

# A STATE OF SEXUAL TYRANNY

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THE PREVALENCE, NATURE AND CAUSES OF SEXUAL  
VIOLENCE IN SOUTH AFRICA

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Component 3 of a study conducted by the Centre for the Study of Violence and Reconciliation (CSVr) for the Justice, Crime Prevention and Security (JCPS) cluster

November 2008

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# NOTE ON THIS REPORT

South Africa is currently experiencing very high levels of violent crime. In 2006 the Justice, Crime Prevention and Security (JCPS) Cabinet committee decided to contract the Centre for the Study of Violence and Reconciliation (CSVR) to carry out research aimed at enhancing understanding of the nature of violence in South Africa with a view to strengthening government's response to this problem. As a result, in February 2007 CSVR was contracted by the Department of Safety and Security to carry out a project with the following six components:

- A concept paper on the violent nature of crime.
- A study of the circumstances of occurrence of murder in areas with a high rate of murder in South Africa.
- A study of the nature and causes of sexual violence.
- An analysis of the socioeconomic factors that contribute to violence.
- Case studies on perpetrators of violent crime.
- A summary report on key findings and recommendations.

The following is the report on the nature and causes of sexual violence in South Africa, which constitutes component 3 of the overall project. The contract provides that the report should address the following questions:

- Why are levels of sexual violence so high in South Africa?
- Why are there such high levels of sexual violence and abuses by and against children?
- What types of measures will assist in addressing the problem of sexual violence in South Africa?

The final report of the overall project is due to be completed in November 2008.

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# TERMINOLOGY

**Sexual violence:** In the introduction this report refers to the definition of sexual violence in the World Health Organisation *World Health Report on Violence and Health* (see section 1.2).<sup>1</sup> While broadly accepting this definition, this report focuses on the problem of rape and child sexual abuse. Sexual violence against adults overwhelmingly, but not exclusively, involves victimisation of women by men. As such it can be seen as part of a broader problem of violence against women by men, which includes sexual violence as well as, for instance, domestic violence. However, sexual violence also potentially involves the victimisation of children and that of men by other men or women, or of women by other women, so that it is not merely a subcategory of the issue of violence against women.

Questions to do with the definition of **rape** are addressed in the introductory section of this report (sections 1.2.1 and 1.2.2). See also the opening paragraphs of section 3.1.9.

**Child sexual abuse** is a subcategory of the broader problem of **child abuse**, which also includes other violence, emotional abuse or neglect of children. Issues of definition of child sexual abuse are discussed in section 3.3.3.1.

The term “**group rape**” is preferred to the term gang rape in this report. The available evidence appears to indicate that such rapes frequently involve groups of men (or boys) who do not have an ongoing relationship with each other as “gang members”.

This report places major emphasis on differentiating between the nature of rape as it affects, respectively, **adult women** (defined as women 18 years and older), **adolescent** and **post-adolescent** (defined as 12–17-year-old) girls, and **young children** (the 0–11 age band). When the terms “**adolescent**” or “**teenagers**” are used on their own, they refer to girls in the 12–17 age band. (See also section 3.3.1 on how the law is aligned with these age distinctions.)

Though not used prominently in this report, the terms “infant rape” or “baby rape” are variously used to refer to rapes of very young children, with the focus sometimes being on children of 12 months and younger, two years (24 months) of age and younger, or 5 years of age and younger.<sup>2</sup>

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1 Krug et al. 2002: 149.

2 See, for instance, Bird and Spurr, 2004; Collings et al. 2007; Joubert 2007.

# ACKNOWLEDGEMENTS

This report is part of a project on violent crime that was initiated by the Justice, Crime Prevention and Security (JCPS) subcommittee of Cabinet. The former Minister of Safety and Security, Charles Nqaku-la, was the chief representative of the JCPS in appointing CSVr to carry out the project. Mlungisi Menziwa, Director of Policy and Research at the Secretariat for Safety and Security, and Trevor Bloem, Director of Communication and Media Liaison in the Ministry of Safety and Security, played a key role in liaising with CSVr on this project and in assisting with securing research access.

Thanks are also due to the roughly 30 people involved in one way or another in working with perpetrators of sexual violence, whose names are listed at the back of this report (see Appendix). All of them were interviewed as part of the research for this report and their insights were extremely valuable in shaping the report.

