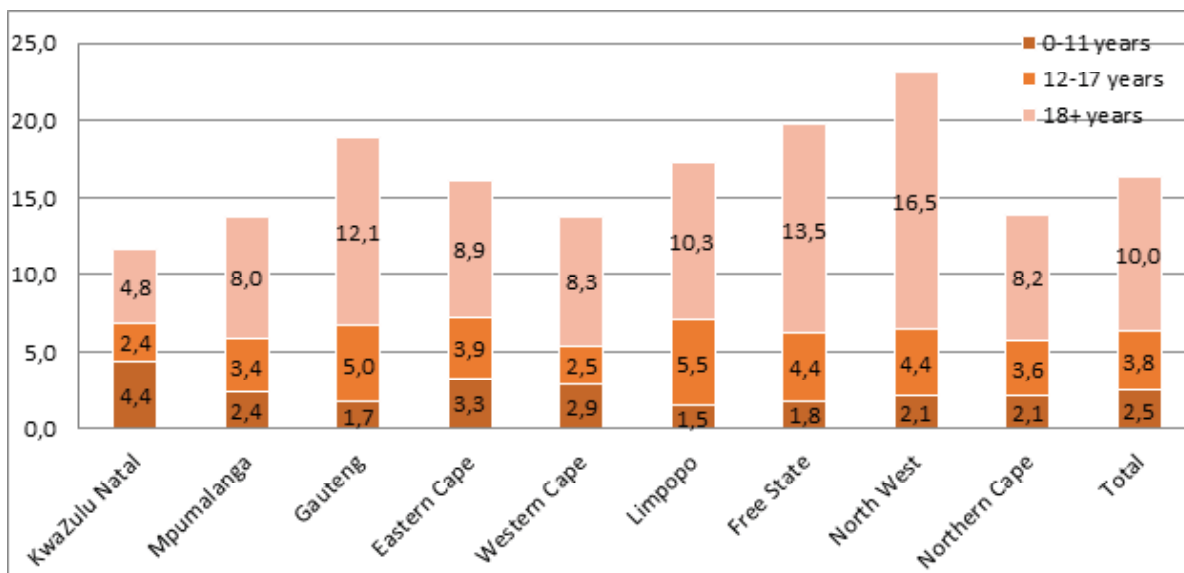
Three in five cases (61.7%) of multiple-perpetrator rapes involved strangers and the most common place for multiple-perpetrator rapes were isolated open spaces and derelict buildings (42%). This may help explain why so many of these cases have no arrests and never go to trial. More multiple-perpetrator rape cases than single perpetrator rape cases involved the use of weapons, presence of firearms, abductions and the use of force (Table 5.13).

Table 5.13. Circumstances of rape in single and multiple-perpetrator rapes

	Single-perpetrator	Multiple-perpetrators	Total	P value
Victim age group (%)				
0-11years	19.7	15.8	19.2	0.005
12-17 years	27.4	24.8	26.9	
18+	52.9	59.4	53.9	
Perpetrator age group				
0-11 years	1.7	8.3	2.4	<0.0001
12-17 years	10.9	18.2	11.7	
18 + years	87.4	73.6	85.9	
Colluders involved	7.4	28.5	10.6	<0.0001
Victim abducted (%) N=3952	33.6	52.7	36.5	<0.0001
Perpetrator(s) had a weapon (%)	29.5	46.8	32.1	<0.0001
Perpetrator had a firearm (%)	5.6	18.1	7.5	<0.0001
Perpetrator used physical force (%)	69.4	80.5	71.1	<0.0001

The prevalence of multiple-perpetrator rape differed by province. Multiple-perpetrator rape was more common in North West (22.7%), and was least common in KwaZulu-Natal (11.7%) and varied significantly across provinces (Figure 5.1).

Figure 5.1. Proportion of cases with multiple-perpetrator rape by age and province



The action of perpetrators after the rape

In most cases (45.5%), the perpetrator(s) left the scene immediately after the rape, but in 27.8% of cases the actions of the perpetrator were not well described. One in eight cases (12.5%) involved the perpetrator threatening the victim and 8.8% of cases involved perpetrators who humiliated or were aggressive towards the victim after the rape occurred. Some perpetrators kept the victim from reporting, for example by locking the victim in or threatening or intimidating the victim (6.7%), but a similar proportion escorted the victim home (6.5%). In 2.7% of cases, the perpetrator apologised to the victim and in 1.9% of cases they offered the victim money. A higher proportion of perpetrators fled the scene or were aggressive when the victims were adults. A higher proportion of 12-17 year-old cases involved the victim being threatened or being kept from reporting compared to the other age groups (Table 5.14). Perpetrator actions were associated with their relationship with the victims. Strangers were more likely to flee from the scene, which occurred in 72.7% of cases. Forty-two percent of acquaintances also fled from the scene. About one in five relatives (19.8%), and around a quarter of intimate partners (25.4%) or other perpetrators (23.8%) fled the scene. A higher proportion of known perpetrators escorted the victim home and the relationship category where this was highest was intimate partners (8.8%) followed by acquaintances (7.0%). Keeping the victim from reporting was more common among intimate partners. This occurred in one of every eight intimate partner incidents (12.1%). Aggression towards victims was highest among stranger rapes (15.8%) and was least prevalent when perpetrators were relatives (1.2%). A higher proportion of acquaintances offered money to victims (3%).

Table 5.14. Actions of perpetrator by victim age group

	0-11 years	12-17years	18+	Total	P value
	N=728	N=1 053	N=2 152		
	%	%	%	%	
Perpetrator left the scene	26.7	38.7	55.5	45.5	<0.0001
Perpetrator actions not described	46.9	31.1	19.5	27.8	<0.0001
Perpetrator threatened victim	16.9	12.7	10.8	12.5	0.0008
Perpetrator insulted, humiliated and acted aggressively towards victim	1.3	5.5	13.1	8.8	<0.0001
Perpetrator kept victim from reporting (including locked her in)	1.8	9.6	6.9	6.7	<0.0001
Perpetrator assisted victim in getting home	2.9	9.5	6.2	6.5	<0.0001
Perpetrator apologised or made promises/proposals to victim	1.5	2.4	3.2	2.7	0.0241
Perpetrator offered money	3.9	1.7	1.3	1.9	<0.0001
Perpetrator(s) had a weapon (%)	29.5	46.8	32.1		<0.0001
Perpetrator had a firearm (%)	5.6	18.1	7.5		<0.0001
Perpetrator used physical force (%)	69.4	80.5	71.1		<0.0001

Victim reporting after the rape

A high proportion of victims (47.9%) told someone about the rape before going to the police to report (Table 5.15). Only one in four victims (24.8%) reported the rape immediately to the police by themselves. In 27.3% of cases the victim did not report the incident immediately. A slightly higher proportion of 12-17 year-old victims told someone about the rape before reporting to the police compared to the adult victims. A higher proportion of adult victims immediately reported to the police compared to the other age groups, while it was more common for the 0-11 year-old victims' cases to delay in reporting (54.2%) (Table 5.15).

Table 5.15. Victim actions by age group

	0-11 years	12-17years	18+	Total	P value
	%	%	%	%	
Victim reported immediately to the police or clinic	6.3	14.1	36.4	24.8	<0.0001
Victim went to get a friend or relative to be accompanied to police or clinic	39.5	50.2	49.7	47.9	
Victim delayed or did other things before reporting the case	54.2	35.7	13.9	27.3	

Thirty-eight percent of victims reported the incident to police on the same day it occurred. The proportion of victims reporting on the same day was highest among the adults (49.5%) and lowest among the 0-11 year-old victims (13.9%). Close to three-quarters (72%) of victims reported to the police within 96 hours of the rape, the time within which a SAECK should be completed. Reporting within 96 hours was highest among adult victims (85.9%), followed by the 12-17 year-old victims (68.0%) and was lowest among the 0-11 year-old victims (41.9%). In 14.6% of cases we were unable to get the actual time to reporting because the date of the incident was missing (Table 5.16).

Table 5.16. Time to reporting by victim age

	0-11 years	12-17years	18+	Total	P value
	%	%	%	%	
Same day	13.9	33.6	49.5	38.1	<0.0001
1 day after	13.2	21.4	28.9	23.6	
2 days after	7.4	7.0	4.3	5.6	
3 days after	4.2	4.4	2.2	3.1	
4 days after	3.3	1.7	1.0	1.6	
5 or more days after	23.9	17.7	7.5	13.3	
Time to report missing	34.3	14.3	6.6	14.6	

There was significant difference across provinces in the time taken to report the rape. Gauteng had the highest proportion of victims reporting the incident on the same day (45.2%). The lowest proportion of victims reporting on the same day were in KwaZulu-Natal, which had the highest incidence of 0-11 year-old victims. KwaZulu-Natal also had lowest level of reporting within four days (62.8%). The province where rape was reported most within four days was Northern Cape (78.8%). Mpumalanga and Free State had the highest proportion of cases where the date of the incident was missing (Table 5.17).

Table 5.17. Time to reporting of incidents by province

	KZN	MP	GP	EC	WC	LP	FS	NW	NC	P Value
	N=478	N=470	N=472	N=542	N=458	N=407	N=441	N=439	N=253	
Same day	31.0	38.3	45.2	34.0	37.9	40.8	41.6	38.8	40.8	38.1
1 day after	21.0	19.9	22.7	28.1	21.8	27.1	19.6	28.4	27.4	23.6
2 days after	5.4	7.6	6.3	6.7	6.0	3.6	2.5	6.0	3.2	5.6
3 days after	3.4	2.3	2.4	2.3	4.8	1.5	5.6	2.6	4.4	3.1
4 days after	2.0	0.5	1.4	1.7	2.1	1.4	1.6	1.1	3.1	1.6
5 or more days after	20.5	13.3	9.4	16.1	12.0	7.9	10.9	11.3	12.3	13.3
Time to report missing	16.7	18.1	12.7	11.1	15.4	17.7	18.1	11.7	8.8	14.6

Discussion

In this chapter, we have shown the varying circumstances surrounding reported rape cases. Rape incidents occurred at all times of the day and night with 73% of incidents occurring outside what would be normal working hours (i.e 9am to 5pm). About half of the incidents occurred during weekends. Such a time distribution for rape incidents supports arguments for 24-hours response and services for rape victims.

Rape incidents involving children occurred more often during the working week and during daytime hours, especially from noon until 6pm. These findings suggest that some rape prevention may be achieved by providing better supervision of children after school when caregivers may be working. The proportion of 0-11 year-old victims (including children not yet in formal education) in rape incidents was higher than that of 12-17 year-old victims during schooling hours. This shows that being in school may confer reduced risk of rape of children. The expedited roll out of Early Childhood Development Programmes that will take in younger children may prevent child rape.

A higher proportion of rape incidents involved perpetrators known to victims compared to stranger rapes and occurred mostly in residential settings. The message that victims often know the person who rapes them is frequently missed in awareness education, with more emphasis being placed on rape of adults by strangers.

Stranger rapes more commonly occurred in non-residential settings such as open spaces, roads and abandoned buildings. Incidents were more frequent when victims were in unsafe isolated spaces with poor lighting, during nighttime and when alone. In these instances, the presence of visible policing or security guards may be effective in deterring perpetrators.

While rapes more commonly occurred when the victim was alone, a tenth of cases occurred when a victim had been sitting or walking with someone else and in 7.0% of cases multiple victims were involved. Rape incidents also occurred in public spaces and at social events. This suggests that bystanders may not behave appropriately in these circumstances, which could be effectively addressed through educational interventions. There is also the possibility of teaching a range of self-defense strategies to women and children (46, 47).

Rape included the use of physical force, other non-violent tactics, use of weapons, threats and abductions. Although other non-violent coercion is used, rape tended to involve physically violent acts against victims. However, in a quarter of reported cases the perpetrators used only non-violent methods. Use of physically violent tactics were more common in rape involving adults and by strangers. The overlap of physically violent acts, which are also classified as criminal assault, shows an overlap of rape and other contact crimes. The use of non-violent methods was higher when the perpetrator was known by the victim and among 0-11 year-old victims compared to the older victims. These findings mirror the prevailing rape myth stereotypes that there must be physical violence for rape to have taken place. The findings also show how perpetrators against 0-11 year-old victims often do not use physical force compared to those who target older victims.

Multiple perpetrator rapes made up 16.7% of reported cases. There are disproportionately more 12-17 year-old perpetrators among multiple perpetrator rapes than in rapes involving other age groups of perpetrators. Most multiple perpetrator rapes were marked by the presence of weapons, including firearms, abductions and the use of physical force and they are often perpetrated by strangers, which makes it harder to make an arrest. However, the overlap of these offenses with other criminal and anti-social behaviour means that DNA could provide useful evidence, if compared to a DNA database (14).

Also apparent from the data is the relationship between intimate partner rape and physical violence. Victims in these circumstances were less likely to resist, presumably because of the previous history of consensual sexual contact or ideas about sexual access "rights". In one out of every eight rapes under these circumstances, perpetrators prevented victims from reporting to the police. These findings highlight the need for community education to counter ideas of male sexual entitlement and encourage reporting of sexual violence by intimate partners, which is well recognized as being markedly under-reported (3).

A high proportion of victims did not resist their perpetrators and less resistance was noted in cases involving 0-11 year-olds where more perpetrators used non-violent tactics. However, among 12-17 year-olds and adult victims there was no resistance in some incidents even when physical force was used against them. Lack of resistance by 12-17 year-old and adult victims was higher when they knew the perpetrators than with strangers. Victims were also less likely to resist intimate partners compared to relative perpetrators. Victims were less likely to resist when multiple perpetrators were involved. The lack of resistance by victims could have been due to fear or shock rendering them powerless to react (48, 49). In rape incidents by known perpetrators women have been shown to be less likely to identify risks and potential danger in a social situation and this makes them less able to resist (48). Education and self-defense training is effective in reducing rape victimisation among women (45).

In the aftermath of the rape some perpetrators were aggressive, threatened the victims or used other methods to keep the victim from reporting. Consistent with previous research, victims did not always report the incident immediately after the rape and child rapes were even more likely delay reporting (50). Twenty-eight percent of victims reported incidents 96 hours after the incident. This has implications for the collection of evidence and success of case progression within the criminal justice system. Reporting after 96 hours means that the SAECK would not be collected or if collected, may not provide sufficient evidence, and police members would be less likely to obtain crime scene DNA to link perpetrators in the cases of stranger rapes. This contrasts with the myths on how victims are “supposed” to behave after a rape, a common myth being that a rape victim will always immediately report a case. Dissemination of information including available services and emphasizing the importance of immediate reporting to ensure justice should continue to be a priority in advocacy efforts. KwaZulu-Natal had the highest proportion of cases reported after 96 hours and this is largely because of the higher incidence of child rape.

Chapter 6

The police investigation stage



Picture courtesy of: AFP/Alexander Joe

CHAPTER AT A GLANCE

- Half of all rape cases were assigned to the most junior rank in the SAPS (Constables) to lead the investigation.
- In half of rape incidents, the perpetrator's name and surname were mentioned in the statements taken.
- In almost 70% of incidents where the perpetrator was named, the perpetrators contact details were also provided.
- In 93% of cases there was no indication in the docket that the investigating officer gave the victim his or her contact details.
- In 17% of incidents involving victims older than 12 years of age no first report statement was taken.
- In only about half the cases where another witness was present or near when the rape occurred, did the police take all the other witness(es) statements.
- Members of LCRC visited the crime scene in slightly more than half of rape cases.
- SAECKs were appropriately collected in 76.7% of adult cases, 57.1% of cases with a 12-17 year-old victim and 33.8% of cases with a victim under 12 years.
- Over a fifth of SAECKs completed within 96 hours of the incident were not sent to FSL and so never analysed. This was more commonly for the SAECKs of 0-11 year-old victims (30.3%).
- The overall arrest rate was nearly 57%.
- The highest rate of arrests were for victims in the 12-17 age category (63.3%).
- In 23.7% of dockets without arrests, reasons for this were not documented or unclear.
- In these cases the perpetrator had been identified and the victim wanted to proceed with the case.
- Analysis of case characteristics associated with arrest suggest that police energy and diligence is variable and importantly influences the rate of arrest, as do ideas about "more serious" rape
- In 20% (1 in 5) of cases where a perpetrator was arrested, there was a successful bail application.
- 20% of cases were closed by the police because they were unable to identify the perpetrator and 13% were closed at this stage because the victim did not want to proceed with the case.
- 2% of rape allegations were deemed to be false.
- Many flaws in the police investigations were noted indicating that the supervisory system was not evidently working well. In most cases instructions to take statements or visit the crime scene were given, but often these things were not done.

Introduction

Police members have the lead responsibility for investigating cases and preparing the evidence for a trial and thus their work critically influences the progression of reported cases within the criminal justice system. In line with the Sexual Offences Amendment Act Regulations, investigating officers (IOs) assigned to cases are required to work thoroughly and in a professional manner. Their responsibilities include taking statements from victims and witnesses, ensuring that a medico-legal examination is conducted, and where appropriate SAECK completed and dispatched to the FSL, ensuring the victim's safety and appropriate referral, visiting the crime scene and organizing specimen collection and ensuring delivery, identifying and arresting suspects and preparing for them to be charged, and regular communication with the victim on the progress of the case to ensure their cooperation when required at all stages.

Rank of investigating officers assigned to cases

The SAPS has established a specialised unit for dealing with sexual offences called the Family Violence, Child Protection and Sexual Offences Unit (FCS). These FCS units are organized into clusters with several stations assigning cases to them. When the data were collected, IOs in the FCS held a broad range of ranks from Constable (lowest), Sergeant,¹⁰ Warrant Officer, Lieutenant, Captain, Major, Lieutenant Colonel, Colonel, Brigadier, to General (highest).

Of the police members assigned to investigate rape cases, almost half were of the rank of Constable (49.1%), 17.7% were assigned to Sergeants and 31.1% to Warrant Officers. A few cases were allocated to higher ranked Lieutenants (1.3%) and Captains (0.6%). In 0.2% of cases we were unable to obtain details of the rank of the IO assigned to a case (Table 6.1). In all provinces except the Free State and Gauteng, 45% or more of the cases were assigned to the lowest ranked Constables. The highest proportion of Constables worked on cases in Limpopo (66%) and Mpumalanga (64.2%). Free State had a higher proportion of Warrant Officers (51.4%) and Lieutenants (2.9%) working on cases compared to other provinces, and the Western Cape and KwaZulu-Natal had more than a quarter of cases assigned to Sergeants (Table 6.1).

The investigating officer in 50% of incidents were Constables, lowest rank in the SAPS, who have least training and access to resources.

Table 6.1. Investigating Officer rank by province

	KZN N=478	MP N=470	GP N=472	EC N=542	WC N=458	LP N=407	FS N=441	NW N=439	NC N=253	National	P Value
	%	%	%	%	%	%	%	%	%	%	
Constable	47.7	64.2	38.9	54.9	46.3	66.0	36.7	51.2	45.8	49.1	<0.0001
Sergeant	27.9	19.0	20.4	10.5	25.5	4.9	8.2	11.7	22.0	17.7	
Warrant Officer	21.9	15.8	37.9	34.3	26.9	26.8	51.4	33.6	30.4	31.1	
Lieutenant	1.7	0.0	1.9	0.0	0.0	2.3	2.9	1.8	0.0	1.3	
Captain	0.8	0.9	0.6	0.4	0.0	0.0	0.6	1.8	0.3	0.6	
Unknown	0.0	0.0	0.2	0.0	1.2	0.0	0.2	0.0	1.6	0.2	
Coloured	4.1	0.2	3.3	1.6	49.3	0.0	2.1	1.0	51.7	8.9	
White or Indian or Other	0.4	1.4	2.2	0.3	1.6	0.8	6.6	1.1	2.2	1.6	
Unknown¹¹	5.9	5.2	5.4	5.7	11.9	3.3	7.3	8.6	12.4	6.8	

Completion of victim statements

Table 6.2. shows completion of various parts of the initial preamble to the victim's statement and the availability of the handwritten statement from the victim in the case docket. It is a requirement that a victim statement should have the victim's date of birth, identity number (ID), physical address, work address, telephone numbers, details of another contact person and the victim's signature. The date of birth was captured in 88.7% of cases and the ID number of the victim was captured in only 49.6% of cases. The address of the victim was recorded in most cases (97.9%). Fewer case dockets of child victims had an address available than those of adults. The victim or guardian's telephone was recorded in 78.5% of cases. The proportion of cases where the telephone number was available was highest for the 12-17 year-old victims (82.2%). Details of another contact person besides the victim (or guardian) opening the case were recorded in only 36.8% of cases, less often for adult victims compared to the other age groups. Signatures were missing on 13.4% of the preamble to the statement forms (Table 6.2). These findings show that victim initial preamble statements filled in by police members are frequently incomplete. Victim contact details and details of another person are crucial for the IO so that he or she can contact the victim when investigating the case. Without contact details, it would be difficult for the IO to follow up with the victim and all cases without traceable victims are prematurely closed.

¹⁰ Since 2016 the rank of Lieutenant and Major are no longer used. Lieutenants became Captains and Majors became Lieutenant Colonels
¹¹ In these cases the rank of the officer was unclear and could be any of those listed above.

Table 6.2: Completeness of preamble to victim statements by age

	0-11 years N=728	12-17 years N=1 053	18+ years N=2 152	Total	P value
	%	%	%	%	%
Date of birth recorded	78.1	88.3	92.7	88.7	<0.0001
ID number recorded	52.8	44.2	51.2	49.6	0.0003
Address of victim recorded	95.9	97.0	99.0	97.9	<0.0001
Phone number recorded	75.1	82.2	77.9	78.5	0.002
Details of contact person recorded	47.5	43.0	29.9	36.8	<0.0001
Preamble to statement signed by victim or guardian	81.2	87.8	87.9	86.6	0.0003
Handwritten victim statement taken	70.2	93.0	97.7	91.2	<0.0001

The detailed handwritten victim statement was not available in 8.8% of cases (Table 6.2). The highest proportion of missing handwritten statements was among the cases of 0-11 year-old victims (Table 6.2). These statements should be taken from an older (usually adult) victim and thus victim age should not be an obstacle to statement taking, although it may impact on statement details. Reasons for not having the statements were commonly that the 0-11 year-old victims were too young to provide details of the incident and this was used to explain 63.1% of missing statements. Among 12-17 year-old victims the reasons for missing statements were generally unclear, but in some cases it was because the victim was mentally incapacitated. In these cases, another person such as the guardian should have provided information.

Identification of perpetrators

Details of perpetrators including their names were extracted from the handwritten victim and witness statements. In half of the cases (50.4%), the perpetrator's name and surname had been provided. The highest proportion of fully named perpetrators were those in cases of the 0-11 year-old victims. This decreased with older victim age. In 28.7% of cases the perpetrator was not named at all and the highest proportion of unnamed perpetrators was among the adult victim cases (35.5%), reflecting stranger rapes in this group, while the lowest was among the 0-11 year-old victim cases (19.4%) (Table 6.3).

In 68.7% of cases where the perpetrator was named, the contact details or address of the perpetrator were provided. As with the naming of perpetrators, the highest proportion of cases in which the contact details of the perpetrator were provided were the 0-11 year-old victim cases (79.2%) (Table 6.3).

In half of the cases the perpetrator's name and surname had been provided.

Table 6.3. Naming and contacts of perpetrators by victim age

	0-11 years N=728	12-17 years N=1 053	18+ years N=2 152	Total	P value
Naming of perpetrators by victim or other witness	%	%	%	%	
No name given	19.4	21.8	35.5	28.7	<0.0001
First name only	21.4	22.6	18.4	20.1	
Surname only	1.1	1.3	0.3	0.7	
Both first name and surname	58.1	54.3	45.8	50.4	
Contact details of perpetrator provided by victim or another witness	79.2	75.2	61.8	68.7	<0.0001
Handwritten victim statement taken	70.2	93.0	97.7	91.2	<0.0001

In 70.9% of cases where the contact details were provided, the perpetrator was fully named and in 24.6% of the cases with perpetrator contact details, only the perpetrator's first name had been provided (Table 6.4).

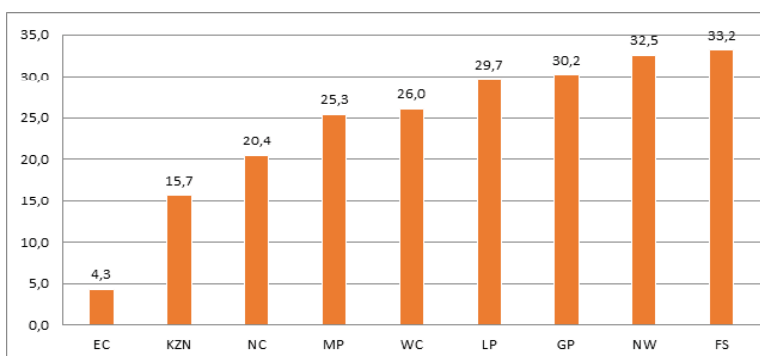
Table 6.4. Naming of perpetrators and availability of contact details

	No perpetrator contact details N=1541	Perpetrator contact details provided N=2687	Total	P value
Naming of perpetrators by victim or other witness	%	%	%	
No name given	85.0	3.4	29.1	<0.0001
First name only	9.9	24.6	20.0	
Surname only	0.1	1.0	0.7	
Both first name and surname	5.0	70.9	50.2	

Providing IO contact details to victims

At the onset of the investigations, IOs should provide all victims with their written contact details and invite them to make contact whenever necessary either to provide additional evidence or to check the progress on the case (51). In this sample, we found records that IOs gave details to only 7.0% of victims. It is possible that IOs may have given the details without writing it down in the docket, but it should have been recorded.

Figure 6.1. Proportion of stranger rape complainants receiving slips



Contact slips with details were more likely given to victims when the perpetrators were strangers (28.8%) than when the perpetrator was someone known (8.8%). The idea here is that should the victim see the perpetrator again they would easily be able to contact the IO so an arrest could be made. The proportion of cases in which victims received contact slips for stranger rape varied by province, ranging from 4.3% in the Eastern Cape to 33.2% in the Free State (Figure 6.1).

First report statements

The IO is expected to obtain information from the victim about the first person that the victim told about the rape, known as the “first report witness”. For victims who immediately reported their cases, the first report is often to a SAPS member. The IO should then obtain a “first report statement” about the incident which they put on file in the docket and this person is usually called to testify in a trial.

Victims mostly told a family member about the rape first (41%), 17.7% told a member of the police, 12.3% told a friend, 5% told an intimate partner, 4.7% told a stranger, 0.6% told a healthcare provider and 18.8% of victims told someone else, including acquaintances (Table 6.5). The proportion of victims disclosing to family members was highest in the 0-11 year-olds and decreased with increasing age. The proportion of victims disclosing to SAPS officers increased with age and was highest for adult victims (Table 6.5). The IOs did not take a first report statement in 16.1% of reported cases. This happened more often with the 12-17 years (16.5%) and adult victim cases (17%)

Overall, family members were the first person the victim reported the rape to in about 40% of cases. The younger the victim age, the more likely they would tell a family member first.

Table 6.5. First report relationship to victim by age

	0-11 years N=728	12-17 years N=1 053	18+ years N=2 152	Total	P value
	%	%	%	%	
Family member	71.8	51.0	25.1	41.0	<0.0001
Other	20.1	18.9	18.3	18.8	
SAPS	3.2	11.0	26.1	17.7	
Friend	3.2	13.5	14.9	12.3	
Husband/boyfriend	0.1	2.2	8.1	5.0	
Stranger	1.0	3.0	6.8	4.7	
Health care provider	0.5	0.3	0.7	0.6	
First report statement missing	13.1	16.5	17.0	16.1	<0.0001

Witnesses and statements

In 23.5% of cases there was another witness present or near when the rape incident occurred. There was no significant difference in the proportion of rapes with witnesses by victim age group. IOs took statements from all witnesses in only about half of the cases (52.1%), from some witnesses in 12.7% of cases, and none of the witness statements were taken in 35.2% of cases (Table 6.6).

All crime scenes should have been visited, but in slightly more than half of rape incidents did police members visit the crime scene.

