

# Rape and other forms of sexual violence in South Africa

Lisa Vetten

## Recommendations

In order to combat sexual violence in South Africa, this policy brief makes the following recommendations:

- 1** The quality of the police's crime statistics should be improved. This will help to show who has access to the criminal justice system and to track trends in these crimes.
- 2** Well-designed community surveys should be conducted in efforts to address sexual violence.
- 3** Barriers to reporting sex crimes should be reduced to strengthen the criminal justice system's response to rape.
- 4** Efforts to dismantle South Africa's inequitable gender order should be addressed, in relation to both men and women. All associated programmes and campaigns must be scrutinised for the possibly inadvertent perpetuation of stereotypes of gender inequality.
- 5** The attraction of gangs and drugs in at-risk communities must be reduced, and quality services must be made available to children and their caregivers to prevent the neglect and abuse of children.

## Summary

The high rate of rape and other forms of sexual violence in South Africa has sparked concern and outrage, leading to law reform, parliamentary debates, marches and campaigns. It has also led to a range of policy interventions intended to reduce the number of people who fall victim to these crimes. This policy brief summarises available information about the nature and extent of sexual violence in South Africa. It also describes some efforts to address the problem. However, it does not focus extensively on child sexual abuse – this being a topic in its own right.

SEXUAL VIOLENCE TAKES different forms and ranges from unwanted sexual comments to rape and murder. This variety is reflected in our legislation, which references 59 different sexual offences. These offences can be found in the Sexual Offences and Related Matters Amendment Act of 2007 (SOA), as well as those provisions of the Sexual Offences Act of 1957 that have not been repealed yet. Some of these crimes include:

- Rape and compelled rape. Compelled rape refers to incidents where a third party coerces two people into having sex. One example would be a housebreaker who forces household residents into having sex with each other. In this instance both parties are treated as victims and the robber is charged with compelled rape.
- Sexual assault, compelled sexual assault and compelled self-sexual assault. Sexual assault includes sexual acts that do not involve penetration (such as groping, for example), while compelled sexual assault, like compelled rape, covers those situations where one person is intimidated into sexually assaulting another. Compelled self-sexual assault refers to situations where one party is pressurised into masturbating or touching themselves in other sexual ways on the command of another.
- Incest, bestiality and sexual acts with a corpse.

- Sexual exploitation and grooming of children, as well as of persons who are mentally disabled.
- Compelling or causing children to witness sexual offences, sexual acts or self-masturbation.
- Exposure or display of pornography, or child pornography, to persons who are mentally disabled and using people with mental disabilities for pornographic purposes, or benefiting therefrom.
- Exposure or display of pornography, or child pornography, to children and using children for pornographic purposes, or benefiting therefrom.

## Extent and nature of sexual violence in South Africa

Not all forms of sexual violence are defined as crimes in South Africa. Much sexual harassment, for example, falls within the ambit of behaviour treated as misconduct and is dealt with in terms of labour law and institutions' disciplinary codes. This location of sexual violence within different laws means that it is difficult to get a comprehensive overview of the nature and extent of reported sexual victimisation in South Africa. Although the South African Police Service (SAPS) provides figures for some sexual offences once a year, educational institutions and workplaces are not compelled to report on their disciplinary proceedings. As a result, some cases of sexual victimisation will be hidden. Very little research has been undertaken to explore these gaps.

There is also very little nationally representative data on all types of sexual offences, and in some instances there is no information at all regarding the experiences of particular categories of victims. That which is available is set out below.

### Rape homicide

At its most lethal, rape culminates in murder. In 1999 a national study of cases drawn from 25 medico-legal laboratories estimated that about one in six (16,3%) of the female homicides that occurred that year involved rape. This gave a rape homicide rate of 3,65 per 100 000 women over the age of 13, a prevalence rate higher than that of all female homicides in the United States (US).<sup>1</sup> When this analysis of female murders was repeated in 2009, the rate had decreased slightly to 2,5 per 100 000 women. Although this drop in numbers may give the impression that rape homicide is decreasing, the decline is not big enough to be statistically significant.<sup>2</sup> The same 2009 study also examined the presence of sexual assault in the murders of girls under the age of 18 and found that one-quarter of girls' homicides (as opposed to 1,5% of boys') were related to sexual assault.<sup>3</sup>

### Rape

Prior to late 2007 and the introduction of the SOA, the police reported separately on rape and what was then termed indecent assault. However, once the Act was promulgated the police largely stopped providing data disaggregated by type of sexual offence and only provided figures for the total number of sexual offences overall. From 2008 onwards it has therefore not always been possible to know which of the 59 sexual offences contained in the Acts of 1957 and 2007 are included within this total and which are excluded. This has made it difficult to track the number of rapes being reported annually and almost impossible to assess how many of the new crimes introduced through the SOA are reported and recorded by the police.