As reflected in the numerous references in this report, the body of research conducted in South Africa on sexual violence was also extremely important in shaping the report. We particularly relied on data collected as part of the recently completed “Tracking justice” study on the attrition of rape cases through the criminal justice system in Gauteng, and all those who are acknowledged and thanked for their contribution to that report by implication also deserve acknowledgement here.

Thanks also to Amanda Dissel, the programme manager of the Criminal Justice Programme at CSVr, for general advice and support to the project, and to members of the support staff at CSVr, whose contribution is invaluable in making a project of this kind possible. Various other individuals, who provided informal assistance of one kind or another, especially Rachel Jewkes, are also to be thanked.

The report was written by David Bruce, Romi Fuller, Collet Ngwane and Angelica Pino. Mark Isserow assisted with the production and analysis of data from the “Tracking justice” data set. Proofreading and the design and layout of this document were done by Lomin Saayman.

# EXECUTIVE SUMMARY

High levels of sexual violence are key, and particularly distressing and disturbing, aspects of the current epidemic of violence that is affecting South Africa. As part of an overall project on the violent nature of crime in South Africa, this report is intended to address questions to do with the nature and causes of sexual violence in order to provide a basis for making recommendations on how to prevent or combat sexual violence more effectively.

The report starts by addressing questions about definitions of sexual violence. While taking note of the broad definition provided in the the World Health Organisation's *World Report on Violence and Health*,<sup>1</sup> the report is focused primarily on sexual violence in the form of rape, although the issue of child sexual abuse is also addressed in the section dealing with sexual violence against 0–11-year-old children (section 3.3.3). The report also makes notes of changes in the legal definition of rape in South Africa following the coming into force of the new Sexual Offences Act<sup>2</sup> on 16 December 2007, as well as the relevance of social norms relating to sexual matters on how rape is defined by ordinary people.

The next section is concerned with questions to do with the prevalence of sexual violence and notes statistics indicating that in the 2002–03 to 2006–07 period, figures for rape reported to the police were consistently between about 55 000 and 52 000. After briefly noting differences in levels of rape recorded between different provinces, the report engages with questions to do with whether levels of sexual violence may be said to have increased or not in recent years.

Noting that figures for recorded rape increased dramatically from roughly the mid-1980s onwards, the report then engages with the question of whether these increases were driven by increases in reporting. In this respect, the report argues, four factors that are likely to have impacted on levels of recorded rape, namely: increases in the levels of rape associated with the emergence of a violent “masculinised” culture among young men caused by entrenched high levels of structural unemployment and marginalisation; improvements in police practices and attitudes flowing from democratisation, the shift to a service orientation and the strong focus on violence against women related to victim empowerment initiatives; changing legal definitions of rape; and changing awareness among women about sexual violence.

This section also briefly engages with the question of false reporting of sexual violence. Thereafter the report engages with questions to do with to what degree rape statistics underestimate actual levels of rape, suggesting that a statistic of “one in six” is credible in this regard, though noting that some of the studies that provide the basis for this type of estimate may be dated.

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1 Krug et al. 2002: 149.

2 The Criminal Law (Sexual Offences and Related Matters) Act, 32 of 2007.



In concluding, this section briefly discusses questions to do with comparing levels of sexual violence in South Africa with those in other countries, emphasising that it is doubtful that meaningful comparisons can be made between South Africa and other developing countries in this regard due to the variety of factors impacting on when and how such information is reported. However, levels of sexual violence in South Africa nevertheless should be regarded as very high and of serious concern.

The next section deals with questions to do with the nature of sexual violence in South Africa, dealing first with the rape of adult women, then very briefly with the issue of sexual violence against (adult) men, and then with the rape of children (defined as those 17 years and younger). This section makes extensive use of the data from the recently released “Tracking justice” report<sup>3</sup> on reported rape in Gauteng in 2003. In addition, sections 3 and 4 of this report also use cross-tabulations of some of the “Tracking justice” report data, and other data that was produced in the research for the “Tracking justice” study that was not used in the original “Tracking justice” report.

In relation to the rape of adult women, the report starts by addressing questions to do with the regional and local variations in sexual violence. Particular emphasis here is placed on likely variations in the nature of rape between urban and particularly metropolitan areas and other (small-town or rural) areas. The key point here is that the prevalence of stranger rape, as with other predominantly stranger crimes such as robbery, is likely to be far greater in the urban or metropolitan areas than in the rural or small-town areas where rapes between people who are known to each other in some way (whether as intimate partners or otherwise) are likely to be more prevalent.

