



## Analysis of the performance of sexual offences court-ready dockets in courts in Gauteng, South Africa

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**ABSTRACT:** The statistics of rape and compelled rape in South Africa are indicative of how rampant these crimes are. These crimes are often committed against women, children, the elderly and people with disabilities. However, the conviction rate of rape and compelled rape cases remains very low despite the high number of incidents reported. The low conviction rate, which may be attributed to high attrition of case dockets on sexual offences, is also linked to cases that are being withdrawn, thrown out of court due to the poor investigation as well as those that are closed as undetected and unfounded. This attrition is still happening to the case dockets which are declared 'court-ready' by the prosecutors. The performance of the court-ready dockets in the courts of law remains a worrying factor. They are being withdrawn in court, thrown out of court, dismissed and sent back for further investigation. Court-ready dockets on sexual offences are of grave concern because a court-ready docket comes into being when all documents and evidence are in the docket and the prosecutor is satisfied that the trial may start. The biggest challenge, therefore, will relate to the quality of investigation that preceded the declaration of such a case docket as court-ready, as well as the ability of investigators to implement the instructions of the prosecutors or to conduct further investigation. The aim of this study is to explore factors which lead to low conviction rates of 'court-ready dockets' of rape and compelled rape. Although the central purpose is to establish the level of performance of these case dockets in the courts of law, the study also intends to understand the reasons behind the poor investigation of sexual offences cases, which in turn impact on the conviction rate adversely. It is critical to understand the dynamics which lead to poor conviction rates as this has a ripple effect on the reporting of sexual offences and the general confidence of the community in the police.

**KEYWORDS:** Sexual offences, rape, and court-ready docket

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### I. INTRODUCTIONS

The high rape statistics are a growing concern in South Africa, with Gauteng being the highest amongst all the provinces followed by Kwazulu-Natal (Crime Stats, 2018). In 2017, the number of rape cases reported were 7549 and it increased to 8062 in 2018. The investigating officers (IO's) of the Family Violence, Child Protection and Sexual Offences Unit (FCS) are charged with the responsibility of investigating these cases, arresting and convicting perpetrators. According to the South African Police Service (SAPS) guidelines on sexual offences, IO's are expected to assist the victims of sexual offences as well as protect the victims because the bodies of the victims are a crucial part of the evidence in rape cases (Department of Justice, 1998).

The focus of this article is on the role, duties and the training offered to the IO's attached to the FCS units. The data was collected from interviews on the actual work of the FCS IO's. In addition, the report focused on the process of reporting rape cases, especially those case dockets that were referred to as 'court-ready' in this research. To establish the successes and failures of the court-ready dockets and the factors which lead to the manner of the conclusion of these cases, the role and duties of prosecutors and magistrates on the sexual offences cases are described in this report. The researchers also used a literature review to establish the shortcomings that have contributed to the low conviction rate on the rape and compelled rape cases. At the end of the findings, the implications and recommendations are discussed.

#### 1.1. Background

Rape and compelled rape are described and defined in South Africa under the Sexual Offence Act and Related Matters Amendment Act, 32 of 2007 (SAPS, 2007). According to this legislation, a sexual offence is defined as any offence in terms of chapters 2, 3 and 4 and sections 55 and 71(1) of this Act. Chapter 2 Part 1 of this Act provides definitions of specific offences such as rape and compelled rape, sexual assault, incest and bestiality as relating to the broader category of sexual offences. Violence against children (aged 18 and younger) and women increased annually in the nine provinces. During 2011/12 Gauteng was the second highest by 18.4% when it comes to the reported sexual crimes after Kwazulu-Natal with 18.7% (Crime Stats SA, 2012).

The Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 came into effect in December 2007 and created a number of “new” sexual offences and the Amended Act expanded the definition of rape which includes 59 separate offences ranging from sex work to rape. This enabled a categorization of sexual offences accordingly, unlike before 2007 where sexual offences encompassed all sexual crimes. According to South African Police Service statistics, reported cases of rape stabilized, with a slight decrease of 3% since 2008/09 from 47,588 to 46,253 in 2013/14. It is worth noting that reported cases of rape showed an increase between the period 2016/2017 and 2017/2018 by 8.2% nationally and a 4.7% increase in Gauteng province (SAPS, 2018). Approximately 54% of rape incidents remained unreported in 2010 (DoJCD 2006-2010 & RAINN, no date).

Jewkes & Abrahams (n.d.) discovered that some rape incidents are not reported by the victims and it causes discrepancies in crime statistics. Institutions like the Institute of Security Studies (ISS) and Knysna Crime Watch (2010) asserted that the 2014/15 crime statistics were unreliable because the SAPS have used the Statistics SA’s population estimates of 2001, which estimated that the population would be 50.6 million in 2011, instead of using data from 2011 which indicates a population of 52.3 million (ISS, 2015). The assumption is that unreported rape can be an alarming figure. According to Jewkes & Abrahams (n.d.) non-consensual sex (in marriages and dating relationships) and coerced sex (common in schools, workplace and amongst peers) are often not reported.