44 751

RAPES WERE REPORTED  
BETWEEN APRIL 1994  
AND MARCH 1995.  
BY 2010/11 THIS FIGURE  
HAD RISEN TO

56 272

Reporting on the overall number of sexual offences also obscures fluctuations within particular categories. For example, in its 2012/13 analysis of the crime statistics, the SAPS reported that sexual offences had dropped by 12,3% between 2008/09 and 2012/13. Rape, however (which included compelled rape and acts of consensual sexual penetration between children aged 12 to 15), declined by just 3,3% during the same period, while sexual assault (which replaced the old crime of indecent assault) increased by 0,7% between 2008/09 and 2011/12 and then decreased by 6,2% in 2012/13

Available information about rape specifically shows that 44 751 rapes were reported between April 1994 and March 1995. By 2010/11 this had risen to 56 272 rapes. While these figures climbed rapidly in the late 1990s and early 2000s, they have largely plateaued over the last few years, neither increasing nor decreasing in significant ways. Gauteng is something of an exception, with SAPS data for the province claiming that the rate of reported sexual offences declined by 43,3% between 2008/09 and 2012/13.<sup>4</sup> However, it is an open question whether the police figures are measuring a reduction in the number of rapes reported or an actual reduction in the incidence of rape.

Interviews conducted in Gauteng in 2010 by Gender Links and the Medical Research Council (MRC) found that almost one in 12 women had been raped in 2009. Only one in 13 women raped by a non-partner reported the matter, while a scant one in 25 women raped by their partners reported the matter to the police. The same study also found that 25,3% of women interviewed had experienced sexual violence in their lifetimes, while 37,4% of men admitted to having perpetrated such violence.<sup>5</sup>

The Gauteng study is not the first to show how extensively under-reported rape is. A national study found that only one in nine women who had been raped and also had physical force used against them reported the attack to the police.<sup>6</sup> Low levels of reporting are not unique to South Africa and happen all over the world. It is by now accepted that police figures

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for rape do not capture the full extent of the problem. Table 1 summarises the barriers to reporting identified in both national and international research.

Police data not only under-reports the extent of sexual violence but also provides no information about the context in which

**Table 1: Factors affecting the reporting of sexual offences**

Reasons for not reporting a sexual offence	Reasons for reporting a sexual offence
<ul style="list-style-type: none"> <li>• Fear of not being believed or being accused of lying</li> <li>• Feelings of shame, guilt, humiliation and embarrassment</li> <li>• Feelings of pity and love towards the offender</li> <li>• Problems of physical access to police or social workers</li> <li>• Fear of retaliation or intimidation by the offender, especially when combined with a lack of confidence that the legal process will result in a conviction</li> <li>• Fear of legal processes, including experiencing rudeness and poor treatment by the police</li> <li>• Fear of having to relive the trauma in court and during the investigation</li> <li>• Fear of upsetting the stability of the family</li> <li>• Fear of the power and authority of the abuser</li> <li>• Fear of loss of economic support by the abuser</li> <li>• Preference for cultural means of resolving disputes (such as the payment of damages by the offender)</li> <li>• Fear of ostracism or ridicule by peers</li> <li>• Wanting to avoid the stigma attached to being raped (being labelled as 'damaged')</li> </ul>	<ul style="list-style-type: none"> <li>• The belief that sexual assault is a serious offence that should be reported</li> <li>• To ensure personal safety and future protection from the offender</li> <li>• To prevent the offence from being repeated, or the offender's harming others</li> <li>• To make the offender take responsibility for his/her actions</li> <li>• To ensure the offender is brought to justice and punished</li> <li>• To obtain help</li> <li>• To regain a sense of control</li> <li>• To gain compensation</li> </ul>