The report then looks at statistics on the prevalence of stranger rape, noting a variety of statistics in this regard varying from just short of 60% in a study of rape in inner-city Johannesburg to an apparently national figure of 24% provided by the South African Police Service. The report then looks specifically at the question of intimate-partner rapes, again making note of various figures from different studies and contexts indicating that these constitute anything from 9% in one study to another study where upwards of 40% of male respondents appeared to indicate that they had engaged in partner rapes.

The report then looks at data from the “Tracking justice” study on the day, location and place and circumstances of rape, making particular note of how typical locations of the rapes vary according to the type of relationship between victim and perpetrator (Table 6) and the circumstances of the rape (Table 8). This section then looks at the phenomenon of group rapes, noting that, among adult victims in Gauteng, 78% of reported rapes involving more than one perpetrator involved a principal perpetrator identified as a stranger or virtual stranger, but noting the differences in the nature of these kinds of rapes between different contexts in South Africa where there have been studies. After looking at issues to do with rapes committed during the course of another crime and questions to do with the levels of

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3 Vetten et al. 2008.

rape homicide, the report engages with the issue of resistance, the use of weapons, the levels of violence and injury in incidents of rape and how these phenomena relate to each other. This section on adult women as victims of rape then concludes with a brief discussion of the impact of rape on victims as well as the profile of female victims of rape in South Africa. A brief section on men as victims of rape follows immediately after this.

The section of the report dealing with children as victims of sexual violence starts by delineating the distinction, based in part on age distinctions that form part of the law and that differentiate children under the age of 12 from children who are 12 to 15 years of age and those of 16 and 17 years. In combination the latter two groups (those from 12 to 17, referred to collectively as adolescent or teenage girls in this report) are the focus of the next section of this report. On many measures figures for this group fall between those for adult women and young (0-11-year-old) children (see, for instance, Table 13), although frequently tending to more closely resemble the figures for adult women. However, this group, particularly girls from the age of 13 or 14 upwards, along with young women up to the ages of 21 or 22, appear to suffer the highest levels of rape victimisation (see Table 12 and related discussion).

The discussion of sexual violence against children then continues with a fairly lengthy discussion of sexual violence and sexual abuse of young children and infants. This starts with a discussion of the differences in meaning between the terms “sexual violence” and “sexual abuse”, as they apply to young children. The latter term is defined in this report as applying particularly to instances of sexual violence that are distinctive because of the age and developmental differential between victim and perpetrator, with the perpetrator taking advantage of these differences to abuse the child sexually.

Thereafter the issue of sexual violence and abuse of young children is discussed in relation to numerous issues including: the nature of the sexual activity characteristically involved; the gender profile of victims; the age of the victim, with specific reference to the levels of rape of children of 2 years and younger; the age differential between the victim and the perpetrator; the relationship between the victim and the perpetrator; locations; repeat victimisation; the number of perpetrators; complicity of other persons; reason for vulnerability; the type of coercion or manipulation; injuries; circumstances; and the significance of the “virgin cleansing” myth.

As compared to the rapes of adult women and teenage girls, a much higher proportion of rapes of young children involve people in close social or relational proximity to the child, and these factors are mirrored in the data on the location of these rapes (high percentages take place at the victim’s or perpetrator’s or other nearby home), as well as in relation to the fact that, among reported cases, a much higher percentage of child rapes are part of a pattern of repeat victimisation.

While young children are less likely than adults or teenage girls to be victims of group rapes, the rape of children nevertheless highlights an issue of abrogation of parental responsibility or other behaviour by parents or other adults, which sometimes amounts to a direct form of complicity in the rape of these

children. Rapes and sexual abuse of young children characteristically involve other forms of manipulation and abuses of trust rather than a reliance on physical force (though these observations are not of relevance to rapes involving pre-verbal infants). Related to this, non-genital injuries are less likely. Genital injuries are not necessarily present, but where they do occur, particularly with very young infants, they are potentially fatal or the cause of extreme physical trauma.

The discussion of the rape of children finishes with a comparison of data from various sources on the prevalence of child rape, focusing specifically on estimates of the prevalence of rape against children of 24 months and younger (which are estimated to number between 600 and 3 600 cases annually) and those of girls and young women in the 15–20 age band.