Table 6.6. Presence of other witnesses and statement taking by victim age

	0-11 years N=728	12-17 years N=1 053	18+ years N=2 152	Total	P value
	%	%	%	%	
Other witnesses present during abduction or rape	21.8	24.9	23.5	23.5	0.3
Police statement taking of other witnesses					
All other witnesses' statements taken	52.9	56.7	49.5	52.1	<0.0001
Some of the other witnesses' statements were taken	16.2	12.3	11.7	12.7	
None of the other witnesses' statements were taken	30.9	31.0	38.9	35.2	
Stranger	1.0	3.0	6.8	4.7	
Health care provider	0.5	0.3	0.7	0.6	
First report statement missing	13.1	16.5	17.0	16.1	<0.0001

Collection and processing of forensic specimens

Members of the Local Criminal Record Centres (LCRC) are expected to visit all the crime scenes and submit a statement about the crime scene irrespective of how long ago the incident occurred (51). A crime scene visit may have not have occurred if cases were closed very soon after being opened, i.e. within 1-2 days. Excluding very early case closures, IOs or LCRC members visited the crime scene in 53.5% of the cases and the proportion was higher for adult victims (61.9%) than the 0-11 year (38.0%) and the 12-17 years (48.3%) age groups (Table 6.7). There was a significant difference in the proportion of cases where crime scene visits were conducted across provinces. KwaZulu-Natal (42.4%) and Mpumalanga (42.8%) had the lowest proportion of crime scene visits and Limpopo had the highest proportion of crime scene visits (69.2%). IOs were more likely to visit the crime scene when the perpetrator was a stranger (62.3%) compared to when an acquaintance (51.6%), intimate partner (50.1%) or relative (44.5%). A higher proportion of police members visited the crime scene when the victim had reported the incident in less than 96 hours (60.1%) (Table 6.7).

Table 6.7 Crime scene visit by characteristics (excluding early withdrawal)

	Crime scene not visited N=1766	Crime scene visited N=2054	P value
Age group	%	%	
0-11 years	61.8	38.0	<0.0001
12-17 years	51.7	48.3	
18 + years	38.1	61.9	
Province			
KwaZulu-Natal	57.6	42.4	<0.0001
Mpumalanga	57.2	42.8	
Gauteng	40.2	59.8	
Eastern Cape	45.1	54.9	
Western Cape	47.5	52.6	
Limpopo	30.8	69.2	
Free State	48.6	51.4	
North West	43.0	56.5	
Northern Cape	38.7	61.3	
Perpetrator age			
0-11years	69.0	31.0	
12-17 years	57.4	42.6	<0.0001
18+ years	41.3	58.7	
Victim –perpetrator relationship			
Relative	55.5	44.5	<0.0001
Intimate partner	49.9	50.1	
Acquaintance	48.4	51.6	
Stranger	37.7	62.3	
Other	42.8	57.2	
Time to reporting incident			
>96 hours/4 days	61.4	38.6	
<=96 hours	39.9	60.1	

IOs or LCRC members visited crime scenes more often in the more violent cases: these included cases where perpetrators used physical violence (57.9%), abductions (58.4%), had weapons (64.1%) and displayed firearms. The police also visited scenes more often where there were other witnesses present (58.2%) or colluders in the rape (60.2%) or multiple perpetrators were involved (54.3%) (Table 6.8).

Table 6.8. Crime scenes visited disaggregated by crime characteristics

	Crime scene not visited N=1766	Crime scene visited N=2054	P value
	%	%	P value
Colluders	39.9	60.2	0.003
No colluders	47.2	52.8	
Number of perpetrators			
Single	46.6	53.4	0.02
Multiple	45.5	54.3	
Physical force used			
Yes	42.1	57.9	<0.0001
No	55.0	44.9	
Perpetrator had weapon			
Yes	35.9	64.1	<0.0001
No	51.2	48.7	
Victim abducted			
Yes	41.6	58.4	0.0002
No	49.1	50.9	
Witness to rape present			
Yes	41.6	58.4	<0.0001
No	47.9	52.0	

Generally, examples of thorough investigative practice were seen to cluster. Thus IOs visited crime scenes more often when the victim's address or the address of the crime scene were recorded in the preamble statement, and when the handwritten statement was available. Crime scene visits were also more likely to have been conducted in cases where the first report and other witness statements had been taken.

Part of the case investigation involves an examination of the victim and where this is done within 96 hours of the rape, a SAECK is completed to gather samples, which may be tested for DNA. If relevant material is available, samples for DNA testing may be collected at crime scene and fingerprints collected. In cases where a firearm was discharged, ballistic analysis is important.

SAECKs were collected in 80.4% of cases, samples for isolation of crime scene DNA were collected in 6.4% of cases and fingerprints were collected in 5.4% of cases (Table 6.9). Very few cases had evidence collected for ballistics (0.1%).

SAECKs were appropriately completed in 87% of cases reporting within 96 hours and not completed in 42% of cases reporting after 96 hours (Table 6.9). These figures show that SAECKs are not always completed when they should be and are inappropriately completed when they should not be. Further training for SAPS and medical examiners on appropriate completion of SAECKs is needed. However, depending on the specimen and conditions of the crime scene it is possible that DNA could be isolated after 96 hours. Crime scene DNA specimens were sent more often if the case was reported within 96 hours (7.3%) (Table 6.9).

Table 6.9. Collection of evidence by time to reporting of incident

	Reported >96 hours after the rape	Reported less than 96 hours after the rape	Total	P value
	%	%	%	
SAECK completed	58.0	87.0	80.4	<0.0001
SAECK not completed	42.0	13.0	19.6	
Specimens collected for isolation of crime scene DNA	2.6	7.3	5.8	<0.0001
No specimens collected for isolation of crime scene DNA	97.4	92.7	94.2	
Finger prints taken	6.3	5.1	4.7	<0.0001
No finger prints taken	93.7	94.9	94.6	
First report statement missing	13.1	16.5	16.1	<0.0001

SAECKs were appropriately collected in 76.7% of adult cases, 57.1% of cases with a 12-17 year-old victim and 33.8% of cases with a victim under 12 years. All forensic evidence should be sent to the FSL within 48 hours of collection. However, at the time of this study in 2015 not all the forensic specimens from the selected cases reported in 2012 had been sent to the laboratory. Over a fifth (21.6%) of SAECKs completed within 96 hours of the incident were not sent to FSL. This was more common for the SAECKs of 0-11 year-old victim cases (30.3%) followed by the 12-17 year-old victims (23.9%) and was least common for adult victims (19.2%). These SAECKs would not have been analysed and so will not contribute evidence to the cases.

DNA was isolated in 52% of case samples sent to FSL.

In 32 cases, samples for isolation of crime scene DNA were collected but not sent to the FSL (0.8%). Finger prints were taken but not loaded by LCRC members onto the Automated Fingerprint Identification System (AFIS) in 38 cases (1.1%). In 1 235 of 2 303 SAECKs (51.9%) sent to the FSL DNA was isolated for analysis. Finding DNA does not necessarily mean that it was the suspect's DNA, and this link was investigated through further tests.

Requests for itemised cellphone bills.

In 10.9% of cases of victims older than 12, the perpetrators also stole the victim's cellphone. A higher proportion of adult victims' cellphone were stolen (17.7%). If a crime has been reported and a cellphone stolen in the incident, IOs need to request an itemised cellphone bill from the mobile operators as evidence that can also be used to track down the perpetrators. Nevertheless, IOs only requested the itemised cellphone bill in 111 of the 463 (26.3%) cases where a cellphone had been stolen. Only in 59 cases was an itemised bill available in case dockets (Table 6.10)

Table 6.10. Cell phone thefts and processing of evidence

	12-17 years		18+ years		Total	
	%	N	%	N	%	N
Victim phone stolen	5.5	61	17.7	402	10.9	463
Itemised bill was requested	2.0	20	4.2	91	26.3	111
An itemised bill was available in the docket	1.2	13	2.4	46	1.6	59

Arresting perpetrators

Police made arrests or perpetrators were charged in court in 56.9% of cases. In 67 of 1 669 cases (4.6%) where the perpetrator was not arrested or charged the victim withdrew charges within 3 days of reporting. For the cases where victims did not withdraw cases within 3 days, a higher proportion of arrests were made for the 12-17 year-old victim cases (64.2%) compared to cases with 0-11 year (56.2%) or adult victims (55.0%). Arrest rates differed significantly by age and were highest in Northern Cape (70.8%) and lowest in Gauteng (50.1%). Strangers were least likely to be arrested (27.3%) and almost similar proportions of relative (76.4%), intimate partner (73.6%) and acquaintance (73.6%) perpetrators were arrested. Perpetrators were somewhat more likely to be arrested when they acted alone (61.8%) there were other witnesses to rape (61.1%). Lower proportions of perpetrators were arrested or charged at court in cases that involved the use of physical force used (57.5%), abduction (53.4%), weapons displayed (49.2%), firearms displayed (33.8%), compared to cases where these crime tactics were not used (Table 6.11). Perpetrators involved in multiple perpetrator rape were much less likely to be arrested than those involved in single perpetrator rape. This is surprising as the chances of arrests in these cases might be expected to be higher because these cases often involve known assailants.

The overall arrest rate was nearly 57%. Non-arrests were highest for stranger rapes



Table 6.11. Arrests by characteristics (excluding early case withdrawal) N=3 822

	No arrest or charging N=1 586	Arrest or charged at court N=2 236	P value
Age group	%	%	
0-11 years	43.8	56.2	0.0003
12-17 years	35.8	64.2	
18+ years	45.0	55.0	
Perpetrator age			
12-17 years	22.7	77.3	<0.0001
18+ years	7.8	92.2	
Relationship			
Relative	25.4	74.6	<0.0001
Intimate partners	23.6	76.4	
Acquaintance	26.4	73.6	
Stranger	72.7	27.3	
Other	23.8	76.2	
Unknown	70.1	29.9	
Province			
KwaZulu-Natal	44.9	55.1	0.002
Mpumalanga	48.2	51.8	
Gauteng	49.9	50.1	
Eastern Cape	37.3	62.7	
Western Cape	37.8	62.2	
Limpopo	35.4	64.7	
Free State	49.0	51.0	
North West	35.7	64.4	
Northern Cape	29.2	70.8	
Multiple perpetrators	63.6	36.4	<0.0001
Single perpetrator	38.2	61.8	
Multiple victims	40.1	59.9	0.30
No	42.7	57.4	
Perpetrator displayed weapon	50.8	49.2	<0.0001
No	38.5	61.5	
Perpetrator displayed firearm			
No	39.1	61.0	<0.0001
Yes	66.2	33.8	
Perpetrator used physical force	42.5	57.5	0.78
No	42.0	58.0	
Victim was abducted	46.6	53.4	0.0004
No	40.0	60.0	
Witnesses present	38.9	61.1	0.02
No	43.4	56.6	

In 49% of cases without an arrest or the perpetrator being asked to appear in court, it was documented that the perpetrator was undetected and in 21.2% victims were not willing to proceed with cases. In 5.8% of dockets cases were closed were because of a combination of factors attributable to the victim in addition to undetected perpetrators. This was more common among dockets of 0-11 year-old victims (21.2%). In 23.7% of dockets without arrests, reasons for were either not documented or unclear.

The highest proportion of cases in which the perpetrators were undetected were those involving adult victims (57.6%) and the lowest was among those involving 0-11 year-old victims (29.3%). There was little difference by age in the proportion of cases in which non-arrest was due to victims withdrawing charges. The proportion of undetected perpetrators was highest in Mpumalanga (73.8%) followed by Limpopo (69.1%) and was lowest in Northern Cape (28.1%). Victim withdrawals were highest in Eastern Cape (35.7%). Northern Cape (42.1%), followed by Free State (38.1%), had the highest proportions of undocumented reasons (Table 6.12). The non-arrests for undetected perpetrators were highest among stranger rapes (81.4%). A higher proportion of victims that withdrew the case before the arrest were those who had an intimate partner as a perpetrator (59.4%) followed by those whose perpetrator was a relative (35.0%). Rapes involving relative perpetrators had the largest proportions of other unspecified reasons for non-arrests (50.9%) (Table 6.12).

Table 6.12. Documented reasons for closing cases without arrests by case characteristics (N=1669)

	Victim reasons only N=340	Perpetrator undetected only N=877	Victim reasons and undetected perpetrator N=86	Other undocumented reasons N=366	P value
	%	%	%	%	
Victim age group					
0-11 years	21.5	29.3	3.2	46.0	<0.0001
12-17 years	23.7	49.1	4.1	23.1	
18 + years	20.1	57.6	7.5	14.8	
Province					
KwaZulu-Natal	25.0	46.9	1.6	26.6	<0.0001
Mpumalanga	10.4	70.6	3.2	15.8	
Gauteng	18.6	53.1	13.9	14.4	
Eastern Cape	28.7	37.2	7.0	27.1	
Western Cape	24.5	44.0	0.6	30.8	
Limpopo	13.3	67.3	1.8	17.6	
Free State	20.1	39.9	1.8	38.1	
North West	18.4	52.0	11.3	18.3	
Northern Cape	29.8	28.1	0.0	42.1	
Relationship					
Relative	32.9	14.1	2.1	50.9	<0.0001
Intimate partner	55.6	18.9	3.8	21.6	
Acquaintance	29.2	21.0	2.2	47.7	
Stranger	10.3	72.9	8.5	8.3	
Other	32.6	25.6	1.6	40.3	
Unknown	20.2	38.8	4.2	36.8	
Total	21.2	49.4	5.8	23.7	

Case characteristics associated with arrests

Logistic regression analysis was used to identify the characteristics associated with an arrest of a perpetrator over the age of 12 where there was not early case closure. The results indicated that arrest was associated with perpetrator age, and adult perpetrators were almost three times more likely to be arrested than 12-17 year-old perpetrators (Table 6.13)

Police were more 70% more likely to arrest perpetrators known to the victim¹¹, than stranger perpetrators. Police were twice more likely to arrest perpetrators if they had visited the crime scene than when there was no crime scene visit. Police were also 70% more likely to arrest perpetrators who used physical force against victims compared to those who did not. Police were nearly four times more likely to arrest the perpetrator when the handwritten statement had been taken from the victim than in situations in which these investigative processes had not been done. The longer the time taken to report the rape, the less likely it was that police would arrest perpetrators. Victim age and province were not significantly associated with arrests (Table 6.13).

Arrests were more likely to occur when the following investigative steps were undertaken: police member had visited the crime scene, and the handwritten victim statement had been taken.

The perpetrator being known to the victim would clearly have influenced the ease of making an arrest, but the other case characteristics would in most cases not have influenced this. The research findings strongly suggest that there are different degrees of effort by police to arrest perpetrators in different cases. Visiting the crime scene and taking a hand-written statement are crucial to the likelihood of making an arrest, showing how important effective police procedure is in determining arrests of perpetrators. There appears to be decreased likelihood of police arresting teenage perpetrators compared to adult perpetrators. Arrests are more likely in cases where force is applied, suggesting that IOs may differentially judge cases on “seriousness” and deploy efforts accordingly.

Table 6.13. Regression model of case characteristics associated with arrest where perpetrators are over 12 and there was no early victim case withdrawal

	Adjusted odds ratio	Arrest or charged at court N=2 236		P value
Victim age group				
0-11 years	1.0			
12-17 years	0.7	0.4	1.1	0.108
18+	0.7	0.4	1.3	0.315
Perpetrator age				
12-17 years	1.0			
18+ years	2.8	1.6	4.8	<0.0001
Stranger perpetrator				
Known perpetrator	1.8	1.1	2.9	0.012
Province				
KwaZulu-Natal	1.0			
Mpumalanga	1.8	0.9	3.4	0.08
Gauteng	1.1	0.6	2.2	0.70
Eastern Cape	1.0	0.5	2.0	0.92
Western Cape	1.1	0.6	2.2	0.70
Limpopo	1.9	0.9	4.0	0.08
Free State	0.5	0.2	1.1	0.07
North West	1.5	0.8	3.0	0.18
Northern Cape	0.8	0.4	1.5	0.45
Police visited crime scene	2.1	1.4	3.2	0.001
Perpetrator used physical force	1.7	1.1	2.7	0.03
Time to reporting	0.998	0.997	1.000	0.024
Handwritten victim statement taken	3.8	2.0	7.3	<0.0001

Case characteristics associated with arrests when the perpetrator was known

A quarter of all those not arrested are in the sub-group of known perpetrators. Characteristics of cases associated with arrests of known perpetrators were therefore analysed. Known perpetrators in cases involving 12-17 year-old victims were nearly half as likely to be arrested as perpetrators in cases involving 0-11 year-old victims and there was a suggestion of a similar pattern in arrests in adult victim cases. Adult perpetrators were three times more likely to be arrested than 12-17 year-old known perpetrators. Perpetrators in incidents occurring in Mpumalanga, Limpopo and North West were more likely to be arrested than perpetrators in KwaZulu-Natal (the comparison province). Perpetrators were four times more likely to be arrested when police took a handwritten victim statement, twice as likely if police visited the crime scene, and twice as likely if perpetrators had used physical force. Time taken to report was marginally associated with arrests of known perpetrators and as time taken to report increased there was small reduction in chances of arrest (**Table 6.14**). This shows that where the perpetrators were named there were fewer arrests than expected. This suggests that there were other factors influencing arrest that could be related to police members' energy and diligence and ideas about 'more serious' rape.

Table 6.14. Case characteristics associated with arrest of known perpetrators, in cases not subject to early withdrawal and where perpetrators were aged over 12 years

	Adjusted odds ratio (aOR)	95% Confidence Interval		P value
Victim age group				
0-11 years	1.00			
12-17 years	0.56	0.32	0.96	0.04
18+	0.60	0.31	1.15	0.12
Perpetrator age				
12-17 years	1.00			
18+ years	3.20	1.82	5.62	<0.0001
Province				
KwaZulu-Natal	1.00			
Mpumalanga	2.48	1.20	5.12	0.02
Gauteng	1.31	0.62	2.79	0.48
Eastern Cape	0.95	0.48	1.88	0.89
Western Cape	1.15	0.58	2.27	0.69
Limpopo	3.15	1.02	9.70	0.05
Free State	0.45	0.19	1.06	0.07
North West	3.83	1.83	8.05	<0.0001
Northern Cape	0.80	0.37	1.73	0.56
Police visited crime scene	2.15	1.35	3.41	0.001
Perpetrator used physical force	2.00	1.20	3.33	0.008
Time to reporting	0.99	0.997	1.000	0.07
Handwritten victim statement taken	4.48	2.30	8.70	<0.0001

Bail applications

In 50.6% of cases where a perpetrator was arrested, a bail application was made (1 171). Forty percent of bail applications were successful (501/1 161) (Table 6.15). Over half of the adult perpetrators (54.5%) and 26.9% of 12-17 year-old perpetrators who were arrested or charged at court applied for bail. There was no difference in the proportion of 12-17 year-old and adult perpetrators who were granted bail. A slightly lower proportion of perpetrators in cases of 0-11 year-old victims (48.6%) applied for bail than perpetrators of 12-17 year-old (52.8%) and adult victims (52.6%). A higher proportion of perpetrators who had raped adolescent victims (44.6%) compared to the perpetrators of adult victim rapes (39.6%) or 0-11 year-old victim rapes (32.8%) had successful bail applications.

The highest proportion of bail applications were among the stranger perpetrators (55.3%). The lowest was among intimate partner perpetrators (43.3%). The highest proportion of successful bail applications were among the intimate partner perpetrators (50.2%) and the lowest proportion were among the strangers (34.7%).

There were significant differences in the proportions of bail applications by province. Bail applications were higher in the Western Cape (67.7 %) followed by North West (62.6%) and Free State (61.7%). The lowest proportion of bail applications were in the Northern Cape (38.9%) (Table 6.15). The proportion of successful bail applications varied by province. Northern Cape cases had the highest proportion of successful bail applications (52.4%) while Eastern Cape had the lowest (23.6%) (Table 6.15). Bail was revoked for 49 of 51 cases in which perpetrators who had been granted bail breached conditions.

Half of perpetrators apply for bail and 40% percent of bail applications were successful.

Table 6.15. Bail applications, for arrested or charged perpetrators over 12 years old

		Bail application				P Value	Bail application outcome				Total	P value
		None	N=1 054	Application N=1 161			Unsuccessful N=660	Successful N=501				
Perpetrator age	N	%	N	%	N		%	N	%	N	N	
12-17 years	213	73.1	158	26.9	55	<0.001	63.8	30	36.2	25	55	0.62
18+ years	2002	45.5	896	54.5	1106		59.9	630	40.1	476	1106	
Victim age												
0-11 years	384	51.4	199	48.6	185	0.009	67.2	120	32.8	65	185	0.03
12-17 years	650	47.2	292	52.8	358		55.4	183	44.6	175	358	
18+ years	1165	47.4	550	52.6	615		60.4	354	39.6	261	615	
Relationship												
Relative	288	50.0	146	50.1	153	0.03	60.0	89	40.0	64	153	0.08
Intimate partner	398	56.7	214	43.3	184		49.8	90	50.2	94	184	
Acquaintance	866	45.9	409	54.1	457		62.3	267	37.7	190	457	
Stranger	332	44.7	148	55.3	184		65.3	115	34.7	69	184	
Other	271	46.6	115	53.4	156		58.1	82	41.9	74	156	
Province												
KwaZulu-Natal	254	51.0	128	49.0	126	<0.001	61.2	76	38.8	50	126	<0.001
Mpumalanga	229	50.0	108	50.0	121		54.7	59	45.3	62	121	
Gauteng	222	55.2	124	44.8	98		68.9	68	31.1	30	98	
Eastern Cape	301	60.8	188	39.3	113		76.4	87	23.6	26	113	
Western Cape	281	32.3	91	67.7	190		52.4	97	47.6	93	190	
Limpopo	254	47.9	122	52.1	132		67.1	88	32.9	44	132	
Free State	237	38.3	92	61.7	145		48.5	65	51.5	80	145	
North West	268	37.5	100	62.6	168		51.2	89	48.8	79	168	
Northern Cape	169	61.1	101	38.9	68		47.7	31	52.4	37	68	

Supervision of the investigation

The case dockets of IOs should be reviewed regularly by superior supervising officers and instructions issued for actions necessary to complete the case investigation. In many cases IOs performed tasks without instruction, but there were other cases with key gaps in their investigations. These should have been identified through the supervision process and instructions given. **Table 6.16** shows steps not undertaken when no instruction was given. In this analysis, we excluded cases that were withdrawn early (i.e. within 3 days of reporting) in which case the instruction may never have been given or most of the investigative processes undertaken. In 11.1% of cases where the instruction to obtain the first report statement was not given, this was never done. In 31.8% of cases where there was no instruction for obtaining witness statements, this was never done and in 7.5% of cases, only some statements were obtained. In 45.9% of cases where there were no instructions given for police members to go to the crime scene, members did not visit the crime scene. In 93% of cases there was no instruction given to obtain an itemized phone bill in cases where the victim's phone had been stolen. This shows that some members do not act unless they are given instructions. In a high proportion of cases the lack of instructions was associated with the non-implementation of the investigative tasks. Supervision of IOs was generally poor.

Table 6.16. Lack of instructions and investigative actions

	First report statement not taken		Some, not all, witness statements taken		No witness statement		No crime scene visit		No itemised phone bill requested	
	%	N	%	N	%	N	%	N	%	N
No instruction given	11.1	300	7.5	236	31.8	1 027	45.9	1393	93.2	320

Cases closed by police at the investigation stage

Thirty-five percent of cases (1 373 cases) were closed by the police before referral to a prosecutor. This is appropriate if there is no suspect. It occurred in a higher proportion of cases where the victim was an adult (42.7%), Black African (37.7%), female (36.3%), not disabled (36.5%) and was raped alone (single victim cases) (36.3%). Alcohol consumption by the victim made no difference to the proportion of cases closed by the police (**Table 6.17**).

Table 6.17. Cases closed by police by victim characteristics

Victim characteristics	N	Cases referred for prosecution N=2 579		Cases closed N=1 373		P value
		%	N	%	N	
Age: 0-11 years	717	78.2	557	21.8	160	<0.0001
12-17 years	1 044	69.1	730	30.9	314	
18+ years	2 148	57.4	1 256	42.7	892	
Victim race: Black African	3 358	62.3	2 107	37.7	1251	<0.0001
Coloured	475	78.3	381	21.7	94	
White, Indian and other	69	79.3	51	20.7	18	
Sex: Male	214	76.5	164	23.5	50	<0.0001
Female	3 693	63.7	2 379	36.3	1314	
No disability	3 734	63.6	2 407	36.5	1327	<0.0001
Disability	167	80.8	131	19.2	36	
Missing	51	86.0	41	14.0	10	
Victims in case: one	3 605	63.7	2 314	36.3	1291	0.0005
Multiple victims	292	72.0	218	28.0	74	
Victim alcohol: Intoxicated	385	63.7	250	36.3	135	0.12
Victim drinking alcohol but not intoxicated	360	63.0	242	37.1	118	
Victim not drinking/no alcohol mentioned	3 132	64.7	2 029	35.3	1103	

More cases were closed by the police when the perpetrator was an adult, Black African, male, a stranger and cases in which multiple perpetrators were involved. Police also closed a higher proportion of cases where the perpetrator had no previous convictions. There were significant differences in the proportion of cases closed by police across the provinces. Gauteng police closed the highest proportion of cases (50.4%) and Northern Cape closed the least (10.3%) (Table 6.18).

Table 6.18. Cases closed by police by perpetrator characteristics

Perpetrator characteristics	Total sample	Cases referred for prosecution N=2 579		Cases closed N=1 373		P value
	N	%	N	%	N	
Age 0-11 years	55	90.8	49	9.3	6	<0.0001
12-17 years	278	91.4	256	8.6	22	
18+ years	2 142	86.2	1 869	13.8	273	
Perpetrator Race: Black African	3 210	64.5	2 088	35.5	1 122	
Coloured	388	81.9	325	18.1	63	<0.0001
White, Indian and other	72	73.3	51	26.8	21	
Perpetrator sex: Male	3 882	64.4	2 522	35.6	1 360	0.0007
Female	44	69.2	31	30.8	13	
Relationship with victim: Relative	405	84.0	345	16.0	60	<0.0001
Intimate partner	546	66.6	380	33.4	166	
Acquaintance	1 176	82.8	989	17.2	187	
Stranger	1 281	35.6	466	64.4	815	
Other	358	79.7	289	20.3	69	
No previous rape conviction	2 210	86.4	1 948	13.6	262	<0.0001
Previous rape conviction	117	92.6	109	7.4	8	
No previous criminal conviction	1 908	85.7	1 671	14.3	237	<0.0001
Any previous criminal conviction	419	91.3	386	8.7	33	
Number of perpetrators in case: one	3 278	66.7	2 219	33.3	1 059	<0.0001
Multiple perpetrators	674	54.8	360	45.2	314	
Province: KZN	481	66.9	318	33.1	163	<0.0001
Mpumalanga	480	56.1	270	43.9	210	
Gauteng	476	49.6	238	50.4	238	
Eastern Cape	503	67.4	337	32.6	166	
Western Cape	463	76.2	351	23.8	112	
Limpopo	409	68.0	277	32.0	132	
Free State	444	66.7	282	33.3	162	
North West	443	66.1	288	33.9	155	
Northern Cape	253	89.7	218	10.3	35	

When case characteristics were considered, police closed a higher proportion of cases in which the victim was abducted, weapons were used, colluders were present, physical force was used and the perpetrator threatened to kill compared to the cases in which these did not occur (Table 6.19). It is likely that these were characteristics of stranger rapes and so the suspect was not arrested.

Table 6.19. Cases closed by police by crime characteristics

Crime characteristics	N	Cases referred for prosecution		Cases closed		P value
		%	N	%	N	
No abduction	2 547	69.3	1780	30.7	767	<0.0001
Victim abducted	1 405	56	599	44	606	
No weapon used	2 686	70.0	1899	30.1	787	<0.0001
Weapon used	1 266	52.7	680	47.3	586	
No colluders	3 533	66.5	2372	33.5	1161	<0.0001
Colluders present	419	48.2	207	51.8	212	
No physical force used	1 307	72.0	941	28.0	366	
Physical force used	2 645	60.9	1638	39.1	1007	
No threats to kill	2 210	67.1	1511	32.9	699	0.0002
Threats to kill	1 137	59.1	669	40.9	468	
Unknown	605	66.1	399	33.9	206	

However, there was also evidence that failure to undertake key investigative processes had a bearing on the closing of cases by police. A higher proportion of cases were closed by the police where the crime scene was not visited, where there was no written victim statement, where the first report statement was not collected and where the crime scene DNA (36%) and finger print evidence was not collected (36%). Cases were closed by police as undetected in two thirds of cases where no arrest was made. The remaining cases where no arrest had been made were referred for prosecution. A somewhat higher proportion of cases where the SAECKs had been collected within 96 hours and not sent to the FSL (42.5%) were closed compared to when the SAECK had been collected within 96 hours and sent to FSL (38.8%) (Table 6.20).