An important part of this research was the number of court-ready rape cases that end up in the courts of law without a conviction or guilty verdict. For example, from April 2010 to December 2013 a total of 23 086 cases of rape and compelled rape were reported in Gauteng province. However, only 12 836 cases were taken to court for prosecution. A total number of 1 910 cases out of all reported cases (23 086) and cases were taken to court resulted in successful convictions. Some of the cases were never registered on the court roll whilst others were either thrown out of court or withdrawn. Additionally, a total number of 8 220 were sent back to SAPS for further investigation due to insufficient evidence (SAPS, 2013). The research was conceptualized to reveal the reasons behind the withdrawal of cases and those thrown out of court amongst other cases.

### **1.3. Problem Statement**

This research was prompted by the poor performance of court-ready-dockets that failed to secure a full conviction or guilty verdict. As highlighted in the background, there are a high number of rape cases and compelled rape cases that are not completed in court and cases that are brought forward to the following months without finalisation. This is cause for concern as they create a huge backlog of cases. The victims of these crimes seek justice, some of the perpetrators may not be punished accordingly and such a practice can result in victims not reporting cases due to lack of confidence in the criminal justice system. This has created an impression of the inability of police to deal with rape and compelled rape. Conviction rates are one way of measuring how well the criminal justice system is doing. It answers the question of whether the police are doing well or failing the community and victims they serve. A criminal justice system that consistently fails to secure convictions and fails to protect its users has little credibility. Victims of these crimes were denied justice and some resort to taking the law in their own hands.

### **1.4 Objectives of the study**

As a result of the problem statement discussed earlier, the researchers wanted to realize the following objectives:

- To study docket analysis reports as prepared by Ikhaya Lethemba and identify flaws in detective performance, which lead to low convictions in sexual offences cases;
- Identify factors that lead to these cases being thrown out of court;
- Assess the implementation of the Detective 10 Point Plan in relation to sexual offences, with the intention of establishing why these cases are being referred back to the SAPS for further investigation;
- To determine the reasons why these cases take longer to be finalized in the courts of law; and
- To assess the working relationship between prosecutors and the Investigating Officer’s when dealing with court ready dockets.

### **1.5 Research questions**

As a result of the research objectives, this study seeks to answer the following question:

- What are the factors that account for the poor performance of trial ready dockets of sexual offences in court?

In order to solicit enough responses to the research question, this main question is further delineated into the following sub-questions:

- What leads to low conviction rates in sexual offences cases?
- Why are the court ready dockets in sexual offences withdrawn or thrown out of court?
- Why are these dockets sometimes referred back to the SAPS for further investigation?
- Why does it take a long time to finalize these cases in court?
- What is the nature of the relationship between the SAPS and the NPA regarding these dockets?

## **II. LITERATURE REVIEW**

The researcher used existing material about sexual offences and rape in particular. This section endeavors to explore the reasons and factors that lead to low conviction rates of rape and compelled rape cases. Rape against women and children is a global problem and is increasing dramatically in recent years (SAPS, 2013 -2018; Naeema & De Kock, 2011).

### **2.2 Discrepancies in the conviction rate**

The NPA focuses on high conviction rates as a barometer of success; this has encouraged a tendency to decline to prosecute other cases which they deemed unwinnable (Rademeyer, 2013). Furthermore, prosecutors have a wide discretion to decide which cases have reasonable prospects of success and this has led to a huge percentage of cases being declined access to courts. For example, the NPA received 517 000 case dockets from the police in 2013. However, in the same year, only about 74 000 cases, or 14% of those cases, were ultimately prosecuted. The NPA declined to prosecute in more than 300 000 cases (60%) and referred a further 130,000 to police for further investigation (Redpath, 2002). Only in South Africa (unlike other Commonwealth and common law jurisdictions) are prosecutors the ones who determine when court proceedings should start, the exercise does not actively involve the SAPS (Sarkin et al, 2001).

### **Attrition on rape cases**

In South Africa, the decision whether to follow through with a rape case depends on the criminal justice agents (the IO and the Prosecutor). According to Artz & Smythe (2007), both IOs and prosecutors inevitably approach a rape complaint from a cost benefit perspective that is ultimately focused on the 'convictability' of the case and an evaluation of whether the case has evidential difficulties. Case attrition<sup>1</sup> refers to the pace at which dockets on sexual offences are closed after a decision has been taken by the prosecutor. Normally, the case dockets are referred to the senior prosecutor to make a decision on whether the matter will be prosecuted or not. Attrition in this instance will therefore, be premised only on case dockets wherein a suspect has been identified. According to Smythe (2004) in some jurisdictions, a substantial number of cases as many as 60% of the reported cases are closed *nolle prosequi*<sup>2</sup>. This occurs sometimes where the state no longer has an interest in the matter, but more often because the deciding prosecutor is of the opinion that the case is not winnable or that there is no prima facie evidence to pursue such a case. This category of cases is usually included in the statistics of the cases that went to court but there was no conviction.