The discussion of the causes of sexual violence is organised under three broad themes: those of sexual entitlement; insecure and threatened masculinity; and the relationship of the problem of sexual violence to that of other crime and violence in South Africa. Ideas about sexual entitlement may be seen to have originally privileged men by authorising the sexual subordination of women to them once they were married. However, in contemporary South Africa, particularly within the context of youth culture, these ideas can be seen to have been adapted to give endorsement to (young) men in taking sex by force within dating relationships and in other contexts, while at a cultural level this “forced sex” is not recognised as rape and is widely tolerated and ignored.

Adaptations around ideas of entitlement are also manifested in forms of “transactional sex” where apparent acts of generosity, such as buying a woman a beer, are understood by men as also providing them with a right to sexual intercourse with that woman. This section concludes with a brief discussion of evidence relating to whether higher social class is associated with an increased tendency to engage in coercive sexual practices on the basis of “entitlement”, as well as information highlighting the fact that young girls and women in particular often endorse ideas that legitimate “forced sex” or ideas about entitlement themselves.

The focus on the theme of insecure and threatened masculinity starts off by highlighting a wide range of factors operating at different levels and which may be said to contribute to insecurity generally, and specifically among men, in contemporary South Africa. Though it is not necessarily the most important, the emphasis on gender equality itself, which has been a characteristic of the transition to democracy, and the post-transition period, may be seen as one factor accentuating these levels of insecurity. Due to the fact that, related to factors such as structural unemployment, many men’s experience is one of being unable to acquire access to the means to obtain social standing and legitimacy, many men may be inclined to invest in types of masculine identity that provide them with an alternative base for such standing. These identities are often based on violence and criminality and may be associated with ideas that involve antipathy towards women and may legitimise sexual violence in various ways.

The discussion of the relationship between the high levels of sexual violence in South Africa and the broader problem of widespread violence and criminality starts off by highlighting various points in earlier parts of the report where this issue has been alluded to. Data on previous convictions from the “Tracking justice” study is then used to explore the question of the degree to which alleged perpetrators of rape in Gauteng in 2003 might be said to have been involved in criminality more broadly. Roughly 18% of all perpetrators had previous convictions of one kind or another. Among these only 9% (that is, less than 2% of alleged perpetrators overall) had previous convictions for rape, though 52% (9% overall) had previous convictions involving violence in some form.

Among alleged perpetrators in the different victim age groups there were distinct differences in types of previous convictions. Alleged perpetrators of rape against adult women were more likely than other perpetrators to have previous convictions for assault or assault GBH as well as other crimes such as housebreaking, while alleged perpetrators of rape against young children were most likely to have previous convictions in an “other” category, incorporating offences such as fraud but also possession of dagga or other drugs, and offences related to the use of alcohol and/or motor vehicles.

Perhaps surprisingly the statistics did not indicate that alleged perpetrators in stranger rapes were more likely to have criminal records. However, older perpetrators were distinctly more likely to have criminal records than younger perpetrators. This fact, combined with information pointing to high levels of attrition in rape and other criminal cases, points to the certainty that data on previous convictions is likely to substantially underrepresent the overall level of involvement of alleged sexual-violence perpetrators in previous acts of sexual violence as well as other violence and criminality.

The latter point is reinforced by data from a study conducted in Australia. Other Australian data also highlights the tendency for perpetrators of sexual violence against adults to have substantially different profiles from perpetrators of rape against young children, in terms of the types of criminal convictions. This discussion then moves forward by suggesting that perpetrators of sexual violence could be differentiated from each other in terms of the types of criminal careers they are associated with, as well as in terms of their level of involvement in sexual violence.

After considering the issue of the link between sexual violence and other criminality, however, this section concludes by raising the issue of to what degree perpetrators of sexual violence can be said to be “non-criminalised” in the sense that their lifestyles are not characterised by a general orientation towards sexual violence or other criminality. In this section the report argues that criminalised rapists may tend to be distinguished by a lack of empathy, which facilitates their involvement in sexual violence. On the other hand, the acceptability of sexual violence to other perpetrators could have more to do with it having been legitimised by ideas about sexual entitlement. In addition, the phenomenon of the “culture of violence” might have fed into their acceptance of sexual and other violence. The latter perpetrators are therefore influenced in their perpetration of rape more by apparent social and cultural endorsement of sexual violence, rather than by deep-level defects of personality. These types of motivations

might be particularly prevalent among perpetrators of rape against adolescent girls and young women, who are also roughly from the same age category.