Table 6.20. Cases closed by police by crime investigation procedures

Crime investigation	N	Cases referred for prosecution		Cases closed		P value
		%	N	%	N	
No crime scene visit	1 837	65.2	1196	34.8	641	0.0013
Crime scene visited	2 090	63.8	1358	36.2	732	
No hand-written victim statement	354	71.3	254	28.8	100	0.0003
Victim statement	3 576	63.8	2303	36.2	1 273	
No first report statement	617	55.5	348	44.5	269	<0.0001
First report statement available	3 312	66.2	2208	33.8	1 104	
No SAECK collected	751	71.8	542	28.2	209	<0.0001
SAECK collected in 96 hours and sent to lab	1 968	61.2	1230	38.8	738	
SAECK collected in 96 hours but not sent to lab	556	57.7	315	42.5	241	
SAECK collected after 96 hours	298	71.2	217	28.8	81	
Samples collected for isolation of DNA and sent to FSL	195	72.4	143	27.6	52	
No arrest	1 669	33.8	542	66.3	1127	<0.0001
Arrest or asked to appear in court	2 283	88.1	2 037	11.9	246	

Documented reasons for police closing cases

Most closed cases were due to undetected perpetrators (20.1%). In 1.9% of cases the police asserted that the rape allegations were false, a proportion that did not differ by victim age group. In 0.5% of cases there was deemed to be no evidence of rape and this was most common in the 0-11 year age group where 2% of cases did not have evidence of rape. Case closure was at the request of the victim or for reasons around the victim in 13.1% of cases. Case closure at the request of the victim or for reasons around the victim and because the perpetrator was not found occurred in 2.1% of cases. Victim reasons included that untraceable victims (3.2%), victims wanted to get on with their lives (2.7%), and the victim (or her family) and perpetrator had resolved the matter 3.4%. In 4.7% of cases other unspecified reasons led to the closing of cases for victim reasons (Table 6.21).

“Most cases closed by the police were done because they were unable to identify the perpetrator (20%) but many (13%) were closed at this stage at the victim’s request.”

The proportion of untraceable victims was highest among adults (4%). Family resolution of matters were more common in the 12-17 year-old victims (2.5%) compared to the other age groups. Adult victims were more likely to resolve the matter directly with the perpetrators and without family involvement (2.9%). A higher proportion of adult victims wanted to get on with life (3.6%) (Table 6.21).

Table 6.21. Victim reasons leading to police closing cases

	0-11 years N=728	12-17 years N=1 053	18+ years N=2 152	Total	P Value
	%	%	%	%	
Victim was untraceable	2.6	1.8	4.1	3.2	0.009
Families of accused and victim resolved the matter	0.3	1.9	1.3	1.3	0.02
Victim and accused resolved the matter	0.1	1.9	2.9	2.1	<0.0001
Victim wants to get on with life	0.4	2.3	3.6	2.7	0.0004
Other reasons not clear from the docket	3.4	5.4	4.8	4.7	0.28

Two percent of victims were untraceable because they moved and did not leave addresses, and 1.8% of victims did not return phone calls. In 0.5% of cases police could not find the victim’s home and almost equal proportions of victims (0.4%) provided incorrect telephone numbers or addresses.

Discussion

This chapter highlights the importance of dedicated, professional and thorough investigation of cases. This was seen in cases where the docket details were complete, crime scene visited, a detailed handwritten victim statement taken, LCRC involved in the case, SAECK completed and sent to the FSL and all witness statements taken. When all this was done, suspects were more likely to be arrested and cases more likely to be referred for prosecution. We have also shown that in a disturbing proportion of cases these were not done.

We have shown that although all rapes are investigated through FCS Units, these units are not all staffed and managed in a way that reflects a dedication to pursuing justice for the victims of these serious crimes. In half the cases the investigations were led by constables who are the most junior rank in SAPS. Their low status will reflect the skills and training they bring to the job and their access to resources for their work (discussed in the next chapter). This could be mitigated by strong supervision, but we have demonstrated that supervision of IOs is not strong, shown by instructions to complete tasks not being given or if they were given where not documented in the investigative diaries. In these circumstances, it is not surprising that many of the basic tasks of policing were not conducted, such as crime scene visits, sending SAECKs to the FSL and taking statements (timeously) from witnesses. Also noteworthy is that many dockets lacked very basic information which would be essential for follow up of the cases.

We recognise that arrests cannot be made if a suspect is not identified, but the data have shown that in many (up to a quarter) of cases where a suspect is identified and the victim has not withdrawn the case, the arrest is still not made. The analysis of factors associated with arrest reveals that IO’s perception of more serious or “real” rape involving only physical violence and tactics is influencing these and not just objective aspects of the case or state of the investigation. Further in cases without a suspect it is particularly important that all evidence trails are followed. We have shown that this is often not done. Cell phones were often stolen but it was very infrequent that the record of location and calls was subpoenaed. SAECKs and crime scene DNA are especially important in cases where perpetrators are strangers, but we showed that in 13% of cases SAECKs are not completed and in 21% of cases where they have been done they are not sent for analysis. Thus, important opportunities to find DNA are missed. The DNA database is essential for matching perpetrators to other possible crimes, and it would be important to investigate whether police officers are taking all opportunities to get samples from offenders to contribute details to this. Overall these findings show the need to improve evidence collection by police investigators to ensure justice for victims.

Victim withdrawal is an important problem during the police investigation stage and does result in a high proportion of cases having to be closed. We recognise that pressure is often brought to bear on victims to drop charges by their family in cases where the perpetrator is a relative, by his family where he is a neighbour and by the perpetrator directly when he is an intimate partner. It is essential that the police try to discourage victim withdrawal of cases because it has been shown that more than half of men who rape do so more than once and so the criminal justice processes have great potential for preventing more women and girls becoming rape victims in future (39, 52). We have shown that complaint details are often not as complete as they should be in dockets and raised a question about how often victims are given IO contact details. If victims are not treated as important partners in rape case investigation and feel that the response from the IO is not always empathetic they are much more likely to withdraw cases. This is discussed further in the next chapter. We also have found very little evidence of attempts to understand why they would withdraw cases and to discourage this. It is essential for justice in the country that efforts are made to discourage withdrawal of cases by victims and we recommend that social workers should be involved in withdrawal decisions where the victim is a minor to ensure that the decision is appropriate and does not just reflect a low status or neglect of a girl child in a family, which may have led to the offence occurring in the first place.

Chapter 7

Occupational stress and gender attitudes among Family Violence, Child Protection and Sexual Offences Unit members



Picture courtesy of: churchimagenetwork.com

CHAPTER AT A GLANCE

- The profile of interviewed staff shows low levels of formal education. Over half of the entire sample (53.9%) had completed secondary school.
- Only 80% had specialist training in FCS and attendance was not associated with having better gender attitudes.
- Many of the IOs had conservative gender attitudes and supported rape myths. These were more common among older, longer serving male officers.
- Access to police vehicles was a major issue and IOs reported a mean of 3.5 persons per vehicle, instead of 2, with some cases of very large numbers of staff sharing vehicles (20-28 IOs per car)
- Work stress levels were high and were significantly impacted by vehicle availability. Not being able to do a good job due to lack of vehicles was stressful.
- Using statistical techniques to pull this together, we show that issues of vehicle access result in work stress, which results in staff holding generally less equitable and sympathetic attitudes to rape victims. This highlights the importance of attention to the basic conditions of work in enabling the system to function effectively.



Introduction

Policing in South Africa is a dangerous profession, and members are inevitably exposed to stressful and traumatic incidents, whether directly or indirectly (53). It is important for members to be aware of their own stress to manage it efficiently (53). Stress impacts on the individual and their relationships at home and work, but it can also impact work in other ways. Occupational stress and trauma exposure can be associated with decreased empathy, which is particularly important for personnel working in areas where empathy is a critical part of their work. A study conducted in the United Kingdom found police empathy to be positively correlated with victims' ratings of likelihood of taking their cases to court (54). When police respond sensitively and empathetically, rape case attrition may be reduced (54). Negative gender attitudes may include victim blaming, affirming rape myths, expressing conservative patriarchal attitudes toward gender relations including notions of male sexual entitlement and justifying men's use of violence against women as being "caused" by the victim (55).

This chapter draws on a different dataset from the main study. It presents an analysis of questionnaire-based interviews with IOs in the FCS which were conducted with the aim of measuring occupational stress and gender attitudes and describing the personal and work-related factors associated with levels of work stress and more patriarchal attitudes. It takes as its starting point the position that being more stressed and less gender sensitive adversely affects policing work, and particularly sexual offences related cases.

Sample description

The sample was 292 FCS IOs. This was not a random sample and so some caution is needed in generalizing beyond the IOs interviewed and for example their distribution of ages and ranks does not reflect IOs in the FCS overall. Typical questions for the occupational stress measure were "I have felt trapped by my work" and "I have felt I am not succeeding in achieving my life goals because of my work". These questions measured longer term stress rather than an acute anxiety reactions, which might have occurred after a single trauma exposure

The IOs interviewed were aged 20-58 years old and the mean age across the eight participating provinces was 38.8 years. More men participated in the survey (n=190, 66.4%) than women (n=96, 33.56%). Female IOs were generally younger (mean = 35.2 years) than male IOs (mean = 40.6 years). Female IOs were better qualified than male IOs with 46.1% of women and 33.3% of men having technical or university training. Over half of the sample (53.9%) had completed secondary school only (**Table 7.1**).

Table 7.1. Characteristics of IOs by gender

	Male		Female		Total		P value
	N	%	N	%	N	%	
Age							
<30 years	17	9.5	15	16.3	32	11.8	<0.0001
30-39 years	65	36.3	57	62.0	122	45.0	
40-49 years	72	40.2	17	18.5	89	32.8	
Level of schooling							
Secondary school	114	66.7	48	53.9	162	53.9	<0.10
Technical College	32	18.7	25	28.09	57	21.9	
University	25	14.6	16	17.98	41	15.8	
Rank							
Constable	66	34.7	62	64.6	128	44.8	<0.0001
Sergeant	36	19.0	19	19.8	55	19.2	
Warrant Officer	71	37.4	7	7.3	78	27.3	
Lieutenant and above	17	9.0	8	8.3	25	8.7	
Length in service							
<=10 years	68	35.8	66	68.8	134	46.9	<0.0001
11 – 20 years	42	22.1	22	22.9	64	22.4	
21+ years	80	42.1	8	8.3	88	30.8	

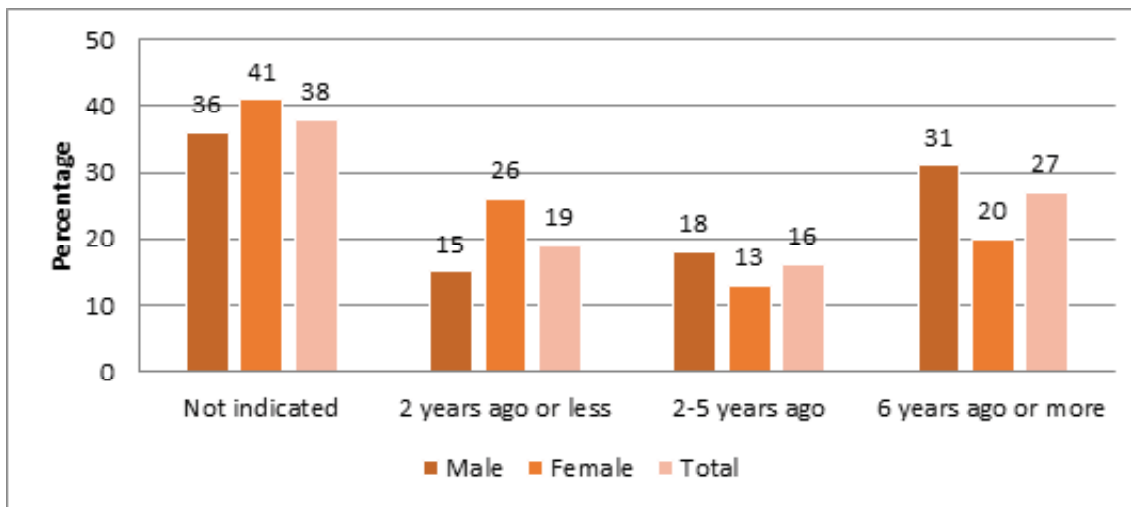
Female IOs were more likely to be in lower ranks of the SAPS, with 64.6% of women and 34.7% of men serving as Constables. Of the sample, only 8.7% of men and women served as Lieutenant, Captain, Major, Lieutenant Colonel and Colonel (**Table 7.1**).

Table 7.1 also shows a significant relationship between gender and length in service ($p < 0.0001$). More women than men had served in SAPS for 10 years or less. This may be related to the SAPS gender mainstreaming practices that have more recently aimed for higher representation and empowerment of women within the police service (SAPS 2016) or barriers to the promotion of women including perceptions of incompetence that may cause them to leave (56). Just less than half (42.1%) of men had been with SAPS for 21 years and longer, compared to 8.3% of women.

Most IOs (80%) had received specialist training in sexual violence and related matters. Of the IOs 83% of males and 75% of females had received FCS Sexual Offences specialist training, which is a six week course. However, this should have been a job requirement for all IOs in FCS units.

IOs were asked about time (months and years) since they have received their specialist training. **Figure 7.1** shows time since specialist training received by gender. Overall, 38% of IOs did not supply an answer to this question, but among those who did, 35% had done the course in the last 5 years and 27%, 6 or more years ago. Women IOs were significantly more likely to have been on the most recent training (within 2 years) than men.

Figure 7.1. Time since FCS specialist training by gender



IOs were asked about the availability of police vehicles to investigate cases and allocation of vehicles. Access to vehicles was used as a proxy for resources available to conduct investigations. They reported that there was a mean of 3.5 persons per vehicle, which is higher than the prescribed ratio of two detectives per vehicle. In four questionnaires, IOs indicated that they share a vehicle with 20-28 police members. **Table 7.2** shows that 57% of members ($n=163$) reported that they use a vehicle assigned to no more than two police members investigating a case of sexual violence. About 17% ($n=48$) of IOs reported that they shared their vehicle with 10 or more people. Female IOs were less likely than male IOs to share a vehicle with more than five people. This lack of an easily accessible vehicle greatly impacts upon the detective’s ability to go to witnesses to take statements, go to court to obtain section 205 subpoenas, collect and deliver exhibits, and follow up on investigations.

Table 7.2. Vehicle allocation by gender

Vehicle allocation	Male		Female		Total		P value
	N	%	N	%	N	%	
Up to 2 persons per vehicle	110	57.9	53	55.2	163	57.0	0.0001
3-5 persons per vehicle	35	18.4	25	26.0	60	21.0	
6-9 persons per vehicle	11	5.8	4	4.2	15	5.2	
10+ persons per vehicle	34	17.89	14	14.58	48	16.78	

Occupational stress

The occupational stress measure has 13 questions and a score of 13 would indicate no serious stress. The overall mean of occupational stress scored by both men and women IOs was 27.5, with women scoring slightly higher than men. **Table 7.3** shows several personal characteristics and other factors that might have impacted occupational stress, but most of them did not do so. The key factors were in fact related to vehicle availability. IOs who shared vehicles with three or more people experienced occupational stress more significantly than those who did not need to share vehicles. Those who had experienced not having a vehicle in the last month had much higher stress levels than those with less frequent experience of this.

Table 7.3. Occupational stress by characteristics of IOs and their access to vehicles

	Occupational stress mean score	Total	P value
Female	27.7		
Age group: = or <30	26.75	27.4	0.80
31-40 years	26.53		
41-50 years	28.41		
50+ years	27.91		
Rank: Constable	26.81	27.52	0.69
Sergeant	26.14		
Warrant Officer	29.12		
Lieutenant and above	28.04		
Length of service: = or <10 years	26.36	27.62	0.59
11-20 years	27.41		
21+ years	29.1		
Last time FCS specialist training received: < 2 years	29.52	28.88	0.66
2-5 years	28.78		
6+ years	27.83		
Not indicated	25.39		
Vehicle allocation: up to 2 persons per vehicle	24.81	29.23	0.04
3-5 persons per vehicle	30.63		
5 + persons per vehicle	29.27		
Vehicles not readily available		28.5	0.0001
Within last 2 weeks	33.47		
Within the last 15-30 days	30.31		
Not in last month	24.0		
Has not happened	24.9		

Rape myths, gender equality and male sexual entitlement

The gender of IOs was strongly associated with attitudes around rape myths, and ideas about gender equality and male sexual entitlement. **Table 7.4** displays mean scores of these items by different characteristics of IOs. Women scored higher than men on all scales showing more progressive attitudes on rape myths, gender equality, and male sexual entitlement. Older IOs (41 years and over), those who have served 21 years and longer, and those who have undergone specialist training on sexual violence held more conservative views on items on the three scales, and especially more patriarchal views around gender equality. Across ranks, Warrant Officers scored the lowest on the rape myth scales and the sexual entitlement score, indicating more conservative views by this group than other ranks.

Table 7.4. Rape myths, Gender equality and male sexual entitlement by member characteristics

	Rape myths (/20)			Gender equality (/16)			Male sexual entitlement		
	(/8)	Total	P value	Mean	Total	P value	Mean	Total	P value
Gender		17.3	0.0001		11.88	0.0001		7.0	0.002
Male	16.6			11.2			6.7		
Female	18.0			12.5			7.2		
Age group		17.1	0.006		11.5	0.12		6.9	0.07
0<=30 years	17.5			11.6			6.9		
31-40 years	17.7			12.0			7.2		
41-50 years	16.5			11.6			6.6		
50+ years	16.6			11.0			6.9		
Rank		17.2	0.09		11.6	0.24		6.9	0.25
Constable	17.5			11.9			7.0		
Sergeant	17.2			11.5			6.8		
Warrant Officer	16.3			11.5			6.6		
Lieutenant and above	17.8			11.7			7.2		
Length of service		17.2	0.001		11.6	0.01		6.7	0.02
10 years & less	17.7			11.9			7.1		
11-20 years	17.6			11.8			6.9		
21+ years	16.4			11.2			6.9		
Specialist training received		17.4	0.07		18.7	0.21		6.9	0.37
Yes	17.0			18.5			6.9		
No	17.7			19.0			7.0		

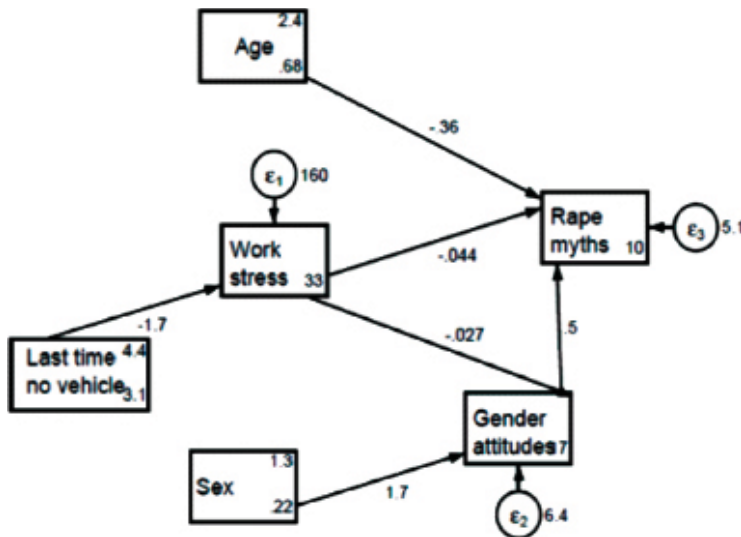
Factors associated with gender attitudes

To understand better the factors associated with believing rape myths and patriarchal gender attitudes we used multiple regression to show the independent effect of different personal factors. **Table 7.5** shows that female members were more likely to express more equitable views about gender relations and less likely to be supportive of conservative notions of male sexual entitlement. There was no significant difference in the expression of rape myths by member sex. Higher rank members, i.e. the Warrant Officers, Lieutenants and above were more likely to express gender equitable views, and Lieutenants and above were less supportive of rape myths and notions of male sexual entitlement. On its own, longer duration of service in SAPS was associated with expressing more inequitable views on the gender relations and endorsing rape myths. Whether or not a member received the FCS specialist training did not appear to impact on gender attitudes or rape myths on any of the three scales. This suggests that either rape attitudes were not addressed in the training or that the way they were addressed may have been not very effective. It could also show lack of compassion by IOs that is associated with fatigue.

Table 7.5. Factors associated with attitudes among members

	Regression model of factors associated with rape myths		Regression model of factors associated with attitudes towards gender relations		Regression model of factors associated with notions of male sexual entitlement						
	Coefficient	95% CI	P- Value	Coefficient	95% CI	P- Value					
Sex:											
Male	1.0										
Female	0.64	-0.17	1.44	0.12	0.73	2.32	<0.0001	0.36	0.00	0.71	0.047
Age	-0.02	-0.10	0.06	0.646	-0.03	0.05	0.498	-0.01	-0.05	0.03	0.607
Education											
Secondary education	1.0										
Technical College	-0.15	-1.08	0.77	0.748	-0.01	0.89	0.981	-0.01	-0.41	0.39	0.946
University	0.37	-0.65	1.40	0.475	-0.38	0.61	0.453	-0.35	-0.80	0.10	0.127
Rank											
Constable	1.0										
Sergeant	1.09	-0.55	2.72	0.191	0.38	2.04	0.653	0.12	-0.60	0.85	0.737
Warrant officer	1.45	-0.49	3.38	0.142	2.17	4.08	0.027	0.70	-0.15	1.55	0.106
Lieutenant and above	2.53	0.47	4.60	0.016	2.79	4.80	0.007	1.31	0.41	2.22	0.005
Length of SAPS service											
<10years	1.0										
11-20years	-1.32	-2.98	0.34	0.118	-0.25	1.45	0.77	-0.24	-0.97	0.50	0.524
21+ years	-2.39	-4.37	-0.40	0.019	-1.99	-3.95	0.047	-0.75	-1.62	0.13	0.093
FCS training received	-0.46	-1.39	0.46	0.326	-0.44	0.48	0.343	-0.07	-0.47	0.34	0.746

Figure 7.2. Pathways between work stress and expressed attitudes



The study cited in the introduction to this chapter by Maddox, Lee and Barker (2011) found police empathy to be positively correlated with victims' ratings of likelihood of taking their cases to court, which is important for cases (54). Given that contexts of trauma and stress, particularly documented in the context of vicarious trauma, are recognized to result in less empathy in other settings (57), we thought it important to see if connections could also be established in our dataset. To do this, we used a structural equation modelling and tested a model with causal paths from work stress to rape myth adherence and patriarchal gender attitudes. We included a measure of the main factors associated with work stress, namely vehicle access, and the factors associated with patriarchal gender attitudes and adjusted for age. The outcome of the analysis is shown in Figure 7.2, which is a well fitted model for the variables. The data fit well to the initial hypothesis. It shows that having a shorter time since a vehicle was last unavailable results in work stress and greater work stress results in more patriarchal gender attitudes and greater adherence to rape myths or less empathy towards victims (and indeed these feed into each other). Gender attitudes are also influenced by sex and rape myths by IO age.

Figure 7.2 demonstrates the importance of the availability of fundamental tools of the trade, including vehicles in impacting stress and that stress impacts attitudes towards victims and the central part of the job. The model also shows that female and younger officers are more gender equitable and less adherent to rape myths than men and older ones.

Discussion

Our sample is not a random sample of FCS Unit members and so we have no way of knowing whether the general characteristics of the nearly 300 IOs interviewed reflect all IOs in the FCS. However, we noted that although almost all rape victims are female, only a third of our interviewees were women. Women IOs were more highly educated and held more equitable gender attitudes generally than men, which would suggest that they would have been better IOs. Most of them had more recently joined SAPS and had been trained in the FCS course within the last 5 years. Ensuring retention of women in SAPS is an important goal.

Only 80% of the IOs had been FCS course trained. This is a concern as this course is the means through which IOs learn about rape, the sexual offences legislation and how to investigate cases. It is fundamental to the ability to work effectively in rape cases that all IOs are trained. Our findings suggest that reviewing the FCS course curriculum and pedagogical methods may be useful as FCS training did not seem to impact rape myth adherence and gender attitudes and we would hope that the course material explored these and sought to build a greater understanding of gender equity and counter ideas related to sexual entitlement. A further consideration is the importance of testing gender attitudes and views on rape victims as part of selection processes for FCS Units.

On average, there were 3.5 IOs per vehicle when the police standard is two. This indicates that either the FCS units do not have enough working cars, or that existing cars are not appropriately managed, to ensure that vehicles are available when needed for front line investigative work. Informal conversations between the researcher and IOs have pointed to IOs sometimes being left with little choice but to use their personal resources (i.e. vehicles and money to get to court) in some areas. We have shown that this is very serious as in the short term it will impact case investigation but in the long term it undermines police morale and creates stress.

We have found considerable levels of occupational stress among police members dealing with rape cases, coupled with some assertion of conservative gender attitudes and endorsing of rape myths. With one in five of this study's FCS IOs experiencing high levels of occupational stress, the extent to which experiences of such stress, constructions of masculinities which emphasise respect and self-confidence, and conservative gendered attitudes influence the quality of case investigation needs to be further explored.

The data showed differences in prevailing gender attitudes among members by rank and length of service. The higher ranked members who also dealt less with cases held more supportive attitudes compared to most constables dealing with cases. Interventions are necessary to transform the attitudes of all ranks especially those dealing the most with cases.

The structural equation model shows the interconnectedness of the problems discussed in this chapter. We have shown that issues of vehicle access results in work stress which results in staff holding generally less equitable and empathetic attitudes to rape victims. This highlights the importance of attention to the basic conditions of work in enabling the system to function effectively, as well as addressing questions of selection of staff for the work based on positive attitudes towards all rape victims, and the need for values clarification work and training to improve gender attitudes.

Chapter 8

The medical examination and evidence collection



Picture courtesy of the AIDS Healthcare Foundation

CHAPTER AT A GLANCE

- Half of the victims were examined in hospitals (53.3%) and 30% in crisis centres (including Thuthuzela Care Centres) but there were significant differences between provinces.
- 81% of victims were examined by a doctor and 19% by a nurse. There was no evidence of widespread use of specialists in examining young children.
- Children often delayed in presenting after rape: 92% of adults were examined within 3 days compared to 66% of children aged 0-11 years.
- The presence of injuries was reported in two thirds of cases with no difference by age group of the victim. 26.0% of victims had non-genital injuries recorded on the J88 and 56.3% had genito-anal injuries. Absence of injuries cannot be interpreted as absence of rape.
- Male victims were not as well examined as female victims, with relevant history more often missing from the J88s and some parts of the examination were not done. This highlights a need for training.
- There were many areas in which the J88 form was inadequately completed Further training for health providers is essential
- The J88 form in use needs revision.

Introduction

A medical consultation by a doctor or nurse is conducted with victims after a rape to provide medical care, but also to document findings from the medical examination of the victim for court purposes and to collect forensic evidence. The medical history, findings from the medical examination and record of the evidence that was collected is completed on the J88 form. The J88 form is produced as evidence in court, and in some instances healthcare providers (doctors and nurses) are asked to testify in court. The National Department of Health has developed a standardised training curriculum for post-rape care that provides guidelines for the provision of care, recording of information and collection of evidence (58). In addition, national management guidelines are available but they require revision.

Sample description

This chapter describes data from 2 810¹² J88 forms found in 2 645 of the study dockets, with 63 cases having J88 forms completed for 165 multiple victims. This means that only 66.8% of dockets had J88 forms available. The J88 forms analysed were of 2 655 female victims (94.0%) and 151 male victims (6.0%). Ninety female victims (3.1%) were pregnant at the time of examination. Seven percent of victims (n=191, 7.3%) were reported to possibly be under the influence of alcohol or drugs and 2.8% (n=73) of victims had a physical and/or mental impairment. Eighteen victims (5.7%) who were reported to have mental impairment according to information in the dockets were not reported as such on the J88 forms.

Healthcare provider and location of service

Table 8.1 shows that most victims were examined in hospitals¹³ (53.3%) but there were significant differences between provinces (p value < 0.05), with at least two-thirds of in Limpopo (82.2%), Mpumalanga (74.3%), North West (67.3%) and Northern Cape (68.0%) being examined in hospital. In Free State and Gauteng, the majority of victims were examined in crises centres¹⁴ (62.8% and 57.4% respectively), with large proportions of victims also examined at crises centres in KwaZulu-Natal (35.2%), Western Cape (32.8%) and Eastern Cape (21.1%). This indicates provincial differences in the availability and utilization of specialised centres of care for victims of rape. A few victims were examined in private general practitioner offices and in police stations, and in 12.4% of forms the type of facility could not be identified as the name of the facility was not fully recorded. The examination of victims in police stations goes against regulation and so too does the unclear documentation of the facility type and name.