particular rapes take place. One piece of information that is never provided, for instance, is the relationship between the perpetrator and victim. However, an analysis of 2 068 rape cases reported in Gauteng in 2003 provides some insight into the circumstances surrounding rape. This study shows that girls under the age of 12 are especially likely to be raped by someone known to them, with relatives, friends and neighbours perpetrating 84% of rapes reported by girls in this age category. In contrast, 57% of rapes reported by girls between the ages of 12 and 17 and 52% of rapes reported by adult women were perpetrated by someone known to the victim. Almost one in five adult women (18,8%) reported being raped by a current or former intimate male partner.<sup>7</sup>

While the police have begun distinguishing between adult and child victims, this information is not further broken down into

discrete age categories. This means that when individual cases involving the rape of very young children or older women hit the headlines, we have no idea how frequent such incidents are, or whether they are on the decrease or increase. Some insight into the rape of very young children is provided by the study of reported rapes conducted in Gauteng in 2003. This sample included four victims (0,2%) aged a year or less, another 19 who were two years old (0,9%) and 35 victims three years of age (1,7%). In total, victims aged three years and younger accounted for 2,8% of all victims in the study where an age could be determined.<sup>8</sup> However, knowing this does not help us to understand how common child rape is across the country.

The deliberate and selective rape of lesbians and other gender non-conforming women is another phenomenon that has attracted a good deal of public attention but little research. The only study that has made some attempt to explore the extent of the problem comprised a convenience sample of 591 women largely recruited by community-based organisations in Botswana, Namibia, South Africa and Zimbabwe.

### 'Corrective rape' has attracted a good deal of public attention but little research

This study found 31,1% to have had an experience of forced sex – 14,9% by men only, 6,6% by women only and 9,6% by both men and women.<sup>9</sup>

Although an entire chapter of the SOA is devoted to criminalising sexual offences against people with intellectual disabilities, there is also no information available from the police on how many of these crimes are being reported. This reflects the general absence of information about people with disabilities' experience of sexual violence. While the Gauteng study of reported rape showed 41 of the victims (or 1,9%) to have some form of disability,<sup>10</sup> these figures fell below the prevalence of disability in Gauteng, calculated as affecting 3,8% of the female population in the province in the 2001 census. It is impossible to know whether these figures reflect under-recording of disability on official documents; under-reporting of rape by victims with disabilities; or a lower vulnerability to rape among disabled people. International research suggests that the last explanation is unlikely.

Two other groups whose experiences of sexual violence have not been well documented are men and sex workers. One household survey conducted in KwaZulu-Natal and the Eastern Cape determined that about one in ten (9,6%) of the 1 705 men interviewed had experienced sexual victimisation by other men in the course of their lifetimes.<sup>11</sup> Small, non-random surveys of sex workers suggest that both clients and police officers perpetrate considerable violence against this group.

### Research challenges

As this overview illustrates, information provided by police statistics can only sketch the broad outlines of sexual violence in the country. Detail and nuance must be sought in community-based surveys and small-scale qualitative studies. Victimisation surveys, for example, typically attempt to randomly select a representative slice of the population who can be interviewed about their experiences of different forms of violence, as well as whether or not they had reported the crime to the police. It is notoriously difficult for survivors to speak of experiences of sexual violation and researchers require depth training to equip them with the necessary sensitivity to ask about the topic. In addition, the questions in such a survey need to be formulated carefully to take account of the

THE CENTRAL REGION  
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PREVALENCE OF RAPE

(21,05%)

FOLLOWED BY  
SOUTHERN AFRICA

(17,41%)

fact that many victims may not describe their experiences as rape – even though what they have experienced would fit its legal definition.

These difficulties are both illustrated and acknowledged by Statistics South Africa in its Victims of Crime Survey. Covering the period January to December 2011, the survey found that 94,1% of rapes reported to the researchers had also been reported to the police.<sup>12</sup> However, it cautions that its findings under-represent the scale of the problem since the survey captured fewer rapes than the number reported to the police during the same time period (32 000 vs. 56 272).<sup>13</sup> Better data about sexual violence tends to be obtained from studies that focus only on such violence, rather than violence in general.