In its conclusion the report carries forward the latter theme. Sexual violence partly requires interventions that are located within efforts to address the problem of criminality but also other interventions that engage at the cultural and socio-psychological level. This feeds directly into the report's recommendations, which are reproduced below.

## **Recommendations**

These recommendations should be read in relation to the broader set of recommendations made in the concept paper on the violent nature of crime, the first deliverable in terms of this project. A final set of recommendations informed by this and other reports that have formed part of the overall project, will be included in the final report. Principal issues raised by this report that are relevant to the overall recommendations of the project can be understood on two levels:

- On the first of these levels, sexual violence is a manifestation of a belief in male sexual entitlement and the culture of violence in South Africa. In so far as this issue raises normative issues, there is value in contesting them on a normative level. However, this is not merely about promoting positive values but also about understanding the socio-psychological or other reasons for investment by men in these ideas and practices. This implies the need for a deeper engagement with issues to do with men's experience of their sexuality, the sources of their insecurity, and the factors that support the normalisation of the use of violence in their lives. This raises the need to engage with questions about positive lifestyles among men in sectors of society that are at high risk of rape perpetration.
- On the second level, which is not entirely distinct from the first, sexual violence is a manifestation of the problem of criminality and driven by the factors that support criminality. This implies that responses to sexual violence need to be located within efforts to deal with the problem of criminality more broadly, whether this is through the criminal justice system or through other social crime prevention measures.

# 1. INTRODUCTION

High levels of sexual violence are particularly distressing and disturbing key aspects of the current epidemic of violence that is affecting South Africa. As part of an overall project on the violent nature of crime in South Africa, this report is intended to address questions to do with the nature and causes of sexual violence in order to provide a basis for making recommendations on how to prevent or combat sexual violence more effectively.

## 1.1 Methodology

This report is a short-term study that is intended to engage with and hopefully advance the current state of knowledge and the current understandings of sexual violence in South Africa. The report is therefore a reflection on the nature and causes of sexual violence. The report was developed through:

- Semi-structured, open-ended interviews were conducted with 36 practitioners working in correctional facilities, the South African Police Service (SAPS), non-governmental organisations, private practice, academia or research.
- A review of South African literature on the nature and causes of sexual violence.
- The review of South African literature was supplemented by selected foreign literature on sexual violence, particularly in relation to areas where it might be said that there are gaps in South African research.
- The report also makes extensive use of the data from the recently released “Tracking justice” report<sup>1</sup> on reported rape in Gauteng in 2003. In addition, sections 3 and 4 of this report also use cross-tabulations of some of the “Tracking justice” report data, as well as other data that was produced during the research for the “Tracking justice” study but not used in the original “Tracking justice” report.

## 1.2 Defining sexual violence

The World Health Organisation’s *World Report on Violence and Health* defines sexual violence as:

... any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person’s sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work.<sup>2</sup>

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<sup>1</sup> Vetten et al. 2008.

<sup>2</sup> Krug et al. 2002: 149.

Coercion, often a crucial element of sexual violence, is further defined as “a whole spectrum of degrees of force. Apart from physical force, it may involve psychological intimidation, blackmail or other threats – for instance, the threat of physical harm, of being dismissed from a job or of not obtaining a job that is sought, and may also occur when the person aggressed is unable to give consent – for instance, while drunk, drugged, asleep or mentally incapable of understanding the situation”.<sup>3</sup>

The *World Report on Violence and Health* refers to a range of sexually violent acts that, it says, can take place in different circumstances and settings. Examples include:

- Rape (within marriage or a dating relationship, by strangers, during armed conflict).
- Unwanted sexual advances or sexual harassment, including demanding sex in return for favours.
- Sexual abuse of children or mentally or physically disabled people.
- Forced marriage or cohabitation, including the marriage of children.
- Denial of the right to use contraception or to adopt other measures to protect against sexually transmitted diseases.
- Forced abortion.
- Violent acts against the sexual integrity of women, including female genital mutilation and obligatory inspections for virginity.
- Forced prostitution and trafficking of people for the purpose of sexual exploitation.

In terms of the definition, sexual violence of any nature can be committed by men, women and children against men, women and children; it is not a gender- or age-specific offence.