Table 8.1. Location where victims were examined by province

	EC	FS	GP	KZN	LP	MP	NW	NC	WC	National
Crisis centre	86 21.1%	197 62.8%	168 57.4%	140 35.2%	1 0.3%	2 0.5%	25 11.8%	23 10.8%	97 32.8%	739 30.0%
Clinic/CHC#	3 0.7%	3 1.2%	21 7.3%	9 2.4%	-	41 9.7%	20 7.5%	2 1.7%	8 2.5%	107 3.5%
Hospital	217 56.4%	61 27.2%	81 29.1%	190 50.6%	271 82.2%	287 74.3%	170 67.3%	121 68.0%	175 55.8%	1 573 53.3%
Private GP	-	1 0.3%	8 2.5%	1 0.3%	-	-	-	1 0.9%	-	11 0.5%
Police station	-	-	1 0.4%	1 0.3%	-	2 0.6%	-	1 0.4%	-	5 0.2%
Unclear	77 21.8%	25 8.5%	10 .4%	44 1.3%	57 17.6%	60 15.0%	34 13.4%	37 18.2%	28 8.9%	372 12.4%

CHC: Community Health Centre

A comparison of location of service by age of victim showed no significant differences, with most victims being examined in hospitals, followed by crises centres, irrespective of age (**Table 8.2**). Although a slightly higher proportion of children less than 12 years of age were examined in crisis centres when compared to victims who were 12 years and older, this was not significantly different.

¹² The total number varies for entire dataset due to missing pages on the J88 form, incomplete information recorded, and poorly completed and missing data.

¹³ There were 14 victims who were examined in private hospitals.

¹⁴ Either Thuthuzela Care Centres or other form of specialised unit/centre.

Table 8.2. Location where victims were examined by age group of victim

	0 – 11 years	12 – 17 years	18 years and older
Crisis centre	152 (32.7%)	181 (28.5%)	399 (29.7%)
Clinic/CHC#	27 (4.4%)	26 (3.1%)	51 (3.3%)
Hospital	279 (51.1%)	427 (56.6%)	857 (52.7%)
Private GP	1 (0.1%)	3 (0.6%)	7 (0.6%)
Police station	1 (0.3%)	2 (0.3%)	2 (0.0%)
Unclear	60 (11.3%)	80 (10.8%)	230 (13.6%)

CHC: Community Health Centre

More than 80% of the victims were examined by a medical doctor (81.0%) while the rest were examined by nurses (19.0%) (Table 8.3). There was a significant difference between doctors (in total) and nurses as examiners across provinces ($p < 0.05$) with almost all of the victims being examined by doctors in KwaZulu-Natal (96.3%), Western Cape (93.3%), North West (91.4%) and Northern Cape (87.9%), while the majority of victims in the Free State were examined by nurses (62.9%). A high proportion of victims were also examined by nurses in Mpumalanga (44.2%), Limpopo (23.6%) and Gauteng (21.0%). In Western Cape (39.0%), KwaZulu-Natal (19.2%) and Gauteng (15.7%), a substantial proportion of doctors had advanced qualifications, thus being able to provide more specialised care (Table 8.3).

There has been growing recognition of the forensic nursing qualification in South Africa, with some courts having accepted forensic nurses or professional nurses with some additional training as being fit to provide medico-legal services and testify, while this has been a struggle in other provinces (3). The forensic nursing qualification began in the Free State, and has remained a robust programme, so it is not surprising that most victims in this province are examined by nurses. Nurses can help to reduce the workload of doctors by providing medico-legal services, especially as the examination of victims can take between 30 to 90 minutes.

Table 8.3. Qualification of healthcare provider who examined victims by province

	EC	FS	GP	KZN	LP	MP	NW	NC	WC	National
Doctor	320 84.7%	88 37.1%	224 79.1%	368 96.3%	242 76.4%	211 55.8%	222 91.4%	160 87.9%	284 93.3%	2 119 81.0%
Bachelor's	278 73.7%	66 24.1%	164 57.9%	291 76.7%	212 66.7%	179 46.9%	175 73.8%	130 71.0%	158 52.2%	1 653 62.6%
Higher	31 8.3%	8 4.6%	45 15.7%	76 19.3%	17 5.4%	16 4.7%	13 4.9%	19 9.8%	119 39.0%	344 14.3%
Unknown qualification	11 2.8%	14 8.4%	15 5.4%	1 0.3%	13 4.3%	16 4.2%	34 12.7%	11 7.1%	7 2.1%	122 4.1%
Nurse	62 15.3%	196 62.9%	60 21.0%	13 3.7%	86 23.6%	181 44.2%	24 8.6%	25 12.1%	22 6.8%	669 19.0%

CHC: Community Health Centre

No substantial differences were noted in the healthcare providers that examined victims less than 12 years of age, those between 12 and 17 years, and victims 18 years and older (Table 8.4). In conjunction with the findings on the location of services, this indicates that provincial differences play a bigger role in the way services are offered than the age of the victim, with younger victims not noticeably being offered more specialised services.

Table 8.4. Qualification of healthcare provider who examined victims by age of the victim

	0 – 11 years	12 – 17 years	18 years and older
Doctor	396 (81.4%)	544 (82.1%)	1162 (80.3%)
Bachelor's	296 (60.2%)	425 (62.7%)	918 (63.2%)
Higher	77 (16.9%)	92 (15.4%)	173 (13.0%)
Unknown qualification	23 (4.3%)	27 (4.0%)	71 (4.1%)
Nurse	121 (18.6%)	168 (17.9%)	375 (19.7%)

Time of examination

Fifty percent of the victims were examined within 14.5 hours of the rape, 66.6% within 24 hours, and 84.7% within 72 hours (Table 8.5). Significant differences were noted across the provinces, with only 85.7% of victims being examined within 72 hours in the EC, while 9.8% of victims were examined more than a week after the assault. Similarly, in KZN, 24.6% of victims were examined after 72 hours, with 13.8% of victims being examined more than a week later. This may be a marker of delays in reporting, delays within the police investigation, or it could also be due to challenges in accessing post-rape healthcare services within these provinces.

Table 8.5. Time taken from assault to examination by province

	EC	FS	GP	KZN	LP	MP	NW	NC	WC	National
Within 72 hours	224 85.7%	220 90.4%	197 88.0%	229 76.5%	228 90.4%	248 87.5%	173 89.1%	127 85.7%	208 83.5%	1 854 84.7%
More than 3 days	12 4.5%	12 3.9%	15 6.5%	29 9.8%	12 4.4%	13 5.0%	10 5.2%	11 8.8%	20 7.9%	134 6.5%
More than a week	27 9.8%	22 9.8%	12 5.5%	40 13.8%	12 5.2%	21 7.5%	11 5.7%	9 5.5%	21 8.5%	175 8.8%

CHC: Community Health Centre

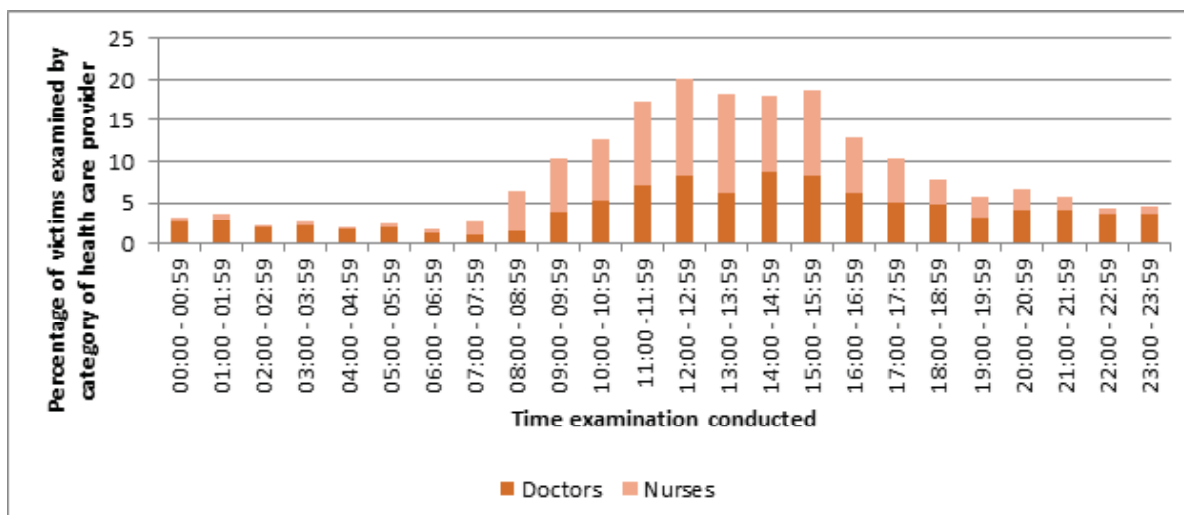
As expected, a significant difference was noted in the time taken to have victims examined comparing victims who were less than 18 years of age to adult victims ($p < 0.05$) (Table 8.6). For children less than 12 years of age, 21.2% were examined more than a week later, while this occurred in 11.5% of victims between the ages of 12 and 17 years of age, and only 4.1% of adult victims. Child victims are more likely to present late, as one well recognised group of young sexually assaulted children are those where the assault is suspected or identified through chronic symptoms, rather than actual reporting by the victim themselves. Although reflecting somewhat earlier reporting, these findings are consistent with previous literature showing that 47% of children report to police within 72 hours and 31% between 74 hours and 1 month, with 43% of children’s cases coming to the attention through accidental detection when someone becomes concerned due to observed injuries, behaviour change, or emotional changes leading to questioning/assessment (50).

Table 8.6. Time taken from assault to examination by age of victim

	0 – 11 years	12 – 17 years	18 years and older
Within 3 days (72 hours)	233 66.0%	440 80.5%	1 176 92.1%
More than 3 days, less than a week	43 12.8%	44 8.1%	45 3.8%
More than a week	67 21.2%	65 11.5%	42 4.1%

Victims were mainly examined during the day, with the number of examinations rising steeply from 7am, peaking at 12pm and then declining again up to 7pm, after which time the number of victims examined levelled off (Figure 8.1). Thirty-four percent of victims were examined between 8am and 4pm and 60% were examined between 7am and 7pm. There was a significant difference in the proportion of victims examined during the day between doctors and nurses ($p < 0.05$). Almost all the examinations conducted by nurses were during the day (7am to 7pm). Due to the organisation of service, doctors are still primarily responsible for providing after-hours services. Depending on the arrangement, this may mean that doctors must provide medico-legal services in addition to other services that they cover after-hours, e.g. emergency room, and this may affect the quality of care provided.

Figure 8.1. Time of examination and health care provider



Injury patterns

In total, 1 849 (66.6%) of the victims had an injury recorded on the J88 form, with significant patterns noted when general body (non-genital) and genito-anal injuries were separated. Seven hundred and thirty-nine victims (26.0%) had non-genital injuries, with significantly more injuries in females (26.5%) than males (17.5%) (**Table 8.7**). The most common location for injuries was the face, head and neck (n=474, 65.6%), followed by arms and hands (n=247, 33.9%), legs and feet (n=228, 33.1%) and the back and buttock (n=157, 21.5%). Injuries to the thorax and abdomen were only reported in 96 victims with non-genital injuries (13.9%). The most common injuries recorded were bruising (n=320, 44.5%), abrasions (n=263, 35.6%), swelling (n=171, 24.6%), and lacerations (n=154, 20.6%).

Fifty-four (54.5%) percent of female victims had genital injuries, while only 94 male victims had a genital examination done, of which three had injuries recorded (**Table 8.7**). The most common sites for genital injuries in females were the posterior fourchette¹⁵ (n=648, 47.4%) and the hymen (n=714, 55.6%). Of the 1 641 female victims who had an anal examination done, 154 had anal injuries (9.2%), while 83 (57.8%) of the 142 male victims who had an anal examination, were found to have injuries (**Table 8.7**). As with female victims, the most common anal injuries were lacerations (50.0% for female victims and 52.5% for male victims respectively) and redness (41.6% and 35.6%). However, a high number of victims were also reported to have funnelling or abnormal tone (21.1% and 36.0%).

Table 8.7. Non-genital, genital and anal injuries by sex

	Total	Female victims	Male victims	p value
Non-genital injuries (n=2 799)	729 (25.9%)	697 (26.5%)	32 (17.5%)	0.035
Genital injuries (n=2 806)	1 420 (51.3%)	1 417 (54.5%)	3 (1.5%)	0.000
Anal injures (n=1 784)	237 (13.5%)	154 (9.2%)	83 (57.8%)	0.000
All injuries (n=2806)	1 849 (66.6%)	1 755 (67.1%)	94 (57.9%)	0.030

Significant differences were noted in the number of injuries recorded by age group. More victims were found to have non-genital injuries with increasing age, whereas younger victims were found to have the higher percentage of genital injuries (56.4%). In addition, anal injuries were highest among 0-11 year-old victims (21.3%) compared to older children (9.1%) and adults (12.2%) (**Table 8.8**). The fewer non-genital injuries among 0-11 year-old victims follows findings from this research that showed the increased use of physical force and aggression with victim age. The findings may also suggest the possibility of grooming of children prior to assault. A very important finding is the large proportion of victims of all age groups without injuries. This is well recognized and demonstrates the importance of police, prosecutors and the courts not concluding that an absence of injuries equates to an absence of rape.

Table 8.8. Non-genital, genital and anal injuries by age

	0 – 11 years	12 – 17 years	18 years and older	p value
Non-genital injuries (n=2 780)	34 (6.3%)	135 (19.7%)	558 (36.2%)	<0.0001
Genital injuries (n=2 788)	288 (56.4%)	396 (56.5%)	725 (46.9%)	<0.0001
Anal injures (n=234)	80 (21.3%)	44 (9.1%)	110 (12.2%)	<0.0001
All injuries (n=2 788)	343 (66.7%)	466 (65.6%)	1 023 (66.9%)	0.91

Collection of evidence with the SAECK

Evidence was collected with the SAECK in 2 066 victims (72.3%). This was done in 73.9% (n=1 985) of female victims and 47.9% (n=80) of male victims (p value <0.05). As evidence collection is closely linked to the time between the assault and the examination, it is not surprising that 83.8% of adult victims had evidence collected compared to 45.3% of children below the age of 12 years, and 69.2% of those between the ages of 12 to 17 years.

Evidence collection varied significantly across provinces, with more than 80% of victims having evidence collected in North West and Limpopo, while only 64.0% of victims had evidence collected in Free State, the lowest rate of all provinces (**Table 8.9a**). It is interesting to note that the collection of evidence was higher in more rural provinces, whereas one would anticipate this to be higher in provinces in more urban settings. Further discussion of evidence collection is found in Chapter 6.

Table 8.9a. Collection of evidence by province

	EC	FS	GP	KZN	LP	MP	NW	NC	WC	National
SAECK completed	265 69.6%	194 64.1%	189 66.0%	284 73.8%	277 82.9%	308 77.9%	205 83.2%	137 75.6%	207 67.1%	2 066 72.3%

¹⁵ This refers a small fold of skin at the posterior end of the vulva connecting to the labia minora.

Seventy-one victims (2.5%) reported that condoms were used during the rape while 136 victims (5.0%) were unsure if a condom had been used. The use of a condom could affect the ability to obtain a DNA sample to match to a suspect.

Most victims had urinated prior to the examination (n=1 988, 92.3%), with almost half having changed their clothes (n=1 013, 49.6%), and 42.4% (n=864) having had a bath, washed or showered after the rape. This could influence the finding of forensic evidence. The public need to be informed about the need to preserve evidence after a rape, and to be examined and have evidence collected as soon as possible.

Completion of the J88 form

In this study, J88 forms were almost never fully completed, but some sections were noted to be better completed than others. For example, the Tanner stage¹⁶ was completed in almost 90% of cases for female victims whereas other information tended to be more poorly completed (**Table 8.9b**). The completion of the date and time of examination on the J88 form is critical as the findings of the form can be disputed in court if it cannot be proven when the examination was done in relation to the time of the rape, yet this was only completed in 94.5% and 91.8% of cases respectively.

The facility address, telephone number and fax number is required for contacting the healthcare provider who examined the victim if they have to testify in court. The telephone number was provided in 92% of the cases, the address in 55.1% of forms and the fax number on 37.1% of forms. Yet, as healthcare providers tend to be mobile and as technology is changing, it would be preferable to request the provider's personal cellphone number and email address as this would provide a more permanent means of contact.

Conclusions were made on the separate examination sections in approximately 90% of victims, except for the male genital examination, where conclusions were recorded in 56.7% of forms of male victims. Conclusions provide an overall summary of the findings in relation to the history provided by the victim, and assists prosecutors and presiding officers in interpreting the findings reported in the J88 form.

Table 8.9b. Percentage completion of a few sections of the J88 form

	N(%)
Date exam done (n=2 807)	2 660 (94.5%)
Time exam done (n=2 807)	2 589 (91.8%)
Facility address (n=2 807)	1 522 (55.1%)
Telephone number (n=2 807)	2 604 (92.0%)
Fax number (n=2 807)	1 134 (37.1%)
Medical history (n=2 803)	1 971 (68.1%)
Height (n=2 807)	1 412 (52.9%)
Weight (n=2 807)	1 690 (62.0%)
Tanner stage for breast completed (female only) (n=2 647)	2 384 (90.5%)
Tanner stage for pubic hair completed (female only) (n=2 646)	2 365 (90.0%)
Tanner stage for genital development completed (male only) (n=151)	89 (58.9%)
Tanner stage for pubic hair completed (male only) (n=151)	87 (57.6%)
General exam conclusion (n=2 807)	2 577 (91.7%)
Genital exam conclusion – females only (n=2 650)	2 364 (89.0%)
Genital exam conclusion – males only (n=120)	61 (56.7%)
Anal exam conclusion – females only (n=1 646)	1 474 (89.3%)
Anal exam conclusion – males only (n=141)	129 (92.6%)

The police station where the case was reported was recorded in 83.2% of forms and the CAS number in 81.4% of forms. However, in only 75.7% of cases a police member signed for receipt of the J88 form after it was completed by the healthcare provider. This could be a marker of a deficient relationship between police and health services. However, the patterns for reporting police-related information were not consistent across provinces (**Table 8.10**). For instance, a high proportion of J88 forms from the Free State and Western Cape had the police station and CAS numbers recorded, yet a smaller proportion of forms (when compared to other provinces) had the police member sign for acceptance of the J88 form. This could indicate a good mechanism or referral process for transferring victims from the police to healthcare facilities, but problems with the collection of the victims and the J88 forms by police. This may also possibly occur when victims are first seen at a healthcare facility and have a J88 form completed prior to reporting to the police. In such instances, healthcare providers and police members may fail to ensure that the transfer of the form is signed off when it is collected later.

¹⁶ This refers to a stage of puberty in the Tanner growth chart, based on pubic hair growth, development of genitalia in boys, and breast development in girls.

Table 8.10. Completion of police-related information on J88 forms

	EC	FS	GP	KZN	LP	MP	NW	NC	WC	National
Police station n=2 807	300 77.5%	278 95.2%	239 83.1%	327 84.3%	245 74.0%	306 77.8%	218 87.4%	144 81.7%	278 90.6%	2 335 83.2%
CAS number n=2 805	312 80.7%	274 92.6%	229 78.4%	323 83.3%	222 66.8%	302 78.1%	212 84.3%	146 82.5%	269 87.7%	2 289 81.4%
Police member signed for receipt of form n=2 80	262 68.6%	225 72.8%	242 84.1%	281 73.2%	282 84.9%	309 78.5%	214 86.7%	137 75.2%	198 64.1%	2 150 75.7%

The inadequate completion of forms may be due to several factors: forgetting to record information, healthcare providers feeling that the information is not required or essential, e.g. age of menarche, victims unable to provide information, healthcare providers unable to assess victims to provide a definite response, e.g. lack of equipment to obtain height and weight, lack of awareness or training of healthcare providers, and deficiencies in the design of the current J88 form. When comparing the completion of information on the sexual history of the victim and actions taken after the rape for female and male victims, we see significant differences in all three instances (Table 8.11). This is due to the design of the form where this information is included in a section which begins with questions specific to female victims (Section D), and thus, this information is often missed and not completed for male victims, unless healthcare providers are appropriately trained.

Table 8.11. Completion of information on sexual history and actions taken as per sex of victim

	Total	Female*	Male*	p value
Date of last consensual sex (n=2 779)	2 344 (84.5%)	2 305 (88.4%)	39 (24.0%)	0.035
Number of consensual partners in last week (n=2 008)	1 485 (73.8%)	1 473 (78.7%)	12 (9.8%)	0.000
Actions after rape indicated (n=2 798)	2 147 (77.4%)	2 093 (80.3%)	54 (33.0%)	0.000
All injuries (n=2806)	1 849 (66.6%)	1 755 (67.1%)	94 (57.9%)	0.030

* Total number in sample varies for each measure

Quality of J88 form completion

Several areas were reviewed to consider quality of form completion (Tables 8.12a and b), which go beyond whether the form was fully completed or not. Poor quality of form completion could be related to several factors including: lack of time, poor delivery of service, the design of the form, and the poor understanding of required information and lack of post-rape care training of healthcare providers on how to manage, care for and examine rape victims.

There are some cases where healthcare providers were apathetic in completing the form, so that they did not provide the correct information on their qualifications (4.1%) or did not record the full name of the healthcare facility where the victim was being examined (12.4%) (Table 8.12 a). Healthcare providers did not describe injuries sufficiently for medico-legal purposes as the location of the injuries was not adequately reported in 29% of victims with injuries, and the length of injuries was not reported in 91.5% of victims with injuries. There were instances where information provided on the form did not match up. For example, healthcare providers reported that the victim had changed their clothing after the rape, but in an earlier section reported details on the clothing (Table 8.12 a). It is therefore unclear if the healthcare providers were commenting on the state of clothes that the victim was currently wearing, which was different from the clothes worn during the rape, or whether they were commenting on the clothes that had been changed, assuming that the victim brought it with them. This error could occur due to the poor design of the current J88 form. Similarly, injuries reported in the text did not correlate with those reported on the diagrams in 23.4% of cases with general body injuries and in 40.3% of cases with genito-anal injuries (Table 8.12a).

Table 8.12 a. Selected measures in terms of quality of J88 form completion

	N(%)
Incorrect information for qualification of healthcare provider (n=2 807)	132 (4.1%)
Name of healthcare facility unclear (n=2 807)	372 (12.4%)
Irrelevant information provided on condition of clothing (n=2 805)	71 (2.6%)
No clear location recorded for injuries (n=1 847)	533 (29.0%)
No length recorded for injuries (n=1 847)	1 675 (91.5%)
Correlation of information provided: Reported that clothing was changed in one section but condition of clothing reported in another section as: (n=1 011)	
Good/neat/normal/clean	557 (54.9%)
Irrelevant information provided	20 (2.3%)
Not reported	56 (5.8%)
No correlation between recorded non-genital injuries and diagrams (n=728)	153 (23.4%)
Nothing marked on diagrams	70 (9.7%)
No correlation between recorded genito-anal injuries and diagrams (n=1 535)	645 (40.3%)
Nothing marked on diagrams	280 (19.0%)

Healthcare providers also provided information that was irrelevant or missed providing relevant information. The former was especially seen when conclusions were made on the examination findings, and to a lesser extent when providing information on the condition of clothing. Healthcare providers also occasionally reported on whether victims had sexually transmitted infections, although the relevance of this in terms of the rape was not obvious, unless the victim was a young child or there had been significant delay in reporting (Table 8.12 b). The current J88 form perpetuates such problems as it does not always clarify the information that is required. For example, information is required on whether a condom was used but it does not specify if this should be provided for the last consensual sexual encounter or rape (it is relevant for both). In some areas, the form requires information that could be unnecessary and possibly even a violation to the victim, such as reporting on the number of fingers that were inserted during a vaginal examination.

Irrelevant conclusions were often made in the general body examination section of the form. Here healthcare providers tended to comment on the genito-anal findings, and did not comment on the general physical examination. However, only 66 forms completed by nurses had irrelevant conclusions (11.3%) compared to 947 forms completed by doctors (43.9%) (p value < 0.05), implying the nurses seem to complete J88 forms better than doctors, possibly due to more having been rigorously trained.

Table 8.12 b. Selected measures in terms of quality of J88 form completion

	N(%)
General exam conclusion (n=2 807)	
Irrelevant conclusion	1 019 (37.6%)
No injuries	828 (29.5%)
Genital exam conclusion – females only (n=2 650)	
Irrelevant conclusion	409 (15.1%)
No injuries	155 (5.5%)
Genital exam conclusion – males only (n=120)	
Irrelevant conclusion	10 (7.9%)
No injuries	32 (26.6%)
Anal exam conclusion – females only (n=1 646)	
Irrelevant conclusion	384 (23.0%)
Anal exam conclusion – males only (n=141)	
Irrelevant conclusion	15 (10.6%)
Made some recording of STI – females only (n=2 637)	181 (7.4%)
Made some recording of STI – males only (n=91)	3 (3.3%)
Recorded presence of smegma (n=92)	3 (3.3%)
Did not clarify whether condom was used during rape or with consensual partner (n=2 797)	1 393 (48.4%)
Recorded number of fingers under vaginal examination (n=2 370)	1 367 (57.6%)

Discussion

Findings from the J88 form provides information on the victims who had medical examinations done after the rape: including their medical history, actions that they took after the assault, injuries that were found, and whether specimens were collected for DNA evidence. However, the completion of the form also provides insights into health services that are offered to victims, and an indication of the quality of the health service through the completion of the J88 form.

The clear majority of victims are female, and analysis of the J88 forms shows that male victims are adversely affected by this. We note that some relevant history was not collected from male victims and that some parts of the examination were not done, or possibly not recorded on the J88 form. We also note that evidence was collected from about three-quarters of female victims but only half of the male victims. Yet, we see that male victims are also severely affected by rape, with 57.8% of male victims having anal injuries on examination and almost one in five having non-genital injuries.

The age of the victim also plays a role in the presentation of the victim and examination findings. Younger victims were more likely to present late and therefore less likely to have evidence collected with a SAECK. Yet, clear differences in injury patterns were still found, with the highest percentage of anal injuries reported in children less than 12 years of ages. In contrast, the highest percentage of non-genital injuries were found in adult victims, probably occurring during the rape, which is in keeping with previous results that found that adult victims were exposed to more physical violence during the rape incident.

Examination of child victims can be challenging, yet we saw no difference in the qualifications of healthcare providers who examined child victims nor differences in the type of health facility that they were taken to for examination.

Provincial differences were noted in the way services were offered and also in terms of the relationship with the police. For example, in the Free State and Gauteng province, more victims were examined in crises centres and by nurses, whereas in Limpopo and Mpumalanga province, more victims were examined by nurses, but in hospitals. Furthermore, more victims were examined within 72 hours in Free State, Limpopo, and North West. The North West also had a high percentage of J88 forms with the CAS number, police station, and police member signature recorded, whereas there were mixed findings in other provinces.

In view of health service delivery challenges, there are increasing efforts being made to train nurses to provide medico-legal care, yet we see that only a fifth of victims were examined by nurses. Most of these victims were examined during the day, implying that more needs to be done to encourage nurses to provide these services on a 24-hour basis. Studies from other countries have reported that nurses provide better quality post-rape care (4,5). This study found similar findings.

The findings underline the need to improve post-rape healthcare services for all rape victims, and training needs to highlight that men and children require the same level of quality response. Further combined analysis needs to be done to identify factors associated with the quality of form completion, but the need for further training of health care providers in this area is apparent. The findings also highlight the challenges faced with the current J88 form, which results in confusion and potentially poor completion. The need to publish a new form, which is more user-friendly and has only the necessary and required information, has been recognised by the DOJ&CD. A new J88 form was approved for use in May 2017.

Chapter 9

The prosecution stage



Picture courtesy of: Vukani News

CHAPTER AT A GLANCE

- Prosecutors declined to prosecute in 47.7% of cases referred to them, i.e. 34.4% of all cases included in the study, they placed the other cases on the court roll but before trial half of the enrolled cases were also withdrawn.
- Reasons for declining to prosecute were that the victim wanted to get on with their life (67.6%), followed insufficient evidence (32.4%), and sometimes both.
- Declining to prosecute due to insufficient evidence was associated with less rigor of the police investigation and perceived severity of the rape incident.
- Police referred many cases for a prosecutor's decision when a perpetrator had not been arrested or charged, which is not appropriate as the police should have closed these cases.
- Cases which included weapons and physical force were less likely to be prosecuted than those that did not.
- Multiple perpetrator rape cases were less likely to go to trial than single perpetrator rape cases even after arrests have been made.
- Approximately 20% of stranger perpetrators pleaded guilty, and approximately 19% of relative perpetrators pleaded guilty. Intimate partner perpetrators had the lowest incidence of pleading guilty at approximately 7%. Child perpetrators more often pleaded guilty than did adults.
- Cases in which there was an identification of a positive DNA sample by the Forensic Science Laboratory had a 77% greater likelihood of having a guilty plea.
- 340 cases (8.6%) of the cases that were opened by the police ended up with someone being found guilty for a sexual offence. Of the cases with guilty sexual offence verdicts, 307 cases (90.3%) had perpetrators found guilty of rape.
- The highest proportions of convictions were in cases involving adult victims, 12-17 year-old perpetrators and stranger perpetrators.
- Police crime visits and matched perpetrator DNA substantially increased risk of conviction. In 9 cases with victims under age 12 the DNA matched and the perpetrator was found not guilty of rape. In these cases, consent did not need to be proved so there should have been a guilty verdict.
- Adult perpetrators and previously convicted perpetrators were less likely to be convicted if they did not plead guilty.
- 78.4% of perpetrators who were convicted received prison sentences. Perpetrators in 26 cases received life sentences.
- 53 sentences were inappropriate for the crime committed, for example correctional supervision given to an adult and suspended sentences given to adults for rape, and many (57 cases) of the prison sentences deviated from minimum sentences for rape.