Other cases with less prospects of conviction are closed after the 24-hour inspection. The determination is made on whether a particular case has enough evidence or a sufficient statement (within 24 hours) to be placed on the court roll. Since most of the police believe much of the rape is not "real rape", it has resulted in undercounted rapes cases, which led to an inaccurate understanding of the scope of the problem (Smythe, 2016). According to Frohmann (1997), rape reporting and victim's demeanor is used by prosecutors to inform their decisions as to whether the complainant is credible. In respect of each of these aspects, prosecutors draw on a store of subjective knowledge, through which they have constructed a typical rape scenario against which complaints are measured. Frohmann (1997) further alluded to the important role that 'convictability' plays in shaping prosecutorial decisions and that this narrow approach is self-reinforcing.

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<sup>1</sup>Attrition refers to the gap between levels of known crime and the response of the criminal justice system in terms of prosecutions, convictions and sentencing: <http://www.crimeandjustice.org.uk/publications/crime-persistent-offenders-and-justice-gap>

<sup>2</sup>Latin for "we shall no longer prosecute," a formal entry upon the record made by a plaintiff in a civil lawsuit or a prosecutor in a criminal action in which that individual declares that he or she wishes to discontinue the action as to certain defendants

### **Poor police discretion**

The inappropriate or poor police discretion directly affects attrition rates. The police have a tendency of using their own discretion whether there was a rape or not. This has led to survivors being put under a lot of pressure and sustained attack during the reporting period. According to Temkin (1997) and Kelly (2002), the way in which the responses of police, prosecutors and judges shape the construction of rape within the criminal justice system has been the subject of scathing critique. Real rapes according to Estrich (1987), are still those involving a weapon and injury, committed by strangers, outdoors. These are the cases that criminal justice personnel take seriously. By cross-examining a victim gradually making them weaker and destroyed resulted in withdrawing or not reporting cases.

### **2.3 Reasons why rape and compelled rapes are under-reported**

According to Smith, & Waxman (2018), under-reporting of cases can be attributed to the lack of confidence in the criminal justice system as well as police misconduct. In addition, guilt, fear of retribution, humiliation, lack of knowledge of and trust in the legal and medical systems caused under reporting. In certain instances, the under-reporting of rape cases is blamed on the weakened mental processing that occurs following intense trauma by the victims. Survivors and communities have experienced incidents where police failed to convict a (known) perpetrator. Police failed to handle cases where victims were raped by their spouse, the police disregarded a victim's statement and evidence (scars and blood) and instructed that they go and sort out their marital problems (Pidd, 2010). According to Artz (1998), rape by your husband is only real in the law; the police always disregard such cases. This is one of the reasons why rape is under-reported. Furthermore, most of the rape victims do not report, according to Wells (2009), only one in five women reports rape to the police.

### **2.4 Reasons that contributed to the low conviction of rape and compelled rape cases**

Most of the reported rape cases and court-ready dockets failed to achieve convictions. The following are the reasons the research has identified:

#### **Police failure to apprehend (known) perpetrators of rape**

Literature has confirmed that nearly a third (29,9%) of the victims are raped by a known community member in their area, their spouse or partner (20,9%), while only 10,5% by an unknown community member (Jewkes; Sikweyiya; Morrell & Dunkle, 2010; USA DOJ, 2005; MRC, 2011; LSA, 2012). The inference drawn is that investigating such cases could be easy since the perpetrators are known and from the same community. The assertion is that either the police failed to investigate and apprehend perpetrators; in some instances, prosecutors fail to prove that rape really happened.

#### **Police officers being perpetrators of rape**

Police misconduct is high in South Africa (GDCS, 2016 & 2018) some police were reported as perpetrators of rape by sex workers, women in custody and community members (Soulcity, no date). Most of the cases that involved police were swept under the carpet (Dr. Groenewald, 2013). Since victims of rape or rape survivors have the knowledge of how the police handle rape cases, they decide not to report other similar incidents. To indicate that police are misdemeanours, the Independent Police Investigative Directorate (IPID) investigated 6 026 complaints against the SAPS in 2011/2012 including murder and rape (SAPS annual report. 2012/13). Since the police protect each other, the victims of police rape will never see justice and their cases may not even be presented in court (Newburn, 1999).

#### **Case withdrawals by the complainants**

Post-traumatic stress and depression can lead to survivors not staying within the process until justice if not counseled (MRCSA, 2012). Furthermore, survivors suffered humiliation by police during reporting, even from female officers (Soulcity, no date & Rich and Seffrin, 2012) Medical examinations (at hospitals and clinics) is unpleasant and even traumatic for survivors and survivors may decide to drop the charges. Delays in reporting rape cases due to lack of knowledge about rape can minimize the chances of getting justice. However, according to Le Riche & Thornhill (2013), the court cannot draw any conclusions from the delay to report or time elapsed before reporting. However, if police are incompetent and use their poor discretion this can jeopardize the case.