While many of these problems are manifested in South Africa in one way or another,<sup>4</sup> the core of the problem of sexual violence in South Africa, as understood in this report, can roughly be summarised as composed of, on the one hand, a major problem of rape and, on the other, a major problem of child sexual abuse. These are the issues this report focuses on.

### **1.2.1 Changing legal definitions of rape**

Until quite recently, rape was defined by common law and its definition was not determined by statute. In common law, rape was defined by a male having unlawful and intentional sexual intercourse with a female without her consent. Sexual intercourse was defined exclusively as the penetration of the female sexual organs by the male.<sup>5</sup>

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3 Ibid.

4 See, for instance, Gould (2007) on trafficking. It would appear that genital mutilation is not a significant practice in South Africa.

5 Snyman 1984: 400.

6 See footnote 3, page 84, regarding changes in the law relating to rape in marriage.



While there was some development of the law relating to rape,<sup>6</sup> this basic definition remained largely unchanged until the passing of the Sexual Offences Act in December 2007.<sup>7</sup> A new definition of rape is provided in section 3, which specifies that “[a]ny person (‘A’) who unlawfully and intentionally commits an act of sexual penetration with a complainant (‘B’) without the consent of B, is guilty of the offence of rape”.

Crucial to understanding the new definition of rape is therefore the definition of “sexual penetration” in section 1. This specifies that:

- ‘Sexual penetration’ includes 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.<sup>8</sup>

The new definition of rape has a number of implications, among others that:

- a broader range of acts of sexual penetration against women (or girl children) are now also classified as acts of rape and this is not restricted to vaginal penetration; and
- men (and boy children) can now also be recognised as victims of rape at law.

A further implication of the new definition is in relation to the production of official statistics on sexual violence. In so far as the definition increases the types of actions regarded as rape, its introduction by the police would tend to increase rape statistics. The revised definition was, for instance, applied in a study of cases of child rape (age range 0–17) that was undertaken during the 2001–06 period in north Durban. Out of 5 308 cases, of whom 94% were female, nine out of 10 cases (89,1%) involved penile-vaginal penetration. Penile-anal penetration was involved in 6,7% of cases, manual-vaginal penetration in 4,1% of cases, and the insertion of an object into the vagina in 0,1% of cases.<sup>9</sup> The study noted that annual figures for the inclusive (new) definition of rape were consistently 12% higher than annual figures for the restrictive (old) definition of rape, and therefore suggests that it is “thus likely that one of the consequences of the new Sexual Offences Bill will be to increase the incidence of reported child rape by approximately 12%”.<sup>10</sup>

7 The Criminal Law (Sexual Offences and Related Matters) Act, 32 of 2007 was signed into law by President Thabo Mbeki on 16 December 2007.

8 This definition also refers to situations where people are penetrated by the genitals of an animal. During the writing of this report we did not come across documentation regarding such incidents.

9 Collings et al. 2007: 5.

10 Ibid.



## 1.2.2 The impact of established sexual norms on definitions of sexual violence

One of the themes that recurs through this report is the question of understandings of rape by ordinary men and women in South Africa. Particularly within marriage relationships, for instance, it appears that South Africans from across the cultural spectrum often in the past tended to see men as entitled to sexual intercourse. A byproduct of this type of belief appears to be a widespread phenomenon where people, both men and women, who are involved in intimate relationships do not label acts where the man coerces the woman into sex and where she is obviously engaging in sex unwillingly as socially unacceptable or define them as acts of rape. Even in other types of settings or relationships, where overt violence is not used but where the man relies on “blackmail, threats, trickery or persistent pleading”,<sup>11</sup> both victim and perpetrator may tend not to regard such acts as acts of rape.

On the other hand, it appears that it may also be said that virtually all people would tend to identify an act where a strange man attacks a woman and forces her to have sexual intercourse as an act of rape. Effectively, therefore, the way in which members of the public understand the term rape, and whether or not they label individual acts as acts of rape, is not necessarily aligned with present, or even past, legal definitions of rape.