Introduction

Following the police investigation, collection of pertinent evidence and the arrest of a perpetrator, the IOs give the dockets to prosecutors. Prosecutors make the decision to proceed with the case if there is prima facie evidence, refer it back for further investigation, or decline to prosecute the case (*nolle prosequi*). Prosecutors put cases onto the court roll, and when there are procedural problems with cases so that they cannot be heard, they are struck off the roll by the court or withdrawn by the prosecutor. If the procedural problems are addressed, cases are placed back on the roll. Cases on the court roll will eventually go to trial and once a trial has started it must conclude with a verdict and if the accused is found guilty of a crime, with sentencing. This section of the report describes the cases referred by police for prosecution, and the prosecutorial decisions over cases. The chapter also outlines the attrition cases after the decision to prosecute including trial commencement and trial outcomes. Case characteristics associated with the different outcomes are described.

Prosecutorial decision making

Of the 3 952 cases, 1 373 were closed by the police (35%). The remaining 2579 cases were referred by the police to be assessed by prosecutors. Prosecutors declined to prosecute in 1 217 cases (47.7 %). These cases made up 30.9% of all cases. Only 1 362 cases (34.4%) of the initial 3 952 cases were assessed by prosecutors as ready and appropriate to go to trial. Of the cases where the prosecutors declined to prosecute, 262 (23.0%) were of 0-11 year-old victims, 327 (26.3%) were 12-17 year-old victims and 618 (49.7%) were adult victims. In 10 (0.9%) cases the victim's age was not available.

In 379 of the 1 217 declined cases (32.4%), the prosecutors recorded that information was insufficient. The proportion of declined cases where there was insufficient evidence were highest among the 0-11 year-old victims (40.1%) followed by cases of 12-17 year-old victims (32.9%) and was lowest among adult victims (27.9%) (Table 9.1). In 5.3% of case dockets the reason for declining to prosecute was that it was unlikely that further evidence could be obtained.

In 52 of declined cases (4.8%) the reason given was that the case was a false report¹². The proportion of false reports was highest among 12-17 year-old victims (9.3%) (Table 9.1). A higher proportion of the false reports involved intimate partners (17/3 952) followed by relative perpetrators (16/3 952), acquaintances (9/3 952), strangers (6/3 952) and other perpetrators (4/3 952).

Victims wanted to get on with their lives in 67.6% of declined cases. Among the declined cases, more 12-17 year-old victims (91.9%) than adult victims (85.9%) wanted to get on with their lives. This was not given as a reason to not prosecute any cases of victims under age 12. In 7.6% of declined cases, the victim disappeared and this occurred more among the adult victims (11.1%). In 5.5% of declined cases the victims resolved the matter with the accused and in 3.5% of decline cases. Victims (2.2%) and guardians of minors (1.4%) also refused to co-operate and in 3.5% of cases the matter was said to be resolved between the families involved. A higher proportion of adult victims were untraceable, declined to co-operate, wanted to get on with their lives or resolved the matter with the accused (Table 9.1).

Most common reason for declining to prosecute was that the victim wanted to get on with her or his life.

There was an overlap of reasons documented on the dockets for declining to prosecute. Evident from the data was the large overlap of cases where both the reasons of insufficient evidence and the victim wanting to get on with life were given. Of the 379 cases where the prosecutor said there was insufficient evidence, 271 (71.5%) of the cases did not go to prosecution because victim wanted to get on with their life. Further research is necessary to explore in detail the victim positions of "wanting to get on with live" along with conclusions of "false reports" and "insufficient evidence in cases.

¹⁷ This refers to the cases where the police/prosecutors concluded and recorded on the docket that the rape incident did not happen (was false) A false report is usually concluded if the victim withdrew charges or retracted their statement saying they had not experienced the incident. However, there is research showing that this conclusion may be independent of the victim retraction and may be due to other evidence or factors.

Table 9.1. Documented reasons for declining to prosecute by victim's age

	0-11 years		12-17 years		18+ year		Missing		Total	
	%	N	%	N	%	N	%	N	%	N
Evidence reasons										
Insufficient evidence	40.1	103	32.9	109	27.9	161	66.8	6	32.4	379
Unlikely to obtaining further evidence	2.9	8	3.5	11	7.1	28	19.4	2	5.3	49
Docket lost	0.8	2	0.0	0	0.0	0	0.0	0	0.2	2
False report	2.1	6	9.3	24	3.4	21	16.1	1	4.8	52
Assessment that victim is incompetent witness	7.6	14	4.0	10	1.6	8	0.0	0	3.6	32
Victim reasons										
Victim wants to get on with life	0.0	0	91.9	294	85.9	516	100.0	9	67.6	819
Victim disappears	3.9	8	4.4	14	11.1	64	0.0	0	7.6	86
Victim and perpetrator resolved matter	0.0	0	3.4	12	9.3	64	0.0	0	5.5	76
Families of perpetrator and victim resolved the matter	2.6	9	5.1	17	3.1	22	0.0	0	3.5	48
Victim declines to co-operate	0.0	0	2.5	11	2.9	21	0.0	1	2.1	32
Guardian unwilling to co-operate	4.6	11	1.1	4	0.2	1	0.0	0	1.4	16
Witness disappear	0.6	1	1.2	1	0.8	4	0.0	0	0.8	6
Perpetrator reasons										
No perpetrator identified	3.8	9	2.3	8	3.6	23	0.0	0	3.3	40
No perpetrator arrested	1.2	2	0.5	2	0.9	2	0.0	0	0.8	10

A docket should not be presented to a prosecutor if no perpetrator was identified, and if a perpetrator has been identified he should have been arrested. However, of the cases that prosecutors declined to prosecute, 425 (34.9%) had no arrests associated with the case. The documented reasons for declining to prosecute this was not evident. In only 40 dockets was the reason for declining to prosecute that the perpetrator had not been identified and in 10 cases that the perpetrator had not been arrested (Table 9.1). Cases being referred for prosecutorial decision when the perpetrator was not arrested or charged was more common in the Western Cape (76/425), followed by KwaZulu-Natal (64/425) Mpumalanga (53/425), Eastern Cape (50/425), Northern Cape (49/425), Free State (46/425), North West (44/425), Gauteng (27/425) and was least common in Limpopo (16/45).

There is evidence of police referring cases for a prosecution decision where no perpetrator had been arrested or charged at court.

We cross-checked this to see if perpetrator age was recorded (thus indicating a perpetrator was identified) and 145/425 had age records: 29/145 were 0-11, 40/145 were 12-17, and 76/145 were adults. It is appropriate that the perpetrators aged under 12 years were not arrested and it may have been quite appropriate for some of the cases with 12-17 year old perpetrators because of their age. Of concern are the remaining 280 cases that were declined for prosecution with no perpetrator named and no perpetrator age reflected. Examination of the data showed that 102/280 were stranger rapes. Our findings appear to support the anecdotally reported finding that some investigators, in collusion with prosecutors, take cases with no perpetrator identified for a decision to prosecute with the intention of obtaining a *nolle prosequi*, which is reflected as a success on the SAPS statistics.

Disaggregation of declined cases by case characteristics

Prosecutors declined to prosecute in a higher proportion of cases with adult victims, among White or Indian, victims, male victims, disabled victims, and intoxicated victims (Table 9.2). They were more likely to prosecute cases with multiple victims. The proportion of cases in which the prosecutors declined to proceed varied by province. The highest proportion of cases declined by prosecutors was in the Western Cape (61.4%) and the lowest was in Eastern Cape (37.4%) (Table 9.2).

Table 9.2. Decision to prosecute by victim characteristics

Victim characteristics	N	Decision to prosecute N=1 362		Decision not to prosecute N=1 217		P value
		%	N	%	N	
Age						
0-11 years	557	51.8	295	48.2	262	0.03
12-17 years	730	55.7	403	44.3	327	
18+ years	1 256	49.9	638	50.1	618	
Victim race						
Black African	2 107	54.8	1 151	45.3	956	0.0001
Coloured	381	39.0	162	61.0	219	
White, Indian and other	51	26.9	17	73.1	34	
Sex						
Male	164	39.8	71	60.2	93	0.0002
Female	2 379	52.6	1 260	47.4	1 119	
No disability	2 407	52.9	1 273	47.1	1 134	0.02
Disability	131	38.0	59	62.0	72	
Victims in case						
One	2 314	50.9	1 185	49.1	1 129	0.004
Multiple victims	218	62.2	141	37.8	77	
Victim alcohol						
Intoxicated	250	43.0	108	57.1	142	<0.0001
Victim consumed alcohol but was not intoxicated	242	51.3	129	48.7	113	
No alcohol mentioned in victim statement	2 029	52.7	1 081	47.3	948	
Province						
KwaZulu Natal	318	51.1	163	48.9	155	0.008
Mpumalanga	270	56.9	151	43.1	119	
Gauteng	238	54.4	126	45.6	112	
Eastern Cape	337	62.6	210	37.4	127	
Western Cape	351	38.6	134	61.4	217	
Limpopo	277	57.4	157	42.6	120	
Free State	282	49.4	159	50.7	123	
North West	288	48.9	140	51.2	148	
Northern Cape	218	56.8	122	43.2	96	

Prosecutors declined to prosecute in a higher proportion of cases of 0-11 year-old perpetrators, White or Indian or other race perpetrators, female perpetrators, intimate partner perpetrators, and perpetrators not previously convicted. There was no significant difference in the proportions of single versus multiple-perpetrator rapes declined by prosecutors (Table 9.3).

Table 9.3. Decision to prosecute by perpetrator characteristics

Perpetrator characteristics	N	Decision to prosecute N=1 362		Decision not to prosecute N=1 217		P value
		%	N	%	N	
Age						
0-11 years	49	33.3	15	66.7	34	<0.0001
12-17 years	256	55.2	138	44.8	118	
18+ years	1 869	57.9	1 108	42.1	761	
Race						
Black African	2 088	55.4	1 161	44.6	927	<0.0001
Coloured	325	42.7	149	57.3	176	
White, Indian and Other	51	36.0	20	64.0	31	
Sex						
Male	2 522	52.0	1324	48.0	1 198	0.004
Female	31	40.3	14	59.7	17	
Relationship with victim						
Relative	345	48.9	177	51.1	168	<0.0001
Intimate partner	380	39.0	146	61.0	234	
Acquaintance	989	56.8	561	43.2	428	
Stranger	466	56.8	265	43.3	201	
Other	289	53.1	159	46.9	130	
No previous rape conviction	1 948	59.7	1 167	40.3	781	<0.0001
Previous rape conviction	109	78.9	85	21.1	24	
No previous criminal conviction	1 671	58.8	948	41.3	687	<0.0001
Any previous criminal conviction	386	68.8	268	31.2	118	
Number of perpetrators in case						
One	2 219	52.7	1 182	47.3	1 037	0.3362
Multiple perpetrators	360	49.9	180	50.2	180	

Prosecutors declined a higher proportion of cases where there was no abduction (51%), no weapons (51.2%), no physical force used (55.7%) and where the perpetrator did not threaten to kill the victim (50.6%) (Table 9.4). This may suggest that the availability of less evidence or prosecutors' biases and rape myths acceptance may be influencing decisions for rape cases to proceed to court as shown in other research (59). There is need for further research to understand the influence of gender attitudes in prosecution.

Table 9.4. Decision to prosecute by crime characteristics

	N	Decision to prosecute N=1 362		Decision not to prosecute N=1 217		P value
		%	N	%	N	
No abduction	1 780	49.0	891	51.0	889	<0.0001
Victim abducted	799	59.8	471	40.2	328	
No weapon used	1 899	48.8	950	51.2	949	<0.0001
Weapon used	680	62.8	412	37.2	268	
No colluders	2 372	52.4	1 255	47.6	1 117	0.71
Colluders present	207	50.9	107	49.1	100	
No physical force used	941	44.3	435	55.7	506	<0.0001
Physical force used	1 638	57.1	927	42.9	711	
No threats	1 511	49.4	750	50.6	761	<0.0001
Threats	699	61.5	402	38.5	267	
Unknown	399	52.0	210	48.0	189	

In keeping with the third of cases declined due to lack of evidence, the prosecutors' decisions to decline to prosecute were also associated with stages of the police investigation processes. Prosecutors were more likely to proceed with cases when the handwritten victim and first report statements were available, the SAECK was completed and crime scene DNA were submitted to the FSL and when DNA had been found by the FSL (Table 9.5). Prosecutors declined to prosecute in 57% of cases where the victim statement was not available, and in 62.9% of cases where the first report statement was unavailable. Prosecutors declined to prosecute a higher proportion of cases in which the SAECK had been collected but not sent to the FSL (59.8 %) and a higher proportion of cases where the crime scene DNA was not collected (49.5%). Prosecutors were more likely to proceed to trial with cases when the FSL had found DNA in a sample (62.7%). However, prosecutors declined to prosecute 320 cases in which there was a letter from FSL saying DNA in a sample was found (Table 9.5). Prosecutors also declined to prosecute in 19 cases (9.6%) where the perpetrator DNA matched the victim samples: four of these cases involved intimate partner perpetrators, four involved acquaintance perpetrators, five involved stranger perpetrators, four involved other strangers and in two cases relatives were involved. The decline to prosecute when DNA had been matched may be associated with issues of establishing consent.

Table 9.5. Decision to prosecute by availability of evidence

	N	Proceed with case		Declined to prosecute		P Value
		%	N	%	N	
No hand-written victim statement	254	43.1	120	56.9	134	<0.0001
Victim statement taken	2 303	52.8	1 220	47.2	1 083	
No first report statement	348	37.1	127	62.9	221	
First report statement available	2 208	54.2	1213	45.8	995	<0.0001
No SAECK collected	542	48.4	255	51.7	287	
SAECK collected not sent to FSL	543	40.2	218	59.8	325	<0.0001
SAECK collected and sent to FSL	1 471	57.8	867	42.2	604	
No crime scene DNA collected	2 390	50.5	1 223	49.5	1 167	
DNA collected but not sent to FSL	23	65.1	14	34.9	9	<0.0001
DNA collected and sent to FSL	143	72.1	103	27.9	40	
No letter from FSL saying DNA found	1 768	46.3	785	53.7	893	<0.0001
Letter from FSL confirming DNA sample	877	62.7	554	37.3	323	
Perpetrator DNA matched	180	90.4	161	9.6	19	<0.0001

Case characteristics associated with decisions to decline prosecution (*nolle prosequi*)

Logistic regression modelling was used to understand the relative importance of different case characteristics among cases referred by the police for a decision on prosecution. The age group of the victim was found not to be important in the decision not to prosecute (Table 9.6). Prosecutors were 40% more likely to decline prosecution of Coloured and more than twice as likely to decline prosecution of White or Indian victim cases compared to cases of Black African victims (Table 9.6). There were no significant differences in decisions to prosecute by province, but there was a suggestion that prosecution may have been more common in the Eastern Cape and less common in the Western Cape (Table 9.6). It is unclear why the race of the victim and province in which the victim lives should have influenced prosecutorial decisions independent of crime characteristics and rigor of the police investigation.

Prosecutors were 22% more likely to decline cases where the victim was intoxicated. Prosecutors were twice as likely to proceed with cases involving strangers compared to cases involving relative. There was no significant difference in declined cases between the 12-17 year-old and adult perpetrators, but those under 12 were less often pursued. Cases were more often taken forward by the prosecutor where physical violence was used and weapons displayed. This may reflect prosecutorial biases about 'real rape' or convictability in a trial, which may reflect bias in the court. It may also have impacted on victim willingness to pursue the case.

Prosecutors were more likely to take forward cases that displayed more rigorous police work resulting in more corroborating evidence, as indicated by those where the first report witness statement was taken, SAECKs had been completed and sent to the FSL and also in cases where the perpetrator DNA had been matched by the FSL (Table 9.6). In terms of injuries, prosecutors (and victims) were less likely to decline cases where there was evidence of non-genital injuries.

Table 9.6. Results of analysis of case characteristics associated with decision to decline prosecution

	Adjusted odds ratio aOR	95% Confidence Interval		P value
		%	N	
Victim age				
0-11 years	1.0			
12-17 years	0.97	0.73	1.30	0.86
18+ years	1.25	0.92	1.70	0.15
Victim race				
Black African	1.0			
Coloured	1.40	0.99	1.98	0.05
White or Indian	2.43	1.15	5.15	0.02
Victim not intoxicated				
Victim intoxicated	1.22	1.01	1.47	0.04
Province				
KwaZulu-Natal	1.0			
Mpumalanga	0.79	0.49	1.27	0.32
Gauteng	0.73	0.44	1.21	0.22
Eastern Cape	0.65	0.41	1.03	0.07
Western Cape	1.52	0.98	2.36	0.06
Limpopo	1.00	0.67	1.50	0.99
Free State	1.03	0.67	1.58	0.90
North West	1.34	0.90	2.01	0.15
Northern Cape	1.01	0.56	1.85	0.97
Perpetrator age				
12-17 years	1.0			
0-11 years	1.97	0.96	4.07	0.07
18 + years	0.91	0.67	1.23	0.55
Relationship				
Relative	1.0			
Intimate partner	1.16	0.86	1.56	0.33
Acquaintance	0.95	0.70	1.28	0.72
Stranger	0.49	0.35	0.67	<0.0001
Other	0.95	0.65	1.40	0.81
Unknown	0.97	0.63	1.51	0.90
Perpetrator was previously convicted	0.87	0.69	1.11	0.27
Perpetrator used physical force	0.67	0.57	0.79	<0.0001
Victim was abducted	0.87	0.71	1.06	0.17
Perpetrator displayed weapon	0.74	0.60	0.92	0.01
SAECK completion				
No SAECK completed	1.0			
SAECK completed not sent to the FSL	1.00	0.77	1.31	0.97
SAECK completed and sent to the FSL	0.73	0.57	0.94	0.02
Police visited crime scene	1.00	0.98	1.03	0.78
First report statement was taken	0.68	0.55	0.83	<0.0001
Perpetrator DNA was matched	0.25	0.14	0.43	<0.0001
Evidence of injuries				
No injuries	1.0			
Non-genital injuries only	0.68	0.49	0.94	0.02
Anogenital injuries and non-genital	1.03	0.83	1.27	0.78

Prosecutor withdrawal of matters after enrolment

The initial enrollment of cases by prosecutors on the court roll was not the final stage of case review before trial. After the prosecutor decides to take on a case, the investigation and preparation of evidence continues and the case is reviewed by other prosecutors prior to a trial. During these stages, cases may still be withdrawn for further investigation or closed, and we found that almost half of them were. Prosecutors withdrew 631 of the 1 362 (46.3%) cases they had enrolled before trial started.

Only 18.5% of all cases went to trial.

A higher proportion of cases of the 0-11 year-old victims (51.3%), Black Africans (48.2%), disabled victims (53.7%), and victims who had not consumed alcohol (47.6%) were withdrawn after enrolment (Table 9.7). There were significant differences in the proportions of cases withdrawn by prosecutors after enrolment by province. Withdrawal of enrolled cases by prosecutors was highest in North West (69.3%) followed by Limpopo (58.5%) and was lowest in the Northern Cape (29.9%) (Table 9.7).

Table 9.7. Case withdrawal after enrolment by victim characteristics¹⁸

Victim characteristics	Cases enrolled	Case withdrawn after enrolment		Trial started		P value
	N	%	N	%	N	
Age						
0-11 years	295	51.3	148	48.7	147	0.0002
12-17 years	403	42.9	160	57.1	243	
18+ years	638	47.0	301	53.0	337	
Victim race						
Black African	1 151	48.2	547	51.8	604	0.008
Coloured	162	36.1	54	63.9	108	
White, Indian and other	17	38.4	7	61.6	10	
Victim Sex						
Male	71	50.1	35	49.9	36	0.11
Female	1 260	46.8	574	53.2	686	
No disability	1273	46.3	574	53.7	699	0.0006
Disability	59	53.7	32	46.3	27	
Victim alcohol						
Intoxicated	108	44.0	47	56.0	61	0.0001
Victim drinking alcohol but not intoxicated	129	35.7	44	64.3	85	
No alcohol mentioned	1 081	47.6	506	52.4	575	
Victims in case						
One	1 185	46.2	537	53.8	648	0.64
Multiple victims	141	49.3	65	50.7	76	
Province:						
KwaZulu-Natal	163	52.8	87	47.2	76	<0.0001
Mpumalanga	151	43.7	64	56.3	87	
Gauteng	126	40.2	51	59.8	75	
Eastern Cape	210	49.2	103	50.8	107	
Western Cape	134	38.7	51	61.3	83	
Limpopo	157	58.5	92	41.5	65	
Free State	159	31.0	50	69.0	109	
North West	140	69.3	98	30.7	42	
Northern Cape	122	29.9	35	70.1	87	

The proportions of cases withdrawn by prosecutors after enrolment also differed by perpetrator characteristics. A higher proportion of cases with 0-11 year-old perpetrators (87.2%), Black African perpetrators (48.2%), stranger perpetrators (53.8%), perpetrators with no previous conviction (51.8%) and multiple perpetrators (61.2%) were withdrawn (Table 9.8). It is unclear why there should have been any trials of perpetrators under age 12, given that they were below the legal age of culpability

¹⁸ N=1 362 cases enrolled for prosecution

Table 9.8. Case withdrawal after enrolment by perpetrator characteristics¹⁹

	Enrolled cases		Cases withdrawn after enrollment		Trial started		P value
	N	%	N	%	N		
Perpetrator characteristics							
Age							
0-11 years	15	87.2	13	12.8	2	0.003	
12-17 years	138	44.9	61	55.1	77		
18+ years	1 108	42.5	463	57.5	645		
Race							
Black African	1 161	48.2	549	51.8	612	0.002	
Coloured	149	33.5	48	66.6	101		
White, Indian and other	20	45.4	8	54.7	12		
Sex							
Male	1 324	46.5	601	53.5	723	0.001	
Female	14	58.2	7	41.9	7		
Relationship with victim							
Relative	177	46.0	77	54.0	100	0.05	
Intimate partner	146	41.9	64	58.1	82		
Acquaintance	561	45.2	244	54.8	317		
Stranger	265	53.8	141	46.2	124		
Other	159	47.1	69	52.9	90		
No previous criminal conviction	952	51.8	465	48.2	487	<0.0001	
Any previous criminal conviction	410	37.7	166	62.4	244		
Number of perpetrators in case							
One	1 182	45.4	520	54.6	662	<0.0001	
Multiple	180	61.2	111	38.8	69		

Pleading

Of the 731 cases in which trial proceedings started in this study, the details of pleading were not clear in 46% of case dockets, while 40.8% of perpetrators pleaded not guilty, and 13.1% pleaded guilty (Table 9.9). A significantly higher proportion of perpetrators in cases of 0-11-year-old victims (24.2%) pleaded guilty compared to the other victim age groups (Table 9.9). A higher proportion of 12-17 year-old perpetrators (19.3%) pleaded guilty compared to adults (12.2%) (Table 9.9). There were also significant differences in the proportions of cases in which the perpetrator pleaded guilty across provinces. A higher proportion of perpetrators in KZN (22.7%) and the Eastern Cape (20.3%) pleaded guilty (Table 9.9).

A significantly higher proportion of stranger (20.1%) and relative perpetrators (18.6%) pleaded guilty. Intimate partner perpetrators had the lowest proportion of guilty pleas (7.3%) (Table 9.9). Of the cases in which the perpetrator pleaded guilty only in 39 (54.5%) was a sentence agreement entered

¹⁹ N=1 362 cases accepted for prosecution

Table 9.9. Pleading by different characteristics

	Cases in which trial commenced	Pleaded not guilty		Pleaded guilty		Did not plead/pleading information not in docket		P value
		%	N	%	N	%	N	
Victim age	N							
0-11 years	147	34.0	51	24.2	30	41.8	66	0.0002
12-17 years	243	41.7	92	6.3	14	52.0	137	
18+ years	337	43.7	137	13.0	36	43.4	164	
Perpetrator age								
12-17 years	77	31.6	23	19.3	15	49.1	39	
18+ years	645	41.8	254	12.2	63	46.0	328	
Province								
KwaZulu-Natal	76	48.8	38	22.7	16	28.6	22	0.001
Mpumalanga	87	37.0	29	4.2	3	58.8	55	
Gauteng	75	40.4	30	11.6	8	48.1	37	
Eastern Cape	107	46.1	47	20.3	23	33.6	37	
Western Cape	83	39.8	34	7.0	6	53.2	43	
Limpopo	65	30.2	19	12.1	8	57.8	38	
Free State	109	39.4	44	4.0	5	56.6	60	
North West	42	32.9	13	11.8	4	55.4	25	
Northern Cape	87	31.2	27	8.0	7	60.8	53	
Relationship with victim								
Relative	100	37.0	34	18.6	18	44.5	48	0.0012
Intimate partner	82	48.4	39	7.3	6	44.3	37	
Acquaintance	317	46.1	140	12.5	35	41.4	142	
Stranger	124	30.9	37	20.1	16	49.0	71	
Other	90	38.1	27	7.9	5	54.1	58	
Total	731	40.8	281	13.1	80	46.1	370	

Case characteristics associated with pleading guilty

In order to understand more about the independent effect of case characteristics associated with the perpetrator pleading guilty we again used logistic regression modelling. Perpetrators against 12-17 year-old victim rapes were much less likely to plead guilty compared to perpetrators against 0-11 year-old victims. Perpetrators in Mpumalanga, Western Cape, Free State and Northern Cape were less likely to plead guilty compared to the KZN perpetrators. Adult perpetrators were half as likely to plead guilty compared to the 12-17 year-old perpetrators. Acquaintances were half as likely to plead guilty compared to relative perpetrators. Perpetrators in cases where a DNA sample had been found by the FSL were 77% more likely to plead guilty (Table 9.10). Injuries on the J88 were not associated with a perpetrator pleading guilty.

Table 9.10. Factors associated with pleading guilty

	Adjusted odds ratio aOR	Pleaded not guilty 95% Confidence Interval		P value
Victim age				
0-11 years	1.0			
12-17 years	0.26	0.13	0.55	<0.0001
18+ years	0.59	0.30	1.15	0.12
Victim race				
Black African	1.0			
Coloured	1.07	0.35	3.32	0.90
White, Indian, Other	4.04	0.79	20.66	0.09
Province				
KwaZulu-Natal	1.0			
Mpumalanga	0.10	0.03	0.40	0.001
Gauteng	0.43	0.15	1.19	0.11
Eastern Cape	1.02	0.47	2.23	0.95
Western Cape	0.20	0.05	0.72	0.01
Limpopo	0.52	0.19	1.42	0.21
Free State	0.17	0.06	0.52	0.002
North West	0.44	0.13	1.54	0.20
Northern Cape	0.28	0.08	0.97	0.05
Perpetrator age				
12-17 years				
0-11 years	2.47	0.13	47.25	0.55
18+ years	0.45	0.21	0.96	0.04
Relationship				
Relative				
Intimate partner	0.51	0.17	1.55	0.24
Acquaintance	0.46	0.22	0.96	0.04
Stranger	0.74	0.30	1.78	0.50
Other	0.34	0.11	1.04	0.06
No injury on J88				
Non-genital injury only	0.41	0.08	2.23	0.30
Non-genital and ano-genital injury	1.67	0.73	3.82	0.23
Letter from FSL confirming DNA sample found	1.77	1.03	3.04	0.04

Concluding matters

Of the cases included in the study 731 (18.5%) went to trial. Of the 178 cases where trials started, 24.4% were dismissed once the trial had started and so were finalised as acquittals. In the 553 full trials, 340 cases were finalised with a guilty verdict for a sexual offence and in seven cases the perpetrators were found guilty of another offence. In 206 of the 553 full trials, perpetrators were acquitted. Therefore, of all cases where trial started (731), 46.5% of cases had a verdict of guilty of a sexual offence, 52.5% of perpetrators were acquitted and 1% of perpetrators were found guilty of other offences. Among the total sample of dockets opened at police stations, the proportion ending with a verdict of guilty of a sexual offence was 8.6% (340/3 952).