#### **Delays to prosecute and the granting of bail**

The delays during trials have led to evidence of going missing or victims withdrawing the case (Sigsworth, Vetten, Jewkes & Christofides, 2008). Most of the rape cases took over four years to be finalized (IOL News, 2012); survivors are likely to forget details of the rape because time lapsed especially when the victim was young. The victim may not remember every detail and the defense can take advantage and render the

witness or victim's testimony unacceptable. The delays afford perpetrators a chance to get bail and they may then commit other serious or similar crimes, as well as intimidate witnesses and victims.

### **Corruption in the justice system**

Literature and studies conducted by the Gauteng Department of Community Safety (2016 & 2018) have identified forms of police corruption and misconduct. Police tamper with dockets, collude with criminals and deliberately not apprehend the suspect and close cases as "undetected" or unfounded" at the station. Corrupt prosecutors also collude with police and criminals by ensuring that the case is not winnable or withdrawn in court. The police are known to aid detainees to escape prosecution. According to the SAPS Annual Report (2012/13), 988 detainees escaped from custody, while only 349 SAPS members were charged with aiding an escapee. These criminals were back on the streets committing serious crimes or similar crimes. The study conducted by Rhodes University stated that in 84% of rape cases perpetrators had prior convictions for the same crimes and some were falsely released (SoulCity, 2003. & rape crisis, undated). Regardless that case dockets are electronically recorded, there is still evidence of lost dockets and information about the alleged rape (SANews.2010.)

### **High number of not guilty verdicts**

With respect to the high number of reported rape cases, only a quarter received a guilty verdict, the rest were either withdrawn in court or sent back to SAPS for further investigation (SAPS Crime Statistics, 2010-13 & SAPS6). According to the Human Rights Campaign (no date), in over two million rapes, less than 0.2% of rapists were found guilty and paid the just due for their crime. Furthermore, rapists have more than a 99% chance of walking free in court due to poor investigation amongst others (LeadSA, no date). The justice system fails victims of rape while it gives leeway for rape to escalate.

### **Investigating Officers not complying with simple standard procedures**

The SAPS guidelines on sexual offences (DOJ, n.d) clearly outline the necessary steps that guide the officers and the detectives in handling rape cases. In addition to that, the Criminal Procedure Act of 1977 and the Amended Act of 2008 as well as the Detective 10 points plan (SAPS, 2008) clearly defines the roles and functions of policing in detail. Rape cases are compromised by poor investigation and non-compliance with normal standards stipulated (LeadSA, no date). SAPS Policy 2 of 2005 and chapter 2 of SAPS guidelines clearly define all the stages (from reporting until closing) and the roles of members involved in a crime scene. According to Vettel (2012), Policy 2 has serious shortcomings because it does not accommodate the realities of daily police work. According to the policy, crime scenes require a designated and separate crime scene manager and technician.

Due to the shortage of experts not all the functions envisaged in the policy are fulfilled. In fact, it is rare for South African crime scenes to be processed in complete adherence to policy requirements (SAPS. 2005). Officer's functions should be limited to cordoning off crime scenes and identifying and restraining suspects and witnesses, after which they should hand over to crime scene managers and technicians. Crime scenes are being contaminated by inexperienced officers and lessening chances of full conviction (SAPS. 2005). Unfortunately, these standard procedural checks, which are relatively simple to comply with, are often not followed in practice. This lack of attention by police to procedural requirements often prejudices the state's case. Furthermore, it resulted in delays and the court as well as victim/witness withdrawals.

### **Prosecutors not fully implementing NPA Policies**

The NPA Prosecution Policies (2013), as well as the NPA guidelines (2010), are more explicit on how the criminal justice system should handle cases. This includes the role of police, the role of prosecutors as well as the magistrates. Guidelines and policies also clearly indicate how well the police and prosecutors should work together to prepare cases for full investigation. This includes prosecutors guiding the investigation to eliminate flaws and poor investigations. A well-processed crime scene, good investigation, and successful conviction are dependent on a well-functioning criminal justice system. Police and prosecutor's policies and training are of a high standard and if they are well implemented as directed, policing would be more effective and more crimes would be solved. In practice, there is a disparity between policy and practice within the police and in the Criminal Justice System as a whole.

### **Poor statements by the police**

Statement taking by the police is also problematic. Alder (1987); Artz & Smythe (2007) alluded that dockets often contain vague victim statements, some statements encompassed irrelevant information and scanty details and did not even set out the basic elements of the offence. Police rape statements give the prosecution a picture of what has happened during the alleged rape. Therefore, poor statements compromise the prospects of a

case docket. Rich and Seffrin (2012) alluded that most police officers often lack the skills to interview victims or rape survivors.

### **Lack of knowledge about rape**

Victims lack knowledge of what to gather (available evidence) after a rape has occurred and shock has jeopardized many cases (SAPS, undated). The evidence is referred to as (public) hair of the rapist, skin on the nails if there was a struggle or anything for DNA that can link a suspect to the crime. However, survivors cannot be blamed; investigations should play this crucial part. If the police have failed to gather evidence in certain cases, it will be unfair to expect too much from traumatized survivors.