## Comparing levels of sexual violence

Comparing different countries' rates of rape is an imprecise exercise. Where official police data is relied upon, rates of reported rape are being compared rather than the actual number of rapes occurring in a particular country. Country comparisons based on police data are also complicated by the fact that different countries use different legal definitions of rape, some of which are broader than others. Inter-country comparisons are therefore not always comparisons of the same set of acts. South Africa's definition of rape is a good example of this. Before the 2007 SOA, forced anal and oral penetration, as well as non-consensual penetration of either the anus or vagina with a foreign object, were dealt with as crimes of indecent assault rather than rape. Following the promulgation of the SOA, these acts were redefined as rape. Because the definition of rape changed, the police stopped providing figures for rape from 2008 onwards on the basis that they were no longer comparable with figures that predated the SOA.

In order to arrive at global and regional estimates of the prevalence of non-partner sexual violence and bypass the limitations of police data, the World Health Organisation (WHO) undertook a systematic review of 77 population-based studies from 56 countries in 2013. Internationally the lifetime prevalence of non-partner rape was estimated at 7,2%. However, regions classified as high-income by the WHO (including Western Europe, North America and Australia) reported a lifetime prevalence rate of 12,6%. Of the regions classified by the WHO as low and middle-income, Africa reported a lifetime prevalence rate of 11,9% and South and central America a rate of 10,7%. The lowest estimate was for South-East Asia, calculated at 4,9%.<sup>14</sup> The 2010 Global Burden of Disease report nuances these figures further. In this study the Central region of sub-Saharan Africa reported the highest prevalence (21,05%), followed by Southern Africa (17,41%), with the Australasia region (16,46%) reporting the third-highest prevalence.<sup>15</sup> The

SAPS figures are not directly comparable because they are calculated differently, but in 2012/13 it was estimated that 94,5 of every 100 000 South Africans had reported being a victim of rape during that 12-month period.<sup>16</sup>

## Criminal justice system response

Sexual offences are addressed in an extensive regulatory framework which, in addition to the SOA, also comprises the Criminal Procedure Act of 1977, various amendments dealing with bail and sentencing, and legislation applicable to the education sector (e.g. the Education Laws Amendment Act of 2000, the 2000 Code of Conduct of the South African Council of Educators and the South African Schools Act of 1996). National Instructions further guide the work of the police, while Directives regulate the roles and duties of health workers.

Specialisation is also increasingly evident as a policy approach, manifest in the police's Family Violence Child Protection and Sexual Offences (FCS) Units, the Thuthuzela Care Centres based in health facilities, and the reintroduction of sexual offences courts.

Recognition of the need for specialised responses to sexual violence has not been unwavering: in 2006 then Police Commissioner Jackie Selebi effectively dismantled the FCS Units, while in 2005 a moratorium was placed on the further expansion of sexual offences courts. The FCS Units were only reintroduced in 2011 and a small number of sexual offences courts in 2013. This policy instability both disrupted criminal justice system services and contributed to the loss of valuable experience. Understaffing and under-resourcing, as well as insufficient training of personnel, further compound these structural problems.

## Rape myths and stereotypes worsen the plight of victims of sexual offences

Also complicating the implementation of law and policy are myths and stereotypes about rape and rape victims that considerably worsen the plight of victims of sexual offences, not least because they trivialise the harm of sexual victimisation and blame victims for its occurrence. The consequence of these ideas may be unsympathetic, disbelieving and inappropriate responses to these victims by society in general, as well as at each stage of the criminal justice process. For example, in a survey carried out at 31 health facilities around the country that treat rape survivors, one in three health practitioners (32,6%) said they did not consider rape to be a serious medical condition.<sup>17</sup> An evaluation of 26 medico-legal services in Gauteng referred to the 'unsympathetic, judgemental and impatient attitude' demonstrated by health workers towards the

women.<sup>18</sup> Suspicion of rape complainants was also embedded in legislation through the cautionary rule applicable to sexual offences and the ‘hue and cry’ rule.<sup>19</sup> While the 2007 SOA attempted to abolish both, cases continue to emerge illustrating the persistence of disbelieving attitudes towards rape complainants.