8.6% of all cases in the study sample were finalised with a verdict of guilty of a sexual offence.

Among the cases in which trial started, the victim age group with the highest proportion of convictions was adults (52.1%) and the fewest convictions were among the 12-17 year-old victims (46.7%) (Table 9.11). A higher proportion of 12-17 year-old perpetrators (61.7%) were convicted compared to adult perpetrators (48.4%) (Table 9.11). A higher proportion of stranger perpetrators (55.6%) were convicted compared to the other relationship categories. The lowest convictions were in cases of acquaintance rapes (47.6%) (Table 9.11). There was significant difference in the proportions of sexual offence convictions by province. KwaZulu-Natal had the highest (66.5%) proportions of convictions and Northern Cape had the lowest proportion of convictions (36.4%) (Table 9.11).

Table 9.11. Proportion of cases going to trial concluding with a guilty verdict or acquittal by victim and perpetrator characteristics

	Acquittal N=384	Guilty sexual offence N=340	Guilty other offence N=7
Age group	%	%	%
0-11 years	49.2	50.8	0.0
12-17 years	52.1	46.7	1.2
18+ years	46.6	52.1	1.3
Missing age	57.4	42.6	0.0
Perpetrator age			
0-11 years	23.7	76.4	0.0
12-17 years	38.3	61.7	0.0
18 + years	50.5	48.4	1.1
Missing age	53.3	46.7	0.0
Relationship			
Relative	48.1	51.9	0.0
Intimate partners	46.4	51.1	2.5
Acquaintance	51.4	47.6	1.0
Stranger	42.8	55.6	1.6
Other	48.6	51.4	0.0
Unknown	65.5	34.5	0.0
Province			
KwaZulu-Natal	33.5	66.5	0.0
Mpumalanga	56.0	44.0	0.0
Gauteng	55.2	41.8	2.9
Eastern Cape	51.8	47.5	0.7
Western Cape	44.3	55.7	0.0
Limpopo	52.2	44.6	3.2
Free State	49.9	49.3	0.8
North West	53.5	46.5	0.0
Northern Cape	62.8	36.4	0.7

Case characteristics associated with guilty conviction when the perpetrator did not plead guilty

To determine the independent effect of different case characteristics in convictions for sexual offences among those cases in which a trial started we again used logistic regression modelling. There was no significant difference in convictions by victim age, and victim relationship to perpetrator. Convictions were three times as common for Coloured victims compared to Black African victims. Adult perpetrators were half as likely to be convicted as 12-17 year-old perpetrators and previously convicted perpetrators were less likely to be convicted. In comparison to KwaZulu-Natal, Gauteng, Limpopo and Northern Cape provinces had lower conviction rates. Convictions were 50% more common when police had visited the crime scene and twice as common when perpetrator DNA was matched. Convictions were not associated with injuries found during the medical examination (Table 9.12).

Convictions were more 50% more common when police had visited the crime scene and twice as common when perpetrator DNA was

Table 9.12. Factors associated with a guilty verdict when the perpetrator did not plead guilty

	Adjusted odds ratio aOR	95% Confidence Interval		P value
Victim age group				
0-11	1.00			
12-17 years	1.17	0.68	2.02	0.56
18+ years	1.40	0.83	2.39	0.21
Victim race				
Black African	1.00			
Coloured	2.94	1.16	7.50	0.02
White, Indian or Other	4.33	0.54	34.66	0.17
Missing	1.62	0.16	16.03	0.68
Province				
KwaZulu-Natal	1.00			
Mpumalanga	0.61	0.30	1.26	0.18
Gauteng	0.28	0.13	0.62	0.002
Eastern Cape	0.66	0.34	1.29	0.22
Western Cape	0.50	0.19	1.31	0.16
Limpopo	0.44	0.18	1.05	0.07
Free State	0.65	0.31	1.36	0.25
North West	0.72	0.24	2.14	0.56
Northern Cape	0.20	0.08	0.52	0.001
Perpetrator age				
12-17 years	1.00			
18+ years	0.47	0.27	0.81	0.01
Missing age	0.79	0.14	4.43	0.78
Relationship				
Relative	1.00			
Intimate partner	1.29	0.63	2.63	0.49
Acquaintance	1.16	0.65	2.09	0.61
Stranger	1.31	0.66	2.59	0.44
Other	1.35	0.62	2.95	0.45
Unknown	0.53	0.19	1.48	0.23
Previously convicted perpetrator	0.60	0.38	0.94	0.03
Police visited crime scene	1.54	1.04	2.28	0.03
Perpetrator DNA matched	2.12	1.01	4.45	0.05
No injuries	1.00			
Non-genital injuries only	1.79	0.72	4.44	0.21
Non-genital and ano-genital injuries	1.19	0.65	2.18	0.57

Sentencing

Of the 340 cases in which there was a verdict of guilty of a sexual offence, 307 of the cases (90.3%) were rape convictions. Of the rape convictions in 239 of cases (78.4%), perpetrators were sentenced to imprisonment: a higher proportion of the adult perpetrators (83.6%) were imprisoned compared to the 12-17 year-olds. Twelve perpetrators aged 12-17 years were sentenced to correctional supervision together with one perpetrator aged less than 12. Forty-six perpetrators (15.2%) received suspended sentences. More 12-17 year-old perpetrators (34.3%) received suspended sentences, while 12.1% of adult perpetrators also received this sentence (Table 9.13).

Table 9.13. Rape sentencing by perpetrator age group

Sentence	18 + years		Missing age		Total		P value	
	%	N	%	N	%	N	%	N
Imprisonment	46.7	17	83.6	218	100	3	78.4	239
Correctional supervision	18.7	12	0.0	0	0	0	2.8	12
Suspended sentence	34.3	16	12.1	30	0	0	15.2	46
Fine	0.0	0	3.4	6	0	0	2.8	6

There were differences in the proportions of sentences passed per province among the 12-17 year-old perpetrators. The highest proportion of prison sentences were passed in KwaZulu-Natal (87.7%) followed by Free State (43.1%) and no prison sentences were passed in Mpumalanga, North West and Northern Cape. No perpetrators were sent for correctional supervision in KwaZulu-Natal and Gauteng. Mpumalanga had the highest number of perpetrators sent for correctional supervision. Four perpetrators in Eastern Cape and Western Cape each received suspended sentences. (Table 9.14).

Table 9.14. Rape sentencing of 12-17 year-old perpetrators by province

	Imprisonment		Correctional supervision		Suspended sentence	
	%	N	%	N	%	N
KwaZulu-Natal	87.7	8	0.0	0	12.3	1
Mpumalanga	0.0	5	81.9	4	0.0	0
Gauteng	37.1	1	0.0	0	62.9	2
Eastern Cape	39.5	3	23.0	2	45.4	4
Western Cape	20.6	9	10.4	1	46.2	4
Free State	43.1	3	26.8	2	42.1	3
North West	0.0	0	100.0	1	100.0	1
Northern Cape	0.0	0	100.0	2	50.0	1

There were differences in sentencing of adult perpetrators across provinces. The highest proportion of adult perpetrators sentenced to prison was in Northern Cape where all convicted adults were imprisoned, followed by KwaZulu-Natal (97.3%) and the lowest proportion of prison sentences were in Gauteng province. Gauteng also had the highest proportion of suspended sentences (Table 9.15).

Table 9.15. Rape sentencing of adult perpetrators by province

	Imprisonment		Suspended sentence		Fine	
	%	N	%	N	%	N
KwaZulu-Natal	97.3	34	2.7	1	9.4	3
Mpumalanga	93.9	23	6.1	2	0.0	0
Gauteng	66.3	15	36.2	7	3.9	1
Eastern Cape	79.4	30	5.8	2	5.2	2
Western Cape	75.6	24	16.2	5	0.0	0
Limpopo	90.2	23	3.3	1	0.0	0
Free State	79.6	36	20.8	10	0.0	0
North West	82.3	14	13.6	2	0.0	0
Northern Cape	100.0	19	0.0	0	0.0	0

Of the 239 perpetrators sentenced to prison for rape, 26 (11.8%) were given life imprisonment, 57 (23.8%) were received a sentence of less than 10 years and 156 (64.4%) received a sentence of more than 10 years (Table 9.16). There were differences in prison sentences by province. No life sentences were handed down in the Northern Cape. The highest proportion of life sentences was in Mpumalanga (26.3%). The Eastern Cape had the highest number of sentences less than 10 years (32.8%). The proportion of sentences less than 10 years were similar in KwaZulu-Natal, Western Cape and Limpopo (~22%). Mpumalanga province had the least cases with sentences less than 10 years (13.6%). The Northern Cape, while having no life sentences handed down, had the highest proportion of perpetrators sentenced to more than 10 years' imprisonment (81.1%). Across the provinces more than 60% of perpetrators received sentences greater 10 years (Table 9.16).

Table 9.16. Length of sentence by province

	Life imprisonment N=26	<10 year imprisonment N=57	10 or more years imprisonment N=156
	%	%	%
KwaZulu-Natal	15.7	22.5	61.9
Mpumalanga	26.3	13.6	60.1
Gauteng	15.7	18.7	65.7
Eastern Cape	5.9	32.8	61.3
Western Cape	6.9	22.7	70.4
Limpopo	8.5	22.8	68.7
Free State	9.1	26.8	64.1
North West	11.3	27.4	61.3
Northern Cape	0.0	19.0	81.1

Discussion

The findings in this chapter provide a snapshot of the progression of cases from the point where the police sent dockets to prosecutors for the decision to prosecute, to the trial and sentencing of cases. The chapter also shows attrition of cases at the different stages. Sixty five percent of all cases were referred by police for prosecutor decision, prosecutors only enrolled 34.4% of cases, prosecutors withdrew 15.9% of cases before trial. Thus, only 18.5% of all cases went to trial. Only 8.6% of all cases included were finalised with a guilty verdict for a sexual offence. Of the 239 prison sentences handed for rape convictions, 11.8% were life sentences, 64.4% were sentences more than 10 years and 23.8% of sentences were less than 10 years. In 12% of cases adults received a suspended sentence.

The main reasons for prosecutors declining to prosecute cases were that there was insufficient evidence (a third of cases) and the victim did not want to pursue the case further (about two thirds of cases). This is appropriate. However, there should have been a suspect and therefore an arrest in cases referred to prosecutors and we found that this was not the case in a third of these cases. These cases should have been closed by the police, and involvement of prosecutors in these cases so that they were classified as a nolle prosequi was inappropriate. A nolle prosequi decision is a positive case outcome for the police which indicates that a suspect had been identified.

Although a nolle prosequi decision is ultimately one made by a prosecutor, in two-thirds of cases the victims decided not to proceed and it is hard (or impossible) to prosecute a rape case with an unwilling victim. Thus the findings that race, possibly province and severity of the rape influenced the decision probably largely reflects the influence of these factors on victims' determination to pursue a case. There may be differences by racial group in assessment of the anticipated personal costs and likely benefits of doing so, and more clearly so by the aggression of the rape incident. The previous chapter discussed research showing that victim's decisions are influenced by the perceived empathy of the investigating officer and this in turn is influenced by factors such as work stress and vehicle access. This challenges the assumption that victim non-cooperation is inevitable and cannot be influenced. Given the very large number of rapists who are unpunished due to cases being closed and the important role of victim decisions in these it is very important that interventions be developed or implemented that focus on supporting the victim and keeping them interested in pursuing cases through the criminal justice system.

At the stage of prosecutorial decision-making, investigative rigor and available evidence were important. We showed previously that police commitment to a case is influenced by crime characteristics. Lay and professional views on "more serious rape" apparently coincide to some extent and impact the likelihood of a case being placed on the court roll. This has very serious implications for the large proportion of rapists who do not use weapons and a great deal of physical force and who should also be punished. Research shows that all forms of rape impact the mental health of victims regardless of the violent tactics used by perpetrators.

We found that prosecutor actions are a key contributor to attrition; firstly at the point of prosecutor decision to prosecute and secondly by the subsequent withdrawal of half of cases enrolled before the trial starts. Thus prosecutorial training and oversight of their decision-making is extremely important to increase the proportion of cases that are heard at court. Cases of vulnerable groups, particularly disabled victims and children under 12, were less likely to start trial than other cases placed on the court roll. These cases require more careful preparation and expert assessments and witnesses to be "convict-able" which makes them a larger burden on police and prosecutors. The application of the sexual offences legislation on consent of minors and persons with intellectual disability in these cases should be reviewed. We show in the next chapter that prosecutors do not always remind the court that a child under 12 cannot consent to sex and the evidence that we have cases closed when perpetrator DNA has been isolated from victims under age 12 further demonstrates the need for investigation and training on this matter. Later in this report we discuss prosecutorial decisions in the contexts of in-depth interviews with prosecutors and learn of the impact of pressure to reach workplace targets on their decisions about which cases to pursue.

The proportion of cases with guilty pleas is a sign of considerable prosecutorial effort, and it was notable that this was more common among child perpetrators than adults, although overall other factors may have influenced the decisions as well as age. Having a letter from the FSL reporting that DNA had been isolated was one of them. We have shown that DNA is playing a role in securing guilty convictions in cases going to trial after a not guilty plea as well. Overall we found that DNA evidence has started to become important in securing justice, yet there are significant gaps in the collection and processing of evidence, starting from the crime scene visits, appropriate completion of SAECKs, with many SAECKs still not being sent to the FSL. This highlights the need for further training of IO and health professionals and IO supervision on the importance of policing, evidence collection and processing to ensure justice.

The findings on sentencing provide further context for the qualitative analysis in the next chapter on the reasons for deviation from minimum sentencing. We have shown that there is very substantial deviation from minimum sentencing and it raises concerns about why some of the very lenient sentences were not appealed.



Chapter 10

In-depth analysis of rape case trial transcripts



CHAPTER AT A GLANCE

- The system of recording trial proceedings is deeply flawed. We could not obtain 80% of the requested transcripts, in many cases for reasons which potentially infringe the rights of guilty perpetrators to appeal judgements.
- Among the transcripts obtained, 20% had major gaps or lacked vital information including on the complainants age, relationship with the accused, testimony of the complainant and accused, as well as swearing in of interpreters, which could render cases vulnerable to appeal.
- Nearly half of the accused were not informed about minimum sentencing which might apply or it was not recorded, rendering sentences vulnerable to appeal.
- In a third of the cases with transcripts the perpetrator pleaded guilty. This is considered an indicator of prosecutorial success.
- Special measures were not routinely used in cases where they may apply and most requests for them were not acceded to.
- There was little evidence of use of additional witnesses such as a child psychologist or social worker to enable the court to better understand the circumstances of child rape and reactions thereafter.
- Some of the court interpreters did a poor job and the interpretation by police officers in taking statements is a concern and should be avoided where possible, as there is considerable potential for courts to be misled due to poor interpretation.
- There was evidence in some cases of rape myths and gender stereotypes continuing to have a bearing in cases. Some magistrates drew appropriate conclusions based on these, some prosecutors led irrelevant evidence on the complainants' sexual history and failed to challenge the same from the defense. There is a need for further training on the context of rape and the law in this regard.
- There was also evidence of inappropriate weight given to the accused family's views in trials and sentencing. This displays a lack of understanding of the role of families in creating the moral climate in which rape is perpetrated and further suggests rape was not always seen as a very serious crime by families of the accused and courts alike.

Introduction

To understand the basis for decision-making by the presiding officer we conducted an analysis of transcripts of trials from the main sample. The aim was to describe and assess the appropriateness of aspects of the work of the prosecutor and defense, use of special measures, evidence led and the basis for the verdict through examining the content of transcripts of the trials. We sought to study the transcripts of all 553 cases that went to trial from the sample. In each case, we recorded the case number from records held at the court and requested the transcript either from the files held in the court or through the Department of Justice's contracted transcription company. The proceedings of all trials are recorded by stenographers. The transcripts of the trials are public records and are essential documents recording proceedings and providing a foundation for any appeal. In addition, we had permission from the Department of Justice to access transcripts.

We worked to get the transcripts over a period of nearly 2 years and yet we were only able to gather 98 of the desired 553 case transcripts. This was 18% of the requested sample. The reasons for our inability to get the other 456 transcripts were loss of records linking the police docket and CAS number to the court number, tapes of trials being lost or in some instances destroyed, reluctance of court clerks to assist in locating court files, and tapes that did not contain the entire trial. Our inability to locate the other transcripts would in many cases have had very serious implications for a convicted person who wanted to take the verdict or sentence on appeal as they may well have had no more success than us in locating trial records. This has major implications for the exercise of justice in South Africa.

Sample description

The sample was made up of 98 cases followed from the docket analysis. trial transcripts were obtained from Limpopo (21), Western Cape (19), Eastern Cape (11), Gauteng (11), KwaZulu-Natal (10), Mpumalanga (9), North West (7), Free State (6) and the Northern Cape (4).

The age of complainants was only indicated in the transcript in 82/98 cases. Of these 19 were aged 0 -11 years, 32 were 12-17 years and 31 were adult complainants. The age of the accused was available in 74 cases: four accused were less than 18 years and the rest were adults. Twenty-one complainants were part of multiple victim rapes. All matters were heard in the Regional Division of the Magistrates' Court.

Charges

In 85.7% of cases only one accused was charged with rape, in 8.2% of the cases two accused were charged with rape and in 6.1% of the cases three were charged with rape. In a minority of cases (12%) the accused faced other charges: attempted rape (7%), sexual assault (4%) and other sexual offences as per the Criminal Law (Sexual Offences and Related Matters Amendment) Act 32 of 2007 (1%). In 29% of the cases the accused was charged with more than one count of rape.

The accused and pleading

Before pleading in a rape case the accused must be asked if he understands the 'discretionary minimum sentence for certain serious offences' in terms of section 51 of the Sexual Offences Act and s 105 of the CPA. In the matter of *S v Ndlovu* (60) the court stated

"... on a vigilant examination of the relevant circumstances, it can be said that an accused had had a fair trial. And I think it is implicit in these observations that where the State intends to rely upon the sentencing regime created by the Act a fair trial will generally demand that its intention pertinently be brought to the attention of the accused at the outset of the trial, if not in the charge-sheet, then in some other form".

In the matter of *Nekuvule v. S.* (61) the court found that the magistrate had failed to inform the accused of the minimum sentence provisions before the accused pleaded. This was taken on appeal and the court found that life sentence as imposed by the court for the rape of a minor was set aside and the accused would only face 20 years' imprisonment.

In 54% (53) of cases the accused was given information on what the possible sentence would be for a case of rape in terms of s51 of the Sexual Offences Act. In 46% of cases the accused was either not given this information or it was not recorded in the transcript.

In 28% of cases the accused pleaded guilty to rape and in 6% guilty to a charge of sexual assault. These numbers are important as it takes significant work on the part of the prosecutor to have any accused plead guilty to an offence. In two thirds of cases (65 in total) the accused pleaded not guilty to the rape charge and so there was a full trial with evidence presented to argue the case.

In 20 cases, where the accused pleaded not guilty, his defence was "denial of the entire offence", which then places the burden on the State to prove all elements of rape. In 17 cases the accused cited "consent" as his defence, in which case the State would only have to show that there was no consent as the other elements would not be in dispute. In three cases the accused cited a defence of "mistaken identity", which requires the State to prove all the elements of the crime. In five cases the accused elected not to enter a defence at all.

All these defences are established defences in law. Twelve of the accused cited "popular culture defences" which do not constitute legitimate legal defences in terms of South African law and largely reflect popular ideas around male sexual entitlement.

In six cases the accused said that the Complainant was his wife/girlfriend/partner as part of the reason why he was not guilty of rape. One accused cited being led-on by the complainant as a defence for perpetrating rape. Popular culture defences provide insights into some of the prevailing social attitudes which drive the problem of rape, based on gender stereotypes and prejudices.

Special measures

Section 170A of the CPA sets out “special measures” which allow for testimony of the complainant via an intermediary in cases where the complainant is a minor, or has a mental age less than that of an 18 year old. Section 153 of the Criminal Procedure Act allows for in-camera proceedings (including testimony via closed-circuit television) and although not contained in legislation the use of anatomical dolls is suggested in the Sexual Offences Court Model as set out in the Department of Justice and Constitutional Development’s report on the adjudication of sexual offence matters (62).

Anatomical dolls provide a way for adults to speak to minor children about sexual issues and to reduce the amount of trauma experienced by the child in talking about sexual violence perpetrated against her/him(63). In other countries their use is particularly encouraged, for example the American Professional Society on the Abuse of Children (APSAC) guidelines state “[t]he dolls can serve as props to enable children to ‘show’ rather than ‘tell’ what happened, especially when limited verbal skills or emotional issues, such as fear of telling or embarrassment about discussing sexual activities, interfere with direct verbal description”(64) Importantly Hlavka notes that anatomical dolls are used for other reasons besides verbal detail from the child. These include icebreakers, anatomical models and memory stimulus (64). Studies have shown that there is no support for the assertion that anatomical dolls cause non-abused children to assert that they have been violated (64) Hlavka found that there was enhanced disclosure of abuse by children in 86% of cases where anatomical dolls were introduced (64) Two examples of how anatomical dolls can be important are the following:

The child reported fondling and indicated additional contact that was unclear. Child said that his “butts were attached” and the butts did something. With the utilization of dolls, the child could demonstrate and verbally clarify the touching with dolls and disclosed penile/anal contact and penile/anal penetration. (Male, age 6) (64).

Child talked about fingers and hands “going in” her “kuku.” [Interviewer] brought one doll out for child to clarify hands/fingers and “in.” With the utilization of one female doll, the child pulled down doll’s pants and inserted a finger to demonstrate exactly what she meant. (Female, age 7) (64).

On dealing with children with disabilities or where a child requires a translator, Hlavka reported that:

Disability and the need for language interpreters during the interview session were not associated with differences in children’s use of anatomical dolls. Interviewers overwhelmingly perceived anatomical dolls as valuable for enhancing verbal disclosures in cases of children who have special needs (89%). In addition, 81% of the children who needed interpreting services during forensic interviews were perceived as able and willing to use the dolls (64)

The use of an intermediary in criminal matters dealing with children (and those individuals with the mental age of less than 18) is extremely important in order to achieve quality evidence provided by the complainant. Jonker and Swansen explain that:

the experience of giving evidence is emotionally traumatic and sometimes developmentally and cognitively impossible for children as they struggle to remember details over extended periods of time, to cope with the abstract language, and to be exposed to processes and standards that are often meaningless to them. Müller states that cross-examination is not only traumatic for children, but also results in inaccurate evidence. The child is questioned in a hostile environment, often about very intimate and emotionally-laden events. The defence is obliged to attack the child’s credibility in an attempt to highlight inconsistencies and discredit the child’s evidence. In light of this, the questioning of a child witness is a very specialised task, and the prosecutors and defence counsel are not trained in these methods (65)..

In three (15%) cases of minors under the age of 11 there was a request for an intermediary and in 12 (37%) cases of minors between the age of 12 to 17 years of age, further in one case of an adult there was request for an intermediary. The use of an intermediary was only found in three cases. Apparently, most requests for intermediaries were not granted or did not result in the service of such a person being made available. The use of an anatomical doll was only recorded in two cases.

Complainant’s evidence-in-chief

Of the 65 full trials, there was evidence as to the complainant’s testimony in only 56 (86%) of cases. Of concern are nine cases where the information was not available from the transcript about the complainant’s testimony.

All the elements of rape should be put to the complainant, unless they were already described, to make it clear through the testimony that all elements of the crime are present. They should be summarized by the prosecutor in closing arguments so that the presence of the elements are not left to the presiding officer to attempt to search for. Yet in putting elements of the crime of rape to the complainant, consent was mentioned in a quarter of cases, whether or not penetration was present was similarly mentioned in a quarter of cases.

It is highly inappropriate for a prosecutor to ask a complainant about her sexual history. Section 227 of the CPA states “(2) *No evidence as to any previous sexual experience or conduct of any person against or in connection with whom a sexual offence is alleged to have been committed, other than evidence relating to sexual experience or conduct in respect of the offence which is being tried, shall be adduced, and no evidence or question in cross examination regarding such sexual experience or conduct, shall be put to such person, the accused or any other witness at the proceedings pending before the court unless- (a) the court has, on application by any party to the proceedings, granted leave to adduce such evidence or to put such question; or (b) such evidence has been introduced by the prosecution*”.

In four cases the prosecutor asked about the complainant’s sexual history. In one case a 13-year old complainant was asked by the prosecutor whether her uncle (the accused) was the only person who had ever penetrated her.

In another case, with a 14-year old complainant, the prosecutor asked the complainant, “did you have a boyfriend before this incident?” The complainant replied, “Yes I once had a boyfriend before this happened.” The prosecutor further asked, “Did you ever go and sleep to [sic] your boyfriend’s place?” to this the complainant replied “I wouldn’t say I slept over, but this happened at his home having the sexual encounter when I felt pains we stopped there and then”. The prosecutor then asked “Did you ever do it after that?” The complainant’s boyfriend was not the accused in this matter and this line of questioning by the prosecutor was not relevant and did not advance the case against the accused.

Complainant and her police statement

In 56 of cases the accused's defence was put the complainant. In most cases where this did not happen the accused did not provide a defence (six cases) or just denied the rape. In 50 cases the defence asked the complainant about her statement to the police. In 12% of cases the defence relied on the lack of consistency between the complainant's testimony before the court and her statement to police.

The courts have in the past cautioned against placing too much weight and importance on the contradictions between what a witness says in court and previous statements made to the police. In *S v Mafaladiso* (66) the Supreme Court of Appeal (SCA) stated that the approach to dealing with the contradiction in versions by the same witness is not to determine which version is correct but to be satisfied by the reason for the contradictions, this could be because of the witness failing to recollect events or alternatively due to dishonesty. Not every error by a witness nor every contradiction affects the credibility of a witness and that contradictory versions should be assessed holistically. The task of the trial judge would be to consider the reliability of all the evidence and to decide if the truth has been told, despite the shortcomings (66) In none of the cases analysed was there an argument by the prosecutor, where the defence relied on the lack of consistency, that *S v Mafaladiso* should apply. Prosecutors need to be reminded of the importance of arguing this.

Accused's evidence-in-chief

In 39 cases the accused testified. Either it did not occur or information about this was missing from the transcript in 26 cases.

In four cases the accused was asked by the defence if he loved the complainant and in two cases the prosecutor challenged this. This type of questioning by the defence must be challenged, as it may be used to suggest that the accused would not hurt the complainant because he loves her.

Witnesses

In nine cases, there was a witness to the rape recorded in the transcript and this individual testified in court. In 30 cases the first report witness testified in court (**Table 10.1**). In 18% of cases the medical expert who completed the J88 came before the court to explain the contents thereof. In 8% of cases the police officer that responded to the rape report or alternatively took down the complainant's statement came to court to testify. In only one case was a clinical psychologist (or social worker) called to speak to the trauma suffered by the complainant because of the rape. The complainant in the matter was a minor child of 15-years old raped by her youth pastor. The clinical psychologist's evidence seems to have greatly assisted the court in the question around delayed disclosure of the rape. The following is the questions posed by the prosecutor and the psychologist's response thereto:

"Ma'am, your therapy sessions with her, do you know why she had told Aunty S not to disclose the alleged rape in any way?' to which she replied, 'Throughout my therapy with L, it is clear that she has felt very – I think this is quite common amongst rape victims, but a great difficulty in knowing who to trust. And she felt, who will believe a 14- year-old in the church, when the only person that knows exactly what happened is a youth leader in the church. And by the time I saw L in January and she had made this disclosure to the pastor in the church, at that point she was able to see that it had been a bad thing not to tell earlier, she was - could realise that she had suffered enormously in those months where she had kept it to herself".

Of the psychologist's evidence, the Magistrate stated in her judgment:

[h]er evidence was very long but the reason why it is important to refer to all of it, is because I think that it relates to the issue why the complainant did not disclose timeously to the members of her family what had happened to her.

The court ultimately relied heavily on the input by the psychologist, not only was clarity around the issue of non-disclosure arrived at but also the Magistrate came to understand the effects of post-traumatic stress disorder and how this could have been a factor in the complainant's behaviour.

In 53 of cases the witness' testimony corroborated the complainant's testimony and in only two cases there was a lack of corroboration. Corroborations can enable the magistrate to infer from this that the complainant is a reliable witness, however lack of corroboration cannot be used to infer under-reliability. Historically the cautionary rule was applied where there is only one witness of an event but this was removed in 1998 and should no longer be used in assessing evidence.