### **2.5 Other factors that contributed to the dismissal of rape cases in court**

Police incompetence (poor investigation and bad decisions) and corruption (colluding with criminals) has led to the closing of cases as “undetected” or “unfounded”. According to Leggett (2003), police discretion believing that the complainant has lied about the alleged rape; results in them filing the case as ‘unfounded’ without testing this evidence in court because they have a perverse incentive to file cases as unfounded.

### **Ineffective case docket inspection and audit**

Essentially, the inspections are undertaken by the Detective Commander or Crime Office Commander in order to guide the investigation process. If inspections do not take place as prescribed, vital information can be overlooked leading to a case being lost in court. According to the Policy Advisory Council report (2008), inspections are often not done in accordance with required standards and policies. Station Commissioners neglect their duties and leave the detective to continue on their own. According to Burger (2015), many Branch Commanders and Supervisors are also incompetent, lack skills, experience, commitment, dedication and discipline.

### **Police working in silos**

South African Police Service (SAPS) components like Detectives, Visible policing and Crime Prevention, work in silos, vital information that could have been used to solve a case is lost or not shared (Omar, 2008). In essence, when these components are able to share information about suspects, conviction rates will be achieved.

### **Failure to profile rapists (is a deterrent)**

It is important for police to be able to profile possible suspects for further investigation of new crimes. Some offenders have committed the same crime repeatedly. For unknown suspects, profiling will assist in reverting to a database and offender profiles. Fitzpatrick (undated), described offender profiling, as a method used during a criminal investigation that allows law enforcement officers to identify a likely suspect through outlining and analyzing patterns that could predict future victims or offenses. This type of police profiling is used to locate a potential criminal and narrowing down a number of suspects that might be brought in for questioning or to run some DNA test on their records.

Police profiling can also be biased; therefore, it must be legal and be done by experts. According to Fitzpatrick (undated), some police profiling is illegal and the police abuse the process by targeting vulnerable groups or race. According to WCART (2006), illegal profiling is based on preconceived notions and stereotypes, often not on scientific assessments conducted by experts. Illegal profiling results in police profiling suspects based on race, religion, sex, social status or class. For example, police will assume that certain races are the most perpetrators of rape or poor people, illiterate and foreign nationals are regarded as rapists. According to Fitzpatrick (undated) whoever is tasked with profiling must receive necessary training.

### **2.6 Isolated training of IOs and prosecutors**

This research has identified the dilemma of defining “court ready dockets”. Isolated approaches to training create a myriad of problems. Training interventions for prosecutors will only have a slight positive impact on the effectiveness of the criminal justice process for as long as the exercise does not actively involve the SAPS (Sarkin et al, 2001). The IOs lack skills that prosecutors expect from them and mistakes are bound to happen when cases are presented to the court.

Investigating Officers (IOs) need regular training to be able to adapt to the dynamics of crime. Once off training is insufficient and has created a culture of disobedience to rules and policies. Burger (2015) mentioned that there are incompetent, unskilled, inexperienced, lack of commitment, no dedication and discipline among the SAPS commanders and other staff members – repeated sentence. Officers need to receive training in writing statements and improve their command of English to enable them to testify in court without fear of aggressive cross-examination by the defense. According to van Zyl (no date), some members of the police lack pride in

their jobs and Omar (2008) added that police lack motivation to do better; feeling apathetic and having generally bad attitudes, which contribute to poor policing.

### **2.7 Closing cases as “successful” conviction**

The SAPS have a mysterious way of closing cases as a “successful” conviction. According to Leggett (2003), all cases referred to court, warrants issued, withdrawals by complaints, and cases filed as unfounded are counted together as successful investigations. In contrast, cases closed as ‘undetected’ constitute unsuccessful investigations. This has caused discrepancies when the statistics are released because it is a wrong reflection of what is happening with the rape and compelled rape dockets. Conviction rates are one way of telling us how well the criminal justice system is doing. The SAPS took pride in declaring such cases as successful investigation (Leggett (2003).

### **2.8 Human resource constraints and other inadequate resources**

Apart from the shortage of experts (crime scene manager and technicians), detectives are having a tough time handling their workload; according to Pieterse (2018), the 2013 figures indicated that a detective carried 150 dockets at once as opposed to the 25 to 30. Pieterse (2018) further indicated that the current figures showed a detective carrying up to 400 dockets. The delays in court also added to the workload. There are insufficient resources such as vehicles, computers and furniture and other technical staff to conduct investigations (SAPS, no date). When the work is piling up, the victims do not see immediate justice while the offenders are out on (forever) bail until a case is lost or the victim chooses not to continue with the case.