These factors contribute to the low conviction rate for rape in South Africa. The most comprehensive data on the progression of rape cases from reporting to sentencing can be found in the Gauteng study of reported rape. Of the 2 068 dockets opened, half resulted in arrests (50,5%) but only 42,8% of the alleged offenders were charged in court. Trials commenced in fewer than one in five cases (17,3%) and a conviction for any crime came about in just over 1 in 20 cases (6,2%).<sup>20</sup> However, some of these convictions were for lesser charges, so overall only 4,1% of cases reported as rape

## The overwhelming majority of sexual offenders are never held to account for their actions

resulted in convictions for rape. Not all those convicted received the minimum sentences mandated by law: 15,6% of cases received less than the mandated 10 years’ minimum sentence while the other prescribed sentence for rape, life imprisonment, was even more rarely observed. While 34 of the men (41%) convicted of rape were eligible for life imprisonment, this was handed down in only three cases.<sup>21</sup> If we take under-reporting into account, it is clear that the overwhelming majority of sexual offenders are never held to account for their actions. The criminal justice system thus works too infrequently and inconsistently for it to be an effective deterrent to sexual violence.

### Combating and preventing sexual violence

Many preventive efforts are underway in South Africa. However, very few are documented and even fewer are rigorously evaluated for their impact.

Research examining the contribution of rape myths to a culture of male sexual entitlement and the normalisation of rape suggests that a high level of rape myth acceptance coincides with very high levels of rape.<sup>22</sup> Further, it would also appear the higher an individual man’s level of acceptance of rape myths, the more likely he is to report a proclivity to rape. Such men also tend to score highly on scales measuring hostile sexism,<sup>23</sup> which refers to beliefs that women are inferior, cold, aggressive and selfish and seek to take over men’s rightful place. Its close cousin is benevolent sexism, which manifests as ideas about women’s specialness and their need to be cherished and protected. When these scales were tested across a number of countries, South African men scored very highly – as did South African women in relation to benevolent sexism.<sup>24</sup>

A few studies have also sought to identify what is distinctive about men who rape. In addition to their holding gender-inequitable views, men who rape are also more likely to be physically violent towards their partners, engage in sex with multiple partners and practice transactional sex.<sup>25</sup> However, there were differences between men who raped their partners and men who raped non-partners. Those who raped non-partners were more likely to be susceptible to peer pressure, use drugs and belong to gangs, as well as being wealthier and more socially advantaged than those men who raped their partners. Childhood adversity (including emotional and physical neglect, along with physical, emotional and sexual abuse) was common to both groups of men.<sup>26</sup> A later study suggested that being raped by a man, as well as having a mother with

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OF THE

2 068

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WERE CHARGED IN COURT

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higher levels of education, was also associated with men who raped. The latter seemed to be associated with these men's perceptions that they deserved more out of life than they currently enjoyed, given their mothers' education. Three-quarters (75%) of first rapes were perpetrated before the age of 20 and more than half of the men raped on two or more occasions.<sup>27</sup>

## Conclusions

The various studies summarised in this short overview provide us with some clues to where we could focus attention in order to combat and reduce rape. These include:

- Improving the quality and type of statistics collected by the police. Doing so would provide insight into who has access to the criminal justice system (and who does not), and enable better tracking of trends (such as an increase in attacks on older women). Comprehensive reporting on all forms of sexual violence is also necessary.
- Well-designed community-based surveys need to become a regular feature of efforts to address sexual violence.
- Given data suggesting that the majority of men who rape do so more than once, it is imperative that barriers to reporting be reduced. This needs to go hand-in-hand with strengthening the criminal justice system's response to rape, both to provide victims with justice and to detain men likely to commit further rapes if left unchecked.
- Efforts to dismantle South Africa's inequitable gender order must continue and address both men and women. This does not mean that every institution or individual is necessarily suited to providing such programming. With sexism being as entrenched as it is, programmes need to be carefully scrutinised for what they are endorsing. Campaigns based on women's vulnerability and need for protection, for example, may well be sustaining benevolent forms of sexism, rather than challenging gender inequality. These efforts need to begin early, given how many men who rape commit their first rape before they are 20.
- Addressing sexual violence and domestic violence is of mutual benefit to both forms of abuse. More generally, reducing the attractions of drugs and gangs would also help.
- It is necessary to alter the social conditions that facilitate the neglect and abuse of children. This includes ensuring the widespread availability of quality services and other forms of assistance to children and their caregivers.

## Notes

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### About the ISS

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