Table 10.1. Types of witnesses in trial

	N
First report witness testified	
Yes	30
Medical professional filling J88	
Yes	18
Parent or guardian	
Yes	12
Police investigator	
Yes	8
Social worker	
Yes	1

In 50% of cases, where the complainant was under the age of 12 years, the prosecutor referenced the irrefutable presumption that the complainant was not able to give consent. This is in terms of s57 of the CPA. This should have been mentioned in all cases.

Closing arguments

In only six of the 25 cases where the transcript contained the prosecutor's final closing arguments did she or he rely on case law in her or his argument. Reference to case law in a matter is of paramount importance as the Magistrates' Court is a "creature of statute" so the precedent of cases from the High Court will be binding, if there are similar facts. Furthermore, where there has been reference to, for example, the lack of consistency between the complainant's police statement, the prosecutor can guide the court on how to deal with this issue by citing case law (see above).

In six cases the prosecutor claimed that a competent verdict was proven. The definition of a competent verdict can be found in section 256 of the CPA. A competent verdict is used when all the elements of the crime cannot be proven but all the elements of a lesser crime can be proven. It is important to argue that a competent verdict has been proved, where possible, if the primary crime was not proved.

Passing judgment

In 62% of cases the accused was found guilty of a sexual offence, this includes crimes such as rape and sexual assault. In seven cases the accused was found guilty of another crime (besides the sexual offence of which he may or may not have been found guilty) such as theft, robbery, housebreaking or kidnapping. In eight cases the accused was acquitted because the defence was successful in a s174 application. Section 174 of the CPA states that "[i]f, at the close of the case for the prosecution at any trial, the court is of the opinion that there is no evidence that the accused committed the offence referred to in the charge or any offence of which he may be convicted on the charge, it may return a verdict of not guilty".

In sentencing the accused for rape the court used its discretion to move away from the minimum sentence in 59% of cases. In these cases mitigating circumstances were evaluated. Mitigating factors, which were most often considered by the presiding officer, were not significantly serious to support a departure from the discretionary minimum sentence. The following were factors considered as mitigating: the accused is a breadwinner (37.8%), age of the accused (50%), the accused was a first time offender (27.8%) and the accused had children (20.4%). It was also notable that prosecutors did not argue for weighty sentences for accused persons. Prosecutors rarely mentioned the scourge of sexual violence in South Africa as an aggravating factor, furthermore, prosecutors did not refer to infringements of the complainant's rights in terms of the Bill of Rights as necessitating a harsher sentence.

Dismissed/discharged matters

In 14 cases the defence applied for dismissal in terms of s174 of the CPA. In two cases the accused was a minor and was sent for diversion rather than a sentence of imprisonment. In one case the complainant was unavailable to testify and the matter was discharged based on this. In two cases there was insufficient evidence for the matter to proceed and the accused was subsequently acquitted. In two cases the accused was sent for a mental health evaluation in terms of s77 of the CPA and was found not to have the capacity to understand proceedings. One case was discharged as the complainant was a minor child and was deemed unready to testify and the state did not produce any other evidence in favour of a conviction.

In one of the cases with a successful s174 discharge, the complainant was a minor and the case would have been assisted by an expert witness such as a child psychologist to enable proper interpretation of her behaviour. In two cases there was a discrepancy between the complainant and witnesses testimony related to the crime and the witnesses corroborated the accused. In one case the complainant was considered unreliable as she was drunk during the rape, and in another the identity of the perpetrator with respect to the accused was not well enough established. In one case the reason given was simply lack of evidence.

Availability, completeness and quality of transcripts

In 81% of cases the transcripts available from court were complete. Instances of incompleteness varied and ranged from only portions of the proceedings being missing, to entire proceedings being absent (such as where only the bail hearing was recorded). With 19% of transcripts being incomplete this becomes an issue of infringement on the individual's right to a fair trial in terms of s35(3)(o) of the Constitution which sets out that an accused person has the right to refer an appeal or review of a judgment to a higher court. This right is unfairly limited when the appeal court does not have access to a full record of proceedings in the court a quo.

In 35% of cases there were more than 10 sections of the transcript were inaudible. This once again highlights the possible infringement of the accused's rights in terms of s 35(3)(o) of the Constitution (67), as there will be problems in reconstructing the missing parts of the trial for purposes of an appeal. In 20% of transcripts there were more than 10 typing errors made by the transcriber. This shows a lack of due care taken by the transcribers by not proof reading the transcripts before submitting them to the recipient.

Sexual assault cases

There were four cases of sexual assault. Every sexual assault case analysed involved a minor complainant. In three of the cases, the accused was an adult and a family member. In one of these three cases the accused was acquitted. In two of these three cases the accused individuals pleaded guilty to the crime. In one case the accused was a 17-year-old at the time of the incident. Of the cases where the accused was found guilty of sexual assault, the sentences were: six years imprisonment suspended for five years, four years imprisonment suspended for five years and four years imprisonment.

Court interpreters

An offer to use an interpreter was recorded as being made in 7% of cases. This may not be the total number of cases where an interpreter was used, rather those recorded by the stenographer. Importantly in none of the cases analysed was there recorded swearing in of the interpreter. On the issue of swearing in of interpreters the court in *S v Siyotula* (68) stated "The interpreter was not only unsworn and hence not competent to interpret. He was also not competent to administer an oath to a witness. His administration of the oath to the accused was irregular. The accused's evidence is not sworn evidence. Indeed, it is not evidence at all. It must be disregarded".

This case shows that any evidence which comes to the court via an interpreter who has not been sworn in is irregular and should not be considered. The court's failure to swear-in the interpreter, although a technicality, can have dire effects on the case.

There were also a series of problems related to the use of interpreters in court proceedings with translators not translating correctly or leaving out portions of what was said by individuals during testimony. In the example below, the translator is both missing out portions of the translation as well as erroneously translating.

"Yes and then?" (Prosecutor)	"Yes and then?" (Prosecutor)
AFRIKAANS	ENGLISH
<p>"Ons was by Squeezes..." (inaudible) "Toe het Sibosiso toonbank toe gegaan en biere gaan koop, maar dit was (inaudible) six pack. So het ons mos nou op gegaan want ons het sitplek gesoek op die..." (inaudible) (Complainant)</p> <p>"Ek weet nie eens wat u gese nie. ...Okay. Kort en kragtig." (Interpreter)</p> <p>"Ons was by Squeezas. Ons het biere gaan drink. Ons het biere gedrink, Windhoek Draught, ons 4." (Complainant)</p>	<p>"We were by Squeezes... (inaudible)" "Then Bibosiso went to the counter and bought beers, but it was... (inaudible) six pack. So we went on because we were looking for a seat on the..." (inaudible) (Complainant)</p> <p>"I do not even know what you have said, Okay. Short and sharp." (Interpreter)</p> <p>"We were by Squeezas. We went to drink beers. We drank beers, Windhoek Draught, us 4." (Complainant)</p> <p>"Yes." (Prosecutor)</p>

It can be seen above that the interpreter, instead of asking the complainant to repeat herself, expressly acknowledges that she/he does not know remember the complete interpretation and she/he continues by simply repeating what she/he remembers.

In the next example the Interpreter leaves out a certain fact expressed by the complainant. This fact was that there were four individuals in the vehicle.

AFRIKAANS	ENGLISH
<p>"So is ons nou in die Karin sit, ons al 4, se Sibosiso sy wil gou saam met my privaat praat..." (Complainant)</p> <p>"Your Worship, whilst we were seated in the car Sibosiso said he wanted to address me privately" (Interpreter)</p>	<p>So now we are all sitting in the car, all 4 of us, Sibosiso says he want to quickly speak with me in private..." (Complainant)</p>

It is imperative that the interpreter interprets the evidence given in testimony correctly and completely. Not only can issues arise where the court does not understand the witness and relies entirely on the interpreter but also the court's decision could be set aside due to this if the matter is appealed. In the case of *S v Griessel* (69) the accused was charged with driving a motor vehicle on a public road while under the influence of an intoxicating substance. During cross-examination, however, it was recorded that the interpreter did not translate the questions to the witness adequately, nor did the interpreter sufficiently provide what the witness had said to the court. The magistrate consequently referred the matter to the High Court to be set aside and to start again from the beginning.

Police statements

In some instances, the police are not reading the complainant's and witnesses' initial statement back to them or alternatively not giving the complainant or witnesses the statement to read themselves after they have reported the crime to the police member and the member has reduced the statement to writing. Further statements are required to be translated into English, which can be problematic where the complainant or witnesses do not understand English and the police member is not qualified to translate into English. There can then be a loss of information, or incorrect information recorded. In one case a magistrate in a rape matter made the following remark to the police member. He said "[h]et ons nou al weer hier n polisieman wat dink hy kan tolk ook speel?", which translated means "[d]o we have another policeman here who thinks he can also play the role of an interpreter?". This remark highlights a problem that occurs often in cases where the police officials battle to reduce the statement to English or cannot adequately reflect what was expressed in another language into English.

Another example recorded is seen from the following dialogue between the prosecutor and the police member in a rape matter:

"So, does that mean you were talking to her in Sepedi language however reduced the statement into writing in English?" (Prosecutor)

"Yes." (Police)

The police member later explains...

"... And then another thing is that after I have written the statement I write it in English and then I will give her an opportunity and her mother to read the statement. If they can, if they cannot do that then I will read the statement which is in English and translate it back into Sepedi the language they understand" (Police)

Relying on police members to translate back and forth from English to another language will not yield a fair representation of what the complainant or witnesses have reported. This also can create the situation where the complainant or witnesses have a different testimony in court to that of their initial police statement. Although, the Magistrate can use her discretion and make a finding that the complainant or witnesses are credible even though there was a lack of consistency between the statement and the testimony, these situations should be avoided.

A further issue with complainant's statements is that police members must follow the correct procedure for reducing statements to writing. In many cases where the complainant was a minor, the guardian was not present during the police official taking down the complainant's statement. In one case the prosecutor put it to the court that the police statement is invalid, as a guardian did not accompany the minor when her statement was reduced to writing.

Family influences

In terms of the Children's Act, family members should not be the judge of whether sexual violence experienced by a minor should be reported to the police or, when before a court, what an adequate sentence would be. In one rape matter, the mother of the complainant came before the court and in her testimony mentioned that the accused's mother had asked her to forgive him for the rape, she stated

"In 2011 his mother came to me as a person known to me as a neighbour, she came to apologise and we accepted the apology, Your Worship" to this the prosecutor asked "You accepted the apology based on what?" and she replied "Your Worship, as her child had done something wrong, she came and placed before us that the child was still a scholar".

In another matter, which was a case of incest, the family's view of sentence was considered by the magistrate and had a bearing on his decision in his sentencing. What follows is part of the testimony between the defence, the mother of the complainant and the court:

The defence puts to the court that "We had a very long conversation regarding how the accused was feeling remorse about the issue whereby the parties as well agreed that the parties (sic) were of the opinion that they withdraw the charges against the accused for the sake of the wellbeing of the family."

The mother of the accused when asked by the court what type of sentence she would like for the Court to consider she states, "I am asking the Court to give him a suspended sentence so that he can go back to school."

The court's final sentence was that based on "... the fact that the family discussed the matter and did not take it in [*sic*] a very serious manner that substantial and compelling circumstances is present".

In this matter the court found there were substantial and compelling circumstances to order a reduced sentence, because the family of the complainant (which was also the family of the accused) felt that a longer sentence would prevent him from attending school. The complainant's view on the matter was never asked and furthermore a victim impact statement was not submitted to court. Most importantly, the degree of seriousness with which the crime of rape is regarded by a family has an important bearing on the likelihood of a family member perpetrating rape in the first place, or again, as incest often runs through multiple generations of a family. A request for a light sentence is an indicator of a family not considering that rape matters are "important" and may reflect neglect of the abused child.

Magistrates' problematic statements that show lack of understanding of GBV

The outcome of a matter can be influenced by the incorrect consideration and reliance of a magistrate on gender stereotypes and "rape myths". This violates the individual's rights to dignity and equality as set out in the Constitution (67) and furthermore, since the magistrate is relying on ideas that are not based on any form of truth, such a decision is one based on false evidence.

There were instances of this in our sample of cases. In one case the presiding officer insinuated that the complainant was promiscuous in so far as she testified that she did not have an intimate partner yet it was recorded on the J88 that she had engaged in sex two days prior to going to the hospital. The presiding officer stated "She made no mentions (sic) to the court that she was seeing anybody else or that she was in a relationship with somebody but what is very interesting to note on the J88 is that the doctor asked her when was her last date of intercourse of consent it would appear that it was 2 days prior to her going to the doctors (sic)."

The court above relied on a stereotype around women being required to be chaste or alternatively required to be in a formal relationship to engage in sexual activities. Reliance on this stereotype coupled with the fact that the complainant failed to mention that she had engaged in sexual activities with any other individuals lead the court to incorrectly find that the complainant was "hiding something" and may not in fact be a reliable witness. On this, first it is inappropriate for the court to assume that the complainant is required to inform the court about other sexual partners she may have had before the rape, secondly the possibility that the J88 was incorrect was not considered, and thirdly the court appears to have violated her right to dignity, equality and freedom and security of the person by linking the rape to her prior sexual activity (2, 67) Magistrates must be educated around gender and sexuality where they come to understand that promiscuity as a test for reliability of a witness is in most cases irrational and in so far as this amounts to discrimination based on sex or gender it is also unlawful.

Another example, which emphasizes the lack of gender sensitivity compounded by the ignorance of sexuality of children by the court, can be seen below. In this matter the magistrate stated that:

the complainant did not impress the court as forceful witness. Initially she played the role of a very shy little girl when she entered the court and we heard her evidence through the intermediary. But this soon change when she was cross-examined on exhibit "1" and exhibit "2" where hearts were drawn around with love messages to boyfriends.

The magistrate in this matter is referring to exhibits handed in by the defence, which comprised of some of the complainant's school exercise books. It is important to note that the complainant was 13 years old at the time of the trial, and even younger when the alleged rape took place. The magistrate in this matter relied on evidence of "love hearts", which the complainant had drawn on her school exercise books that contained her name, and that of her "boyfriends". From this the magistrate wrongly inferred that the complainant was sexually active with these "boys", which even if true, is not to be considered as set in terms of s227 of the CPA as it is not relevant to the proceedings. The magistrate furthermore considered the fact that the complainant had written her own surname as "condom" and her mother as "HIV", for whatever reason, as proof that the complainant was not an innocent 13-year-old girl. The magistrate stated "[b]ut as she portrays the picture of being the innocent, one can really ask why she refers to her surname as a condom and her mother as HIV". This branding of the child by the court as a Lolita-like character reverses the role of the child as a victim of adult sexual violence and instead positions her as the accused. This example emphasises the magistrate's lack of gender sensitivity as well as a clear ignorance around child and childhood sexual development and the multiplicity of forms this can take.

Discussion

Flaws in the recording of trials impact the administration of justice. We were unable to obtain 80% of the requested transcripts and of those found, one in five, had important deficiencies in them. Had these cases been appealed, we do not know what proportion would have been accessed, but we are confident that very many of these would still not have been found. This has important implications as *Mazibuko v City of Johannesburg* (70-72) shows that the State has positive obligations in terms of the Constitution to ensure that the accused person can have a review or appeal his case. Failure of the state to ensure that this is possible by having effective systems in place for obtaining complete transcripts is unlawful. There are also implications for research as we had sought to find all the trial transcripts from our sample. Because we found fewer transcripts, there is need to exercise caution in generalizing from the cases that we have obtained.

In 20% of transcripts obtained there was important information missing from the recorded information. This included omissions of the complainant's age, the relationship between the complainant and the accused, the testimony of the complainant, as well as swearing in of interpreters and setting out the details of minimum sentencing. It cannot be ascertained if the court failed to swear in interpreters or describe the details of minimum sentencing or alternatively if this was simply not recorded, in the case of transcripts that were not complete. The omission of this information is problematic as this could be grounds for an appeal of the matter. In the case where information such as the relationship between the complainant and the accused or testimony of the complainant is omitted this is an incomplete record of proceedings and would require the court to reconstruct the record if the accused decided to appeal the judgement. There is a need for an overhaul of recording of trials and preservation of recordings and transcripts.

Nearly half of the accused were not informed about minimum sentencing, which may apply in their specific case, or alternatively this was not recorded. Not formally informing the accused of the sentence that might be applied if he is found guilty of rape may render the sentences vulnerable to appeal. This is a simple procedural step and failure to put this on record cannot be justified.

In a third of the cases with transcripts the accused plead guilty to the rape. This is a considerable success on behalf of the prosecution whose work is integral to obtaining guilty pleas.

There were very few recorded instances of special measures being provided by the court. There are two possible explanations for this, either there were special measures available at the court and the magistrate did accede to the application to use the special measures but this was not recorded, or alternatively the magistrate did not accede to application (which could be based on there being a lack of availability of special measures in that specific court). The importance of special measures in the courtroom has been stressed above, yet it is important to emphasise that complainants in sexual violence cases are extremely vulnerable and can easily be exposed to secondary trauma in the courtroom, due to the adversarial nature of court proceedings. Special measures are aimed at lowering the potential for secondary trauma and creating a safe space for the victims of violence to give their testimony. When victims of violence feel safer and less traumatised they can give better testimony. Thus, it is imperative that prosecutors apply for special measures in rape cases, that magistrates order the use of special measures and that courts have special measures in place.

There was little evidence of use of expert witnesses such as social workers or psychologists to enable the court to better understand the circumstances of child rape and reactions thereafter. This is a problem as it has been found that some magistrates reach their own spurious conclusions about child behaviour without reference to experts. Further, some take rape myths and gender stereotypes into consideration when making their decision on whether the accused is guilty or not and in the process of sentencing. However, if the prosecutor brought evidence by way of an expert witness who can explain the nuances of the psychological experiences of being a victim of rape or sexual violence the court can be properly guided.

Court interpreters must be properly trained to appropriately and correctly translate testimony for the court. In instances where translators have failed to completely and correctly translate there is incorrect and untrue evidence before the court. This places the magistrate in a position where she/he is making a judgement based on incorrect facts and this is not a fair trial for the complainant or the accused. Interpreters are required to swear by oath that they will completely and correctly translate the evidence of the individuals giving testimony before the court and a failure so should be considered as perjury. The gravity of failure to properly translate must be emphasised as decisions can be made based on mistranslations.

In the case of police members, it is suggested that they should record the complainant's statement in the language in which it is given, in most cases the first language of the complainant. This will avoid them having to translate the statement into English and report again to the complainant. Police members are not qualified interpreters and it is not surprising that information is lost in translation or incorrectly represented. This becomes an issue when the defense puts the contents of the police statement with its errors to the complainant in court and the complainant is portrayed as changing her testimony and viewed as an unreliable witness.

The deviation from minimum sentencing in 40% of cases and flimsy reasons for doing so suggests that many presiding officers themselves do not consider rape as a serious crime. It was also notable that prosecutors did not argue for weighty sentences for accused persons when there are obvious reasons why this would be desirable. As previously mentioned, prosecutors rarely discussed the scourge of sexual violence in South Africa as an aggravating factor. The lenient sentencing in cases of rape contributes to the impunity that individuals feel in committing sexually violent crimes.

The research highlights the need for training on gender equity and rights and a deeper understanding of rape for magistrates and prosecutors. This will address the problems of prosecutors leading irrelevant evidence on a complainant's sexual history and failing to challenge that from the defense. All of which re-traumatizes the complainant. It will also help to prevent the reliance of the court on assumptions rooted in rape myths and gender stereotypes which infringe the rights of the complainant for a fair hearing.

Chapter 11

The role of performance targets and court environment on case progression and prosecution



Picture courtesy of: givengain.com

CHAPTER AT A GLANCE

- The decision to proceed with a rape case is based on the evidence available to corroborate the complainant's version of events.
- These legal and evidentiary requirements are not the only factor influencing prosecutors' decisions about rape cases. What is also important are the performance targets set for the number of cases finalised in a month, as well as the percentage of convictions secured for rape.
- Although targets are important, they don't always sufficiently take into account the court environment in which prosecutors work. They also underestimate the challenges to proving rape, which require time-consuming amounts of investigation and preparation. In relation to child complainants, more time may also be needed to lead their evidence.
- If this is not recognised and accommodated by prosecutors' performance measures, this may result in cases being rushed through, being withdrawn or not adequately prepared

Introduction

Case attrition is a complex, multi-stage process which prosecutors influence within the context both of prosecutor-led police investigations, as well as court proceedings. How determinative their role is, is underscored by research indicating that the outcomes of more than half of rape cases reported in Gauteng province in 2003 were dependent on prosecutorial decision-making. In this study prosecutors declined to prosecute 16.1% of matters (“*nolle prosequi*”), withdrew another 22.3% of matters from the court roll and evaluated a further 17.3% cases as worthy of prosecution (20). At the same time, with case studies of particular localities demonstrating how case evaluation and court practice varies across courts (5, 73) it is also clear that prosecutorial decision-making is neither rote nor uniform. This chapter explores such decision-making in greater detail by drawing on the in-depth, semi-structured interviews conducted with 13 prosecutors and six Legal Aid Board (LAB) attorneys based in Gauteng province, as well as the extended period of observations at selected courts in Gauteng province.

Context of prosecutors’ decisions

Prosecutors’ decisions take place within a context determined by law and policy, institutional rules and practices, and what might be described as society’s unwritten rules for thinking about rape. In relation to the law, prosecutors work within the bounds determined by the Constitution, the SOAA, the CPA, relevant case law and the common law, as well as the national Directives issued in terms of sections 66(2)(a) and (c) of the SOAA. In brief, where the SOAA sets out the various definitions of the crimes prosecutors must prove before a conviction can be secured, the CPA details the procedures that must be followed in the investigation and prosecution of a crime. Case law refers to judicial decisions that further develop existing law, such as by setting out how “substantial and compelling circumstances” are to be understood and applied in arriving at an appropriate sentence for rape.

The Directives provide more detailed guidance around the application of particular provisions in the SOAA and CPA, and also set out, to some extent, how investigation and other preparations for trial are to be managed. According to the Directives: “Specialist, dedicated prosecutors selected on the basis of their experience, interest, skills and levels of sensitisation should deal with such matters. Preferably the same prosecutor should prosecute a matter from beginning to end” (National Prosecuting Authority 2014: 3).

Prosecutors should also closely guide the police investigation of the docket and identify any additional evidence the investigating officer is required to obtain. Ideally, the complainant should also be consulted with within 21 days of the report having been made to the police. Following this consultation, the matter may be withdrawn and the complainant referred for assessment while investigations continue.

In 2013 the Judicial Matters Second Amendment Act allowed for the Minister of Justice to designate courts as specialist sexual offences courts. By the close of the 2015/16 financial year, 47 such courts were reported to be in existence. However, the regulations detailing the requirements for the sexual offences courts, including the facilities, services, equipment, devices and tools they should have not yet been published.

Influence of performance targets

Institutional factors such as workplace performance measures may also be influential (73, 74). Notions of convictability are also key, with only the more promising cases being tried to ensure that resources are focused on the cases most likely to result in prosecutorial success (South African Law Commission, 2000). Factors thought to influence the likelihood of a conviction generally include the nature of the offence (drunken driving being easier to prove than rape, for example); the quality of the police investigation; individual prosecutors’ experience and ability to effectively present the state’s case; the likelihood of the accused pleading guilty; and the quality of the accused’s legal representative (ibid: 19 – 20).

These performance measures are contained in the Annual Performance Plans issued by the Department of Justice and Constitutional Development. In 2016/17 the estimated conviction rate for sexual offences was 69%, with this figure also set as the conviction rate for 2017/18. Somewhat surprisingly (given that these are specialised facilities), the estimated conviction rate for “TCC reported cases” was 67% in 2016/17, with this same target also set for 2017/18. Both targets are lower than the 74% set for the regional courts overall (75). These different conviction rates imply that sexual offences matters are not as easily proved as other crimes.

A second important institutional factor to consider is the volume of cases prosecutors are expected to manage. As at 30 September 2016 the Sexual Offences and Community Affairs Unit had a vacancy rate of 29.5%, meaning that 155 of the 220 available positions were filled and 65 vacant (76). This was the highest vacancy rate in the NPA.²⁰

Influence of rape myths and victim characteristics

Legal policy is not the only factor determining prosecutors’ actions and decisions. Research undertaken in the USA is suggestive of other subjective considerations shaping prosecutors’ thinking. These include an informal distinction between “real” rapes (those perpetrated by violent strangers who are typically also armed and ready to injure their victims) and “simple” rapes (typically occurring between people known to, or intimately involved with, one another and rarely resulting in injury), with the former argued to be more likely to result in prosecution than the latter (77-80). However, prosecutors’ decisions to reject cases are not exclusively determined by the victim’s character, reputation or behaviour. Victims’ cooperation with prosecutorial services and their willingness to proceed with matters may also form an important component of prosecutors’ decisions around whether to proceed with a case or not (78, 81, 82)

Findings

The findings that we present draw on the observations, informal discussions and interviews. The emphasis on the role of performance targets has been selected due to its prominence in the interviews and informal conversations and because it helped explain certain features of the way the court roll was managed. Although the public defenders were not specifically asked about prosecutors’ performance measures, they raised these of their own accord as a factor affecting the courts’ functioning.

²⁰ The Priority Crimes Litigation Unit recorded a 42.9% vacancy rate. However, this number is skewed by the very low number of prosecutors required to staff this Unit. Of the seven positions available, four were filled and three vacant. The few staff required for this unit do not make its vacancy rates readily comparable with those of other units.

Descriptions of the prosecutor decision-making process

Presiding officers can only pronounce upon an accused's guilt or innocence based on the findings they make about the facts presented before the court. These facts, in turn, need to be supported by evidence before they can be proved. At a minimum, key evidence in a rape case comprises the complainant's statement and that of other witnesses, as well as the findings of the medico-legal examination and the outcome of the DNA analysis (where identity of the perpetrator is in dispute). Equally as important is consistency within and across the various statements and documents included in the docket.

However, all of these documents may not be immediately available after a report has been made, making assessment of the presence and absence of evidence, as well as its quality, an ongoing process for prosecutors. These assessments can begin very soon after a rape is reported when investigating officers approach prosecutors to ask their advice around whether to arrest a suspect based on the circumstances of a case, or to ask if there is sufficient evidence to even treat the matter as a viable case. On reading the docket prosecutors will either agree that there is no case, or they will ask the investigating officer to obtain further statements or other evidence. Dockets at this stage are referred to as decision dockets precisely because a decision must still be made regarding whether to place them on the roll. If the case was reported at a TCC, these initial decisions and guidance of the associated police investigation will be undertaken by the case manager of the TCC (who is also a prosecutor).

Although prosecutors are looking for evidence of facts, this does not mean they follow a "checklist" or "prosecutor package," as one prosecutor put it. Indeed, the poor quality of the initial police statement means that prosecutors will often need to consult with the complainant soon after the report to obtain better understanding of events. This was particularly the case for those cases whose circumstances raised red flags: adolescent girls who had returned home late from a social event, reports by children whose parents were involved in acrimonious divorces, and cases where a relationship existed between the complainant and accused. Deciding whether to proceed after a consultation typically depended on the prosecutor's gut feel, based on the complainant's demeanour; the amount of detail they provided about the incident; how the circumstances of this case fitted with other cases in which a complainant had recanted; and, in the case of younger children, the knowledge they had of sexual acts. At the same time a prosecutor might also decide to proceed with a matter even though the statements are of poor quality, contradict each other and the J88 is inconclusive – but the DNA is positively linked to the suspect and the complainant a child under 12 (and thus incapable of consenting in law).

Once a decision had been made and/or a suspect arrested, the docket is made a court docket – although it might revert to being a decision docket if the matter is struck off the roll, or withdrawn. Once classified as a court docket the matter might then go to an altogether different prosecutor to prepare the matter for its first appearance. At one site this assessment was based on whether there was sufficient evidence linking the suspect to the crime. Where there was no TCC case manager to undertake this initial screening and the court dealt with a high volume of cases, this process could be "a mess". At one site, which did not adopt a particularly specialised approach to sexual offences, two prosecutors had been making decisions on between 80 to 150 dockets per day, which detrimentally affected the attention that could be paid to each case. Cases deemed less serious simply never made it onto the court roll, while "a lot of mistakes" were made in the more serious matters.

Docket handling and allocation

The handling of dockets was also fragmented. One prosecutor might undertake the initial consultation with the complainant and then return the docket to the detective for further investigation. But when this was completed and the docket returned to court, it would now be reviewed by a different prosecutor with no background on the matter. This delayed further decision-making as the new prosecutor now sought to locate the prosecutor who had originally requested further investigation. Pressure had eased with the redrawing of the court's boundaries and the incorporation of two police stations into a different magisterial district. The court had also adopted a specialisation of convenience, allocating all crimes of a type to a specific prosecutor to manage until a matter was ready for trial. At this stage, rape cases were then more or less evenly distributed between the three regional courts.