### **2.9 The delays in testing of DNA evidence**

Most rape cases rely on DNA evidence, even where there was physical evidence of a struggle or forced entry. Crime labs are unable to test the exponentially growing amount of DNA evidence and samples collected as part of crime investigations (Otto and Hosken, 2006). Shortage of equipment and technicians has led to the slow processing of evidence (Mabena, 2017). Laboratories sometimes prioritize cases of murder and unknown suspects. The delays also result in some of the victims not continuing with the case while some evidence gets lost in the process. Vettel (2012) alluded that medical examiners often do not properly document medical evidence and incomplete medical records (for use in court) results in courts discontinuing the case.

### **2.10 Unsafe keeping of the evidence**

Most of the rape cases were jeopardized because of police inability to keep evidence safe as well as maintaining a solid chain of evidence. Where there were any flaws related to the chain of evidence, the court struck the case off the roll. Sometimes the evidence is not stored at the correct place or under the recommended temperature. According to the SAPS Guide on Sexual Offences (2010), the control (evidence collection kits, storage in a cool place and sending to laboratories) at station level is the responsibility of the commanding officer overseeing the case (DoJ, no date). Furthermore, there are delays in evidence kits being sent to laboratories, leading to a deterioration of the samples. The police fail to adhere to the prescripts of these guidelines. This was also confirmed by Advocate Retha Meintjes, Gauteng Director for Public Prosecutions, that the procedure for sending evidence to laboratories is not difficult; police just do not follow the due processes (Omar, 2008).

## **III. RESEARCH METHODOLOGY**

This research methodology describes the setting of the research, how participants would be selected, the criteria used in sampling, how data was collected and analyzed (Silverman, 2013). The study followed a qualitative research approach. An empirical research design as explained by Maxfield and Babbie (1995) was used by the researcher, which is described as a production of knowledge based on experience or observation of the role of participants and the researcher.

### **3.1 Qualitative data collection techniques utilized**

#### **3.1.1 Secondary data collection**

**Document analysis:** The reports of docket audits conducted by Ikhaya Lethemba on rape were used. Another report from Gauteng Department of Community Safety, Directorate: Monitoring, Evaluation and Service Delivery Complaints on “cases closed as undetected” were also analyzed.

**Docket Audit:** A docket audit was conducted at SAPS Temba cluster on closed case dockets of rape from January 2011 to March 2012. The focus was on how information and evidence was collected by IOs. A trace of docket inspection (by detective commanders), quality of statements and the due process of the investigation as recorded on the docket was scrutinized. The further focus was on how court instructions were followed as recorded on the docket and the duration of case dockets until they are finalized. Records from the Local

Criminal Record Center (LCRC) and the Forensic Science Laboratory (FSL) were scrutinized as well, until the final verdicts. The audit was conducted against the policy, Detective 10 points plan and guidelines referred to earlier.

### **3.2 Semi-structured interviews**

The researchers utilised a semi-structured in-depth interview guide to collect data. A semi-structured interview is a qualitative method of inquiry that combines a predetermined set of open questions (questions that prompt discussion) with the opportunity for the interviewer to explore particular themes or responses further (Louise & While 2006:346).

### **3.3 Sampling strategy**

The study made use of a stratified sampling strategy. A stratified sample is a probability sampling technique in which the researcher divides the entire target population (detectives) into different subgroups (rape cases), or strata, and then randomly selects the final subjects proportionally from the different strata. This type of sampling is used when the researcher wants to highlight specific subgroups within the population (Castillo 2009). Gauteng has 142 police stations which consist of twenty-two clusters (these have since been reduced to 16 clusters) and each cluster consists of an average of six police stations. The following respondents were selected:

- 4 clusters (high rape rate). 1 detective commander (1-5 years' experience) and 1 detective from FCS (6-10 years' experience).
- Two retired detectives
- 5 regional magistrate courts (Ga-Rankuwa, Temba, Ekangala, Soshanguve and Johannesburg).
- 1 senior prosecutor, 1 magistrate and 1 senior magistrate, and
- 2 retired prosecutors and 1 retired magistrate.

### **3.4. Data Analysis**

Data was coded, and themes were extracted to generate meaning. Themes were grouped (literature and findings) into dimensions or perspectives, related, or compared. In that process, the themes, inter-related themes, or perspectives became the findings or results that have provided answers to the research questions (Creswell, 2009).

## **IV. FINDINGS OF THE STUDY**

These findings are based on the responses of participants who were interviewed in this research as outlined under the methodology. Although there are many reasons which led to this limited success in the conviction of rape and compelled rape dockets, the central indicator is that the conviction rate of these cases remains very low. Since this research did not use statistical information compatible with quantitative research, this finding could not be quantified in accordance with the percentages. It was revealed during this research that a conviction rate is calculated only through the cases that were put on trial or maybe on the court roll. The chunk of other categories of cases is excluded when talking about conviction rates and does not necessarily refer to the total number of cases reported.