At another court, this arrangement was reversed. The prosecutor receiving the docket first might be the control prosecutor or a general prosecutor, neither of whom might have a vested interest in sexual offences. If they decided to proceed with a matter it was then allocated to a court by a magistrate where a different prosecutor would then take over its management. The bail application might be handled by a second prosecutor, with the matter being handed over to still another prosecutor if the initial prosecutor was transferred to another court – or the docket transferred. Consultation with complainants might also be undertaken by a completely different prosecutor. These processes might result in a matter being handled by up to six different prosecutors, each of which had their own ideas on how the case was to be handled. Observation at the different sites suggested that this was more likely to be the fate of the dockets opened for adults who, unlike child complainants, were also not always taken to the TCC either. At these sites, where specialisation was more limited, adults' cases also seemed more likely to be dealt with by generalist, rather than specialist, prosecutors.

Performance targets

Prosecutors signed performance contracts in which they committed to achieving a 69% conviction rate in sexual offences cases. This was in addition to the requirement that they finalise 15 cases per month. Said one prosecutor with more than 15 years' worth of experience specialising in these matters and who had not lost a case in the last 5 years: "It's not worth it...I won't do a rape case anymore" (Prosecutor J, Interview May 2017). Her attitude summed up a pervasive sense among the specialist prosecutors that something fundamental about their work and its quality was being lost.

"It is not only about convictions and finalising, it is about justice. This is what this was built for, this is what the criminal system or the justice system was developed for – not finalisation of cases, not convictions, how many people you convict in a month, or how many cases we get through in a month – but it is about justice" (Prosecutor B, March 2017).

"I am not a person that is driven by targets; I believe in quality; the quality of my work must stand out. I am not driven by stats because if I was driven by stats I would just deliver poor quality service also to the public" (Prosecutor A, February 2017).

Prosecutor A and B's words point to a tension in how prosecutors define their work in relation to the prosecution of rape: is it by reference to numbers, or in the practice of justice? Their words also suggest that numbers and justice exist in opposition to each other. Prosecutor B explains this further:

"It is not about this particular case you did so good. It is one case that you finalised. But you did so well, the effort that you put in that case, you know, going through the transcripts, seeing how much knowledge you have of the law, applications that you did, the address that you did, the preparation that you did, the manner in which you examined witnesses, the manner in which you cross examined. It is not about that."

The emphasis on numbers, she elaborated further, shaped prosecutors' orientation to trials in particular ways:

"That's why you find most prosecutors just going through the trial finalising, just going through the trial. Because I have got four trials that I have to deal with and I have to prepare and I have to consult and I have to think of it's almost the end of the month and I must have finalised about three or four cases and I have got nothing. So I am just going through motions, I am just pushing for stats,... Yes we have this anxiety, you get to work, you have to work and work. It's about numbers. You have to work and even the effort you put into a particular case, you cannot because you have got to think about another case, you've got to work, in a month you must have finalised such cases. How do you do that? How do you concentrate on that, then put so much effort [*into cases*]?"

LAB attorney B (*interview February 2017*) also implied that this particular court (court 1) withdrew a high number of cases in order to achieve its conviction rate:

"You know, I can tell you for sexual offences, once a case goes to court the conviction, it can be 70% to 80%. You know why? They withdraw, there are lots of withdrawals...So you get lots of withdrawals, then it minimises the acquittals. We have got more convictions."

According to this particular public defender, pursuing cases that required more effort: "I think they see it as time wasting. The resources are being wasted unnecessarily because they know they cannot convict".

Public defender A (*interview January 2017*), based at court 2, suggested that similar considerations motivated decision-making at other courts:

"I think the prosecution get merit for more convictions, I think that's how their merit system works. So it's very important for them to get convictions and I know in other courts like the court in area Z where I worked, ... The prosecutor would often withdraw cases if he knew the case wasn't strong and he knew he wouldn't get that conviction."

She went on to say that court 2 (where she now worked) had also granted prosecutors considerable discretion in the withdrawal of matters. However, the disputatious withdrawal of cases had led to a change in the processes prosecutors were required to follow before cases could be withdrawn.

Public defender A also provided a different set of insights into the effect of court performance measures, this time on magistrates:

"[W]e are a court that works very fast, very efficiently. I think he [*Magistrate M*] allocates probably more cases to his court than to other courts because he knows we can deal with them and sometimes it feels out of control for me, to be honest."

(Interviewer) Because?

I said that to him last year. I have never said it in my life because, usually, let's say, I will get 17 new cases a month, which is manageable and the last 3 or 4 months of the year I was getting 30 a month and I couldn't manage to consult with them. I didn't have enough time to consult with my clients and that's one thing I will never do. I will not go into a trial without having instructions – not on the day, prior to the day – because I like to think about the case.

(Interviewer) So how does it happen that you were getting more? Was there a shortage of staff, or other courts doing less work? I don't know. I suspect, and I have no evidence that it has got to do with stats, his stats, and that he wanted to make sure that his stats were good, or up to date, because he had been away for a while as an acting judge and I think he had lost cases during that period.

(Interviewer) They had gone to other courts?

Yes. Because in his place has been an acting magistrate and she didn't take on as many cases as he would have...I do know that the prosecutor and him are always talking about stats..."

Prosecutor A (*interview February 2017*) at court 3 stated that she was required to finalise 15 cases per month and achieve a 69% conviction rate. She explained the effects of this target on sexual offences matters:

"Remember, if you are a prosecutor in that court dealing with sexual offences, your matters are not going to get finalised as quick as the other prosecutor that is doing general offences, are quite easy because you can just produce evidence. Because it is not as complex as rape cases. Can you see there is a balance in the scale? With sexual offences, you find that on the morning of the trial you start the evidence and the child breaks down, or you find that the intermediary didn't pitch up, or the attorney is not present, or the accused didn't pitch up. So, there are different reasons why the matters do not proceed."

The way you speak to them [*child witnesses*], you don't have to use, obviously, a language they don't understand. You come down to their level and you communicate on a level they understand and not rush through the evidence because you want to get the case over and done with ...It is the targets. Also the magistrates have to write reports on why cases are not being finalised. They are also getting pressure now from their office as to why they are not finalising because the minister wants us to prioritise these types of cases.

The court hours are essential, obviously. For you to show you were in court you have to produce the hours and normally if they see you sat for 6 hours and you haven't finalised anything then it means you were not productive. But what were you doing for the 6 hours? You started a trial about maybe 10 'o clock, met the victim, which is 11 and she was cross examined. So you can then substantiate. You have to write reasons on your stats: why you sat for 6 hours and you haven't finalised anything. Because some courts sit for 3 hours and they finalise two cases for the day. Although they sat for less hours they reached their target for the day. Me that sat for 6 hours with a child witness is viewed differently. I don't know why they have that perception."

One of the effects of these targets appeared to be a fragmented approach to the day that saw many matters dealt with in small parts: bail, first appearances, postponements, part-heards, judgements and sentences. Public defender A observed the effect of this on rape trials:

“We do a lot of cases, it becomes very quick, I feel sorry for T (the prosecutor) because we will jump from one day, do parts of six cases, and we will jump and jump and then in the middle of it, she has now got to jump into a sexual offences cases. She is not sort of coming in and concentrating on it and leaving ... you don't really have enough time to think and process and adjust yourself. It's the truth, it is crazy.

(Interviewer) It sounds fragmented.

Yes, it is, and it's wrong, I think it's wrong for sexual offences cases because it is not like a robbery, you can pick up and leave off. It's almost like a therapy session and once you lose the momentum it is hard to get back into it... It is personal, it is intimate, it is a story, it is a journey. It's deep inside; it is not just something that happened to you on the outside. So it is different, I know when we have to break with a rape case we try and put it as soon as possible for the evidence to continue, but it's hard, it is very fragmented.”

Case over-loads

At one site, up to 15 cases were also being set down daily for trial at one site – an impossible undertaking that saw most trials being crowded out. This also saw cases being rushed through court and pleas being accepted to meet targets. To some extent the setting down of so many cases for trial every day was an attempt by the prosecutors to send a message to their managers about the impossibility of their workload. The situation had only eased with the redrawing of the magisterial district's boundaries. Still, the targets had become a source of contention between LAB attorneys and the prosecutors and, if anything, was making the attorneys fight matters harder. According to LAB attorney D, it was not the LAB's function to assist the prosecution reach their targets and their attorneys were opposing attempts to settle matters in particular ways.

At one court targets were also discouraging specialisation in sexual offences. According to the control prosecutor it was discouraging for prosecutors to work in a court that achieved only a 50% conviction rate, while other prosecutors achieved an 80% conviction rate. Consequently, rape cases were distributed between all the regional courts.

Views about prosecutor specialisation and dedicated courts

Most of those interviewed thought specialisation a key element of the prosecution of sexual offences. Specialists were described as having a “passion” for these cases, while generalists were “slapdash”, or approached these cases as just another part of their job. They were not always perceived as having the necessary compassion for complainants, or the patience to deal with children. Generalists were also not seen as having the requisite knowledge of the law in this area (just as specialists in this area did not always see themselves as having the sort of in-depth knowledge required to understand ballistics in a murder trial).

Prosecutors did not only require specialised knowledge to manage cases effectively. Their decisions and actions were also informed by the extent to which the court environment was tilted towards specialisation or generalisation. While one of the research sites dedicated both court room and personnel specifically to the prosecution of such crimes, the remainder demonstrated varying degrees of hybridity, as well as no specialisation at all. While such hybrid courts channelled sexual offences to courts, these also shared the roll with a range of other criminal matters. These courts also appeared subject to greater time pressures than the dedicated courts, with the prosecutors seeming to have less time to consult and prepare for trial. The facilities and equipment available to these courts was also lesser. As was observed at some of the sites, prosecutors shared offices, sometimes with another sexual offences prosecutor, at other times with prosecutors dealing with a range of different crimes. This had obvious implications for the privacy and confidentiality that could be afforded complainants and other witnesses.

Unavailability of functional equipment

Witnesses, including the accused must also be present and all equipment be in order. This includes the microphones necessary to record matters, as well as the recording equipment; the closed-circuit television (CCTV) which enabled children to testify in another room outside of the accused's presence; and the air conditioning. At the height of summer when the air conditioning was broken, the heat in a court room could be stupefying, with court personnel visibly struggling to stay awake. Police vehicles might break down, with the result that accused persons were not brought to court, while the truck bringing awaiting-trial prisoners might be delayed. Acoustics were poor in some courts, with the result that the court would adjourn during periods of heavy rainfall as it would be impossible to hear what was being said.

Malfunctioning equipment was particularly evidence at one court. The microphones stopped working, leading the court to be adjourned until the arrival of the technicians – who then could not repair the equipment and had to return the following day to do so. A week later the microphones had stopped working again. This court had two court rooms equipped with CCTV and, therefore, all children's matters from the six surrounding courts were also being referred to this court. At one point, they were also managing the children's matters for a seventh court due to that court's CCTV not having worked for over a year. However, both sets of CCTV equipment at this site were also prone to not working. At one point one of the CCTVs was out of order for more than 3 months. Because children's matters could now only be heard in this one court, the other courts had to wait for open periods in this court when children's matters could be heard. When such an opening appeared, the entire court would have to decamp to the next court room. Magistrates complained bitterly about this suspecting that contractors deliberately did a poor job to be provided with a steady stream of work for which the Department of Justice could be billed. These logistical problems slowed down pace – with significant implications for prosecutors' ability to meet their targets.

Ensuring everyone is in court

Strictly regulating the use of time was not in prosecutors' control. A court room collects together a number of different functionaries including the court stenographer (responsible for ensuring matters are recorded), the court orderly (a police official responsible for bringing and returning suspects from the cells to the dock), the interpreter(s), the magistrate, the prosecutor and the accused's legal representative. In some cases, these will be supplemented with intermediaries and assessors. All these functionaries must be present at the same time for the court to function. In at least two courts, both of which included “coloured” communities, there were no Afrikaans speaking interpreters. The result was that matters requiring Afrikaans testimony were often postponed until interpreters were available.

Discussion

Prosecutors make decisions about rape cases which are informed by the availability and quality of evidence in the docket, their “feel” for a complainant, and how their court’s systems are arranged. The resources available to prosecutors – including time – are also important considerations, as are their performance measures which play an important role in deciding which cases are set down for trial and the amount of time that is allocated towards their preparation and prosecution. Performance measures are not irrelevant and certainly have their place within the overall scheme of things. However, the centrality they have assumed in the courts is having unintended and perverse effects.

As many of the interviewees suggested, the targets are fundamentally altering how justice is understood and practised. For prosecutors, the emphasis on number diminishes recognition of their capabilities as litigators and turns justice into a “factory” or “conveyer belt.” It also reduces complainants to statistics who either contribute to, or detract from, merit awards. The targets may be perverse for their potential to reinforce and reproduce rape stereotypes. This is because they encourage prosecutors to focus on those cases that uphold conventional notions of “real” rape – that it is violent, results in injuries and typically takes place between strangers. Cases that challenge these conventions, but which are also more time consuming (even if potentially winnable) are thus less likely to be tried and complainants not provided with the opportunity to tell their story in court. This may be efficient but it is neither effective nor equitable.

The prosecution of rape requires a very different approach to measuring performance, one that is better attuned to the more qualitative and substantive dimensions of justice. Such measures might emphasise time spent on consulting with complainants and preparing them for trial (as opposed to the number of cases finalised in a month), as well as the ratio of withdrawals to trials. Lower conviction rates may also be acceptable if they result in more difficult cases being tried. It is only by bringing such “difficult” cases in greater numbers to magistrates’ attention, as well as by testing and developing their prosecution, that notions of “real” rape will be shifted. This will need to be matched by making available the resources – time, human and material – enabling prosecutors to develop specialised skills in this field. Providing ways of recognising and rewarding the time-consuming work that goes into proving rape is equally important. There is also need for the DOJ&CD and NPA to address the dysfunctional and complex contexts in which prosecutors are working.

Chapter 12

Conclusions



Picture courtesy of: GCIS

This report has outlined findings of rape case attrition in the criminal justice system based on an analysis of 3 952 case dockets that were randomly selected in a national sample of dockets opened with the police in the year 2012. The dockets provide insights into incidents of rape that are reported to the police and their outcome in the criminal justice system. It is important in reading the report to be mindful of the fact that only a proportion of victims the crime of rape ever report cases to the police. The oldest estimate of under-reporting suggested that only one in nine cases were reported (9) and more recent estimates from Gauteng province are that 1 in 25 rapes are reported to the police, with the largest under-reported group being those by intimate partners (3).

Our starting point is that rape constitutes a very serious human rights violation for its victims and has a profound impact on the physical and mental health of rape victims (83). In addition to immediate physical injury, the most profound impact is on the mental health of rape victims and their social functioning and relationships. It is also associated with an increased risk of HIV acquisition and a range of longer term sexual and reproductive health problems (83). In children, rape commonly results in depression and post-traumatic stress disorder (PTSD), which may be expressed in outbursts of aggression and poor impulse control, dissociative problems, and difficulty with various relationships and this can profoundly impact children's schooling and future life prospects (24).

Preventing rape from ever occurring is essential. An overview of factors driving the problem of rape is provided elsewhere (84). Our report has pointed to several important dimensions for policy. We have shown that rape of young children often happens during the day and especially in the afternoons between school and the end of the working day. This suggests that child care interventions, especially ECD and afterschool care may be important in rape prevention, and that these should be made available and subsidized for the poorest families so that they can be accessed by those whose children are most vulnerable. Parents obviously also have an important role in protecting children from rape. The role of two parent households in protection is most likely due to these homes being more structured and having more effective rules for children. Parenting support can also help parents from single parent families recognise the importance of consistent discipline, structure and supervision for children, including protecting them from rape. Our findings raise the likelihood that interventions that provide gender empowerment and very basic self-defense for women and girls may be very valuable and should be widely encouraged as part of rape prevention. These have been shown to have great effect in other settings (85-87)

The criminal justice system has an important role in rape prevention. Punitive measures are important to prevent perpetrators from re-offending. Research shows that half of men who ever rape do so on multiple occasions (52, 88, 89). The criminal justice system has a vital role in interrupting the pattern of re-offending. It is also well established that rape perpetration is driven by social norms that deem rape a not very serious offence. These are expressed in blaming and stigmatizing rape victims and in evidence that families often consider that what happened was "just rape" and should not be allowed to prevent boys and men from their otherwise promising careers in school, families and general social life (84, 90-94). The criminal justice system sends a powerful message to communities about the seriousness of rape when perpetrators are convicted and given long sentences.

Work with the Department of Social Development around prevention and identification of sexual abuse among children and adults with disabilities is vital. Our findings suggest that there may be considerable under-reporting and that these cases are quite difficult to successfully prosecute. However, it is essential that this vulnerable social group is protected. Deployment and training for more social workers is important to strengthen prosecution of these vulnerable groups.

Our research has shown that there is substantial case attrition from the point at which crimes are first reported until guilty verdicts are secured in the courtroom. Fewer than one in ten cases initially opened are closed with a guilty verdict. We did not find great improvement in this in Gauteng Province since the Tracking Justice Study was done in Gauteng on cases from 2003 (20), but the performance is better in other provinces. One of the changes since 2003 has been in the availability and role of DNA, which our findings suggest is highly influential in more perpetrators pleading guilty and leading to convictions in trials showing that DNA evidence has a very important role as does good basic policing.

When we examined the drivers of attrition and reasons for this we see a substantial loss of cases through the police's inability to identify and arrest a suspect, due to evidence in cases being limited and insufficient for a trial, and due to victims deciding they would rather get on with their lives. At face value these factors may seem intractable. However, our research has highlighted complex dimensions of these explanations for attrition. We have shown that arrests are influenced by the energy that the police put into cases, which in turn are influenced by assessments made by the police about the "severity" of the rape. Many known perpetrators are still not arrested. Where police are more dedicated and energetic, arrests are more often made and these cases are less likely to be closed by prosecutors.

We have shown that police morale is influenced by levels of stress at work, which are much worse when there is limited access to the tools of the police trade, which include access to vehicles. Stressed IOs held negative gender attitudes and these have negatively affect empathy and communication with victims. Research from other settings has shown that victims are much more likely to lose interest in cases if they do not feel they have an empathetic reception from the police (95). It is essential that police are properly equipped for their job, particularly with vehicles and other resources, and that efforts are made to try and reduce loss of cases from complainant withdrawal. We suggest that there should be research into the impact of different working relationships with complainants, including those that are based more on a partnership with the complainant, who is regularly updated on case progress, through discussion of findings and in-depth discussions about the impact of cases on complainants' lives to assess their impact on retaining complainant interest in pursuing cases. We further note that although 80% of interviewed IOs received training on the FCS course, this was not associated with positive gender attitudes and rape myths. We suggest that the curriculum and pedagogical methods of the FCS course need to be reviewed.

We found that nearly half of rape cases are being led by the most junior police officers with limited power within SAPS to access resources and with limited supervision. This does not send a message to the community that rape is considered an important matter. The lack of supervision is critically important, as much of the police work was inadequate. IOs often did not visit crime scenes, did not take witness statements timeously and did not appropriately organize for SAECK completion and dispatch to the FSL. We have shown that where these are all carried out they have a vital impact on cases, all the way through the likelihood of getting a guilty verdict at trial. We suggest that there need to be changes in working arrangements and supervision to improve police investigation and that these should include police performance targets on timeous completion of gathering evidence in cases. Staffing arrangements related to case investigation may need to be changed to enable this, including moving away from one IO handling each case. Research can be useful in studying how members within the FCS Unit can be most effectively deployed.

We have shown that medico-legal evidence is very important in the progress of cases in the criminal justice system. It is, of course, only one element of post-rape healthcare that is given to victims. Much of victim examination and healthcare is still provided through hospitals rather than through crisis centres and it is vital that staff are properly trained to carry out this work. The National Department of Health developed a national curriculum for this in 2008 (58) and training was rolled out in the provinces, but there has not been a great deal of training recently. It is essential that this is continued. Many IOs are not knowledgeable enough about the appropriate use of SAECKs and they need to be trained in this, as well as understanding just how important this evidence is.

Most of the cases that were not closed by the police were ultimately closed by prosecutors. Prosecutor training is critical to ensure that good decisions are made. Our research has suggested that prosecutors close cases that are considered less easy to win in court, but very often these are cases of vulnerable groups such as children and disabled victims, where more work would be required to secure a conviction.

Internationally, it has been established that these cases are more often successful if special measures, including closed circuit TV, intermediaries and anatomical dolls are used and expert witnesses are called to assist the court. From studying trial transcripts, it was clear that special measures were not always in place as would be expected. There are important lessons to be learnt from the United Kingdom, which is shifting to all victim evidence being provided by CCTV.

It was also clear that it takes a lot of time to prepare rape cases for trial. However, the climate in courts resulted in prosecutors chasing performance measures that were influenced by case completion. Case completion within specified timeframes was most heavily emphasized and rewarded, making the extra effort to win difficult cases that potentially took time that is over specified timeframes was disincentivised. This needs to be addressed as it is not in the interests of justice and our society that perpetrators of rape particularly involving children and disabled victims go unpunished.

Overall the conviction rate of trials is below 50% and given the selection of cases for trial this is much too low. Further we have shown that routinely many of the sentences deviate from minimum sentencing. This research was conducted before the re-establishment of sexual offences courts. It is vitally important that efforts are made to improve the conviction rate, but these should be coupled with a goal of increasing the proportion of rape cases that are taken to trial and so are closed with a conviction. This is not possible without stronger management, training and guidance through the police investigation stages and of prosecutors in preparing cases. It is also essential that presiding officers are more knowledgeable about rape and especially its social context of rape stigma, victim blaming and the mental health impact of rape that influences victim behavior. These are all matters about which a considerable amount is known and so the challenge is to provide the context through which presiding officers and prosecutors can be appropriately informed.

Our research has raised worrying questions about the use of language in processes of the criminal justice system from taking of statements and having these agreed as a true record by complainants to translation in court. Police are routinely expected to act as interpreters without any formal training and generally without any post-matric education. This not a recipe for accuracy, nor for creating a feeling among complainants that they are being welcomed in opening a case and will be involved in the case's progress. One of the interventions which could make a great difference to the criminal justice system is taking complainant statements in their first language, with professional translation, and exploring the move, where feasible, to first language court proceedings. Where this is not feasible it is essential that all translators are properly trained, shown to be proficient in both languages, having their work quality monitored. Efforts are needed to upgrade language competency of key role players in the system as this clearly impacts on cases. Improving the recording of cases not only should create better trial records which is essential for appeals, but enable audit of proceedings to be carried out with the intention of improving performance.

Overall the criminal justice system deploys considerable State resources in the investigation of rape cases and court proceedings. The fact that only one in 10 of these cases result in a guilty verdict is a demonstration of a system that is currently extremely inefficient. The economic costs of investigating cases that never go to trial or result in convictions is enormous and the social costs to victims and their families and cost of justice forgone is very substantial. The fact that there has been very little progress between the Tracking Justice study in 2003 and our study in 2012 demonstrates that there is a need for radical overhaul of the system. One of the clear messages is that the organization and functioning of the criminal justice system needs to be informed by research and evidence on what actually makes a difference to police, prosecution, presiding officers and complainant behavior and intentions, and ultimately case outcomes.

Recommendations

We recommend that:

Case reporting:

1. The Department for Social Development develop mechanisms to enhance identification of disabled children exposed to sexual violence, with a special focus on those under age 12
2. Campaigns to increase reporting of rape cases to the police particularly address provinces with a low proportion of adult cases reported such as Kwa-Zulu Natal

Rape Prevention:

3. The Departments of Basic Education and Social Development should expand access to after school care for children and make necessary transport arrangements to reduce the period that children are unsupervised between the end of the school day and parents' return from work.
4. Development of sexual abuse prevention education that teach young children to recognise sexual abuse ,encourages them to tell adults and promotes early disclosures
5. The Departments of Basic Education and Social Development provide training for parents on parenting to prevent sexual violence with a focus on risk and supervision, and positive parenting
6. Schools and institutions of higher education provide gender empowerment and self-defence training for girls and young women, relationship and gender-based violence prevention programmes for adolescents.

Police work:

7. IOs should be appropriately resourced to investigate cases and urgent attention paid to the availability of vehicles and other resources and management interventions to improve policing
8. Efforts should be enhanced to improve the quality and timeousness of investigations including stronger supervision of IOs
9. Police performance targets should include the quality and completeness of rape investigations and within a stipulated time after the case is reported.
10. Police should be encouraged to do basic policing well.
11. All detectives working on rape cases must be thoroughly trained to deal with cases including those with special needs victims with empathy and reduce secondary victimisation.
12. The FCS investigator's course content should be reviewed to ensure that there is sufficient emphasis on understanding and changing the gender attitudes and rape myths held by FCS investigators and building awareness on how these may impact on work

Medico-legal:

13. Continued training of medical examiners should be provided to ensure all examiners conduct thorough examinations, appropriately fill the J88 forms and improve documentation of injuries, completion of the SAECK, as well as the medical management of the victim
14. Presiding officers and prosecutors should be trained in understanding medico-legal evidence and social context of rape cases, including the appropriate interpretation of absence of injuries
15. The revised J88 that has address some of the challenges with the previous, should be used.

Prosecution:

16. Performance targets for prosecutors should take into account the nature of rape cases and include attainable quality measures as well as case numbers
17. Case closure by prosecutors should be monitored to identify and reduce the impact of target chasing on premature closure of cases
18. Multi-sectoral audit processes should be established in courts to review decisions not to prosecute cases and focus especially on non-evidentiary aspects of such decisions
19. Cases identified as having insufficient investigation should be sent back for this to be completed and reasons for failure to do this should be provided and monitored
20. The use of a wider set of expert witnesses in prosecution and sentencing, including child psychologists, should be encouraged and its impact monitored

Adjudication:

21. Further training be provided to presiding officers to ensure that rape myths about 'real rape being violent' are not brought to play on verdicts
22. Circumstances for deviation from minimum sentencing be actively reviewed and presiding officers be engaged on patterns of deviation

Trial records:

23. Intervention be provided to overhaul trial record keeping and transcription services to improve the quality of records and their availability for appeals through monitoring and evaluation of the system

Trial records:

24. Courts should be encouraged to use special measures especially intermediaries for child witnesses and anatomical dolls. These should be provided when requested.

25. Special measures such as operations of the court in official languages other than English and Afrikaans should be investigated to enhance access to justice

26. Courts should be encouraged to call expert witnesses to enable appropriate interpretation of child complainant behaviour and their use should be monitored

27. Translators in courts should be professionalised, competency tested and assured to ensure the quality of their work

28. First language statement taking should be enabled, with professional translation where required

29. Courts be fitted with microphones for all relevant court personnel and all conversation be audio-recorded so that complete records of proceedings can be made and digitally retained

Research:

30. Given the failure of the current system to provide justice to many rape victims we recommend that the National Treasury and donor partners invest in a programme of research to improve access to justice, including but not limited to:

- a. Systematic reviews of evidence for effectiveness of policing and prosecutorial decision-making models and court operations
- b. Alternative models of police/prosecutorial/complainant relations in case investigation and decision-making including models of partnership with complainants
- c. Management models of decision-making on resource management in police stations and investigative units
- d. The impact on case investigation of team work with a focus on early statement taking and crime scene evidence collection
- e. Management and oversight of case preparation by prosecutors for trials
- f. The impact of routine use of intermediaries and recorded evidence in court on outcomes
- g. Effective support mechanisms for victims so that they stay the course and do not withdraw cases
- h. Prevailing work conditions, vicarious or other trauma, work stress and its impacts on policing and prosecution.

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**Gender and Health Research Unit
(Pretoria Office)**

Tel: +27 (0) 12 339-8526
Fax: +27 (0) 12 339-8582

Postal address:

Medical Research Council
Private Bag X385
Pretoria 0001
South Africa

Street address:

MRC Building
1 Soutpansberg Road
Pretoria

**Gender and Health Research Unit
(Cape Town Office)**

Tel: +27 (0) 21 938-0445
Fax: +27 (0) 21 938-0310

Postal address:

Medical Research Council
Private Bag 19070
Tygerberg 7505
South Africa

Street address:

MRC Building
Francie van Zyl Drive
Parow

**Gender and Health Research Unit
(Durban Office)**

Tel: +27 (0) 31 242-3600
Fax: +27 (0) 31 242-3806

Postal address:

South African Medical Research Council
P.O. Box 70380
Overport, 4901
South Africa

Street address:

SAMRC Building
491 Peter Mokaba Ridge Road
Overport