### **4.1 Factors that resulted in the low conviction rate (of rape and compelled rape cases)**

The low conviction rate in rape and compelled rape is attributed to various reasons. Central to these reasons is the allusion that the case dockets of sexual offences are often riddled with mistakes when they are sent to court. These mistakes, which sometimes start at the handling of the scene of the rape or other sexual offences, lead to case dockets that cannot stand the scrutiny of the courts. The following mistakes which are often committed by the IO's' came to the fore during the interviews:

- Crucial evidence not collected from the scene of the crime
- Crucial evidence and documents missing from the dockets
- The chain of evidence not kept intact
- The dates on which certain activities were carried out not accurately recorded in the dockets, and
- Medical examination certificates not attached to the case dockets.

This situation is exacerbated by the realization that sexual offences cases such as rape are extremely dependent on evidence and less on the testimony. This is so because in the majority of instances, rape takes place only in the presence of the perpetrator and the victim. In criminal cases, the prosecution is required to prove its case beyond reasonable doubt. However, this cannot be achieved if the case dockets are riddled with mistakes which in turn affect the integrity of evidence placed before the courts of law. The worrying factor is that this finding came to the fore even though those interviewed indicated that investigating a case of rape is not



a difficult task. These research participants who are sometimes involved in the investigation of rape indicated that the guidelines provided by the SAPS are straightforward and easy to follow.

#### **4.2 Reasons for withdrawals of court-ready dockets**

The withdrawals in the context of this research include those rape cases that are withdrawn either by the prosecutor or the complainants as well as those cases that are simply thrown out of court. Apart from the mistakes that were mentioned earlier, the quality of statements in the case dockets is often compromised. There are various options when the statements in the court-ready dockets are not of a high quality. The prosecutor may refer the case docket back to the investigator for further investigation or the case may be thrown out of court. Therefore, the strength of any case is determined through the statements as well as the availability of evidence which can prove the allegations. When cases are being withdrawn because of poor statements, some of the complainants may also lose hope in the process and decide to withdraw the case. It was further found that the lack of investigating skills has proven to be a factor that resulted in most cases being removed from the court roll.

#### **4.3 Case dockets are sent back for further investigation**

When case ready dockets were sent to court and the courts return them to SAPS for further investigation it impacts negatively on the performance of these dockets. These dockets are initially declared as 'court ready', however, the prosecutors are often forced to return these dockets with further instructions. Prosecutors often find gaps which if left unattended will negate the prospects of the case. Some of the interviewees attribute this to shoddy detective work. When analyzing the closed case dockets, it came to the fore that some of the instructions issued by the prosecutors related to unnecessary omissions which should have been picked up before the case docket was sent to court. Other cases carried the same instruction in several court appearances which were never attended to. Therefore, not only the competency of investigators and their commanders came into question but also the mechanisms used to promote themraised concerns. In extreme circumstances, case dockets which require further investigation lead to a high attrition rate of case dockets. The prosecutors may decide that there are no prospects of obtaining a conviction in those cases and as a result decide to stop the prosecution.

#### **4.4 Dockets which take long to be finalized**

It is the finding of this research that case dockets which take too long to be finalized lead to poor performance. These delays may be caused by investigators who do not attend to the instructions of the prosecutors in time, accused persons who abscond after bail or the time it takes for results from laboratories to be sent to or collected by the investigators. It was further found that in certain instances investigators claim that they cannot find the suspects although they are known in the communities or have been pointed out by the victims, complainants or witnesses. Sometimes the Magistrates may refuse to grant postponements over and over again and as a result, such a case may end up without conviction. There are other challenges faced by the prosecution such as unavailability of interpreters in certain languages, shortage of equipment in the court as well as resource issues facing the police.

In general, the biggest problem is that the court ready dockets end up without any success because the investigation took too long to finalize. Other collateral damage is as follows:

- Witnesses disappear before the court could hear their testimony
- Witnesses die or disappear before they can give evidence or face the justice system
- Witnesses forget the sequence of events before they can give evidence, and
- Some of the victims commit suicide before their cases are finalized.

The delayed finalization of these court ready dockets has serious implications for all parties involved. In certain instances, the communities decide to be vigilante<sup>3</sup> and seek revenge which will result in another crime.

#### **4.5 The relationship between investigators and the prosecutors**

According to the NPA guidelines and the SAPS guidelines on sexual offences, prosecutors and investigators in sexual offences (rape cases) should work as a team in order to heighten the performance of court-ready dockets. This will assist in closing the communication gap which often exists between the investigators and the prosecutors. Some of the investigators are not satisfied that the prosecutor can decide alone on whether a rape case docket is court-ready or not, it is supposed to be a collective one i.e investigator, the commander who conducts 24-hour inspection and prosecutor. The working relationship between the investigators of the SAPS and the prosecutors is compromised hence prosecutors may choose to work with

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<sup>3</sup> somebody who punishes lawbreakers personally rather than relying on the legal authorities

certain individuals and neglect other investigators. It was further established that although there are meetings and forums where investigators and prosecutors could deal with issues of improving the prospects of cases, these meetings are being attended by junior staff members whilst senior officials do not attend. This means that no concrete decisions can be taken in such fora because management does not take an interest in such discussions. The unhealthy relationship which exists between some of the prosecutors and the investigators negates the performance of court-ready dockets with respect to sexual offences.

## **V. RECOMMENDATIONS**

Making recommendations can be likened to when a story takes a normative leap from 'data' to 'recommendations', from 'fact' to 'values' and from 'is' to 'ought' (Wagenaar 2011). As a result of the findings of this research, the following is recommended:

### **5.1 Improve Detective learning programs and specialized investigations**

The skill base in the investigation fraternity needs to be improved drastically if there is any desire to improve investigations. Although investigators need to be trained in general investigations at the point of entry, there is a need for acknowledgement that investigation of sexual offences or where victims are part of the vulnerable groups is a specialized field which cuts across investigation, law, criminology, psychology and sociology. Although other disciplines may apply when a case of a sexual offence is being investigated, the identified specialized fields are normally on top of the list. Police officials must be exposed to general detective training and then specialized sexual offences training before they are assigned sexual offences cases.

### **5.2 Establish a mentoring program for investigators**

Training should not be seen as a panacea for all problems and mistakes committed by FCS investigators. Training takes place within a specific period of time and is often curriculum based which means that it may not cover every aspect at the same time. It is therefore recommended that detectives with lengthy experience in investigations and those who are on retirement should be used as mentors and coaches for newly appointed investigators.

### **5.3 Improve the statement taking capabilities for all police officials**

Usually, statement taking is performed by certain individuals who may come into contact with the victims, complainants and witnesses. It is therefore recommended that over and above any other training intervention, there must be designated training which focuses on statement taking for all police officials including the visible policing units and detectives.

### **5.4 Improve the victim empowerment rooms at all police stations**

The existence of these rooms in all stations can play an important role in improving the level of reporting of sexual offences cases. The victims of rape will be able to give their statements in a more private environment, while counseling is in progress.

### **5.5. Establish compliance mechanisms with guidelines and prosecutor's instructions**

There must be consequences for any investigator who fails to comply with the guidelines on handling sexual offences cases to avoid deliberate non-compliance. There is serious negligence of a national guideline document on sexual offences and Standing Orders on how investigations need to be conducted. There is no evidence of repercussions for transgressing such orders or guidelines. The compliance mechanism should encapsulate the manner in which these guidelines will be made available to all investigators in sexual offences, the level of compliance required as well as the implications should these guidelines be by-passed. There is currently nothing done when the instructions of the prosecutors are ignored, and this usually persists until the case is thrown out of the court or is withdrawn.

### **5.6. Intensify the 24-hour inspection and court docket inspection**

An overriding factor which contributes to the poor performance of court-ready dockets are the mistakes which happen at the scene of sexual offences, during the compilation of the case docket and during the investigation. The fact that these dockets end up in court with such mistakes raises concerns about the effectiveness of 24-hour inspections. Although this kind of inspection has been in existence for ages, this research posed questions about its effectiveness as a quality assurance mechanism. Apart from the 24-hour inspection, all dockets that are taken to court should be inspected before being sent back to court again. This should be done days before the docket is taken to court so that the inspecting commander can return the case docket to the investigator for rectification of identified mistakes. Intensification of these inspections means that

no docket should be released to court on the CAS system until the commander is satisfied that the docket is free from any mistakes.

## VI. CONCLUSION

There might be numerous reasons which lead to the poor performance of court-ready dockets in court. The role of IOs in the handling of rape and compelled rape cases was unsatisfactory. The guidelines and policies in both the SAPS and NPA are not followed to the letter. Guidelines explicitly outline how survivors of rape should be handled and given support and guidance from reporting until the finalization of a case. Survivors have suffered humiliation, secondary victimization and trauma in the hands of police, courts and medical centers. Corruption and lack of commitment has played a major role in the handling and investigation of rape cases. If the rape cases are handled properly according to the prescripts of the guidelines and policies, underreporting can be reduced.

Cooperation between the SAPS and NPA is very poor and that has resulted in most cases being withdrawn in court. Lack of human resources especially experts in the field of forensic investigation and adequate training have also had a negative impact on the performance of court-ready dockets. Lack of commitment and dedication of SAPS members have led to the poor performance of court-ready dockets. Members of the society should receive extensive education on how to report rape cases and court proceedings. Awareness campaigns on sexual offences should be directed to the most vulnerable groups of society. Officers who disobeyed their own guidelines and policies were not severely punished and this resulted in a miscarriage of justice.

A single research project cannot cover all aspects pertinent to the research title at hand. This is the reason why future research is recommended. It is recommended that there should be follow-up research which will look specifically at the attitude of the criminal justice system towards rape, other sexual offences and the victims of such deeds. This is crucial because if the investigators have assumptions about victims such as their indulgence in alcohol or drugs, there is a likelihood that the cases of such victims will not be investigated fully. There is a possibility that the investigators will have pre-conceived ideas which may jeopardize the investigation. These attitudes should incorporate those of the prosecutors as well as the magistrates as any prejudices may be detrimental to justice.

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