While in this report rape is understood in line with legal definitions, many people do not strictly apply legal definitions when labeling acts of sexual coercion as rape or not rape. As will be reflected in this report, this has implications not only in terms of definitions of acceptable and unacceptable conduct between individuals at an interpersonal level but also impacts in several other ways that have implications for the picture we have of rape. Thus these “cultural subjectivities” around defining rape are likely to impact on whether or not people report cases of rape (as legally defined) to the police or, for instance, to fieldworkers conducting surveys on rape. In addition, because certain forms are underreported, statistics regarding the ratio of one type as opposed to another type of rape are likely to overrepresent those types of rape (particularly stranger rape) that are less underreported.<sup>12</sup>

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11 Jewkes and Abrahams 2002: 1 231–1 244.

12 While they would overrepresent the proportion or ratio of such types of rape, they would still be likely to underrepresent the overall prevalence (see next section, “The prevalence of sexual violence in South Africa”).

## 2. THE PREVALENCE OF SEXUAL VIOLENCE IN SOUTH AFRICA

### 2.1 Official statistics on sexual violence

In so far as incidents of sexual violence are reported to the police, and recorded by them in official statistics, they are reported by the police in one or other official crime category. However, for various reasons incidents of sexual violence, even if they are reported (or otherwise come to the attention of the police) and recorded by them, are not necessarily recorded as incidents of sexual violence. Some murders, for example, may have been initiated as acts of sexual violence. Police may not be aware of the fact that the victim had been raped prior to being murdered, and may simply open a murder docket.<sup>1</sup> Some house robberies may also involve the rape of one of the women in the house. Police may open a robbery docket, and even if they arrest the suspects and charge them with robbery and rape, they may not enter the rape case into rape statistics. Even if procedure is supposed to be that both a case of robbery and one of rape are recorded, it is likely that practise is inconsistent so that only some rape-robberies end up being recorded in rape statistics. As a result, incidents of sexual violence are not necessarily only recorded as incidents of rape or indecent assault.<sup>2</sup>

For these and other reasons, many acts that may be regarded as acts of sexual violence are therefore likely to be buried in official statistics on other categories of crime such as murder, attempted murder, robbery, assault, kidnapping or abduction, or, for instance, the unlawful pointing of a firearm. But the only statistics which in themselves amount to statistics on “sexual violence” are those for rape and indecent assault (tables 1 and 2). Due to the fact that rape is much more likely to be reported to the police, statistics on rape are far higher than those for indecent assaults, despite the fact that forms of indecent assault or harassment are likely to be more prevalent than rape.

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1 See, for instance, Abrahams et al. 2008, which is an attempt to identify likely “rape homicides” among murders of women, and which estimates that these constitute 16% of all homicides of females over 13 years of age.

2 Note also the observation regarding “inconsistency in the recording of cases involving multiple rape complaints. In some stations where more than one victim was raped in the same incident, separate dockets were opened for each victim. At other stations multiple victims were all grouped in one docket” (Vetten et al. 2008: 43).

TABLE 1: Reported rapes in South Africa for the period April to March 2002–03 to 2006–07

PROVINCE	2002–03	2003–04	2004–05	2005–06	2006–07
Eastern Cape	6 066	7 027	7 405	8 960	7 796
Free State	3 733	3 828	3 983	3 709	3 589
Gauteng	12 091	11 926	11 923	11 562	11 114
KwaZulu-Natal	9 489	9 230	9 614	9 731	9 587
Limpopo	4 472	4 158	4 780	4 416	4 573
Mpumalanga	3 534	3 714	3 942	3 991	3 871
North West	5 038	5 004	5 074	5 007	5 065
Northern Cape	1 472	1 531	1 559	1 405	1 300
Western Cape	6 530	6 315	6 834	6 145	5 722
<b>RSA total</b>	<b>52 425</b>	<b>52 733</b>	<b>55 114</b>	<b>54 926</b>	<b>52 617</b>

TABLE 2: Reported indecent assaults in South Africa for the period April to March 2002–03 to 2006–07

PROVINCE	2002–03	2003–04	2004–05	2005–06	2006–07
Eastern Cape	859	862	922	1 030	991
Free State	589	633	710	653	583
Gauteng	1 833	1 960	2 007	2 001	1 970
KwaZulu-Natal	1 405	1 531	1 895	1 639	1 554
Limpopo	284	272	255	267	292
Mpumalanga	290	324	350	361	307
North West	510	480	539	448	486
Northern Cape	355	396	362	359	378
Western Cape	2 690	2 844	3 083	3 047	2 806
<b>RSA total</b>	<b>8 815</b>	<b>9 302</b>	<b>10 123</b>	<b>9 805</b>	<b>9 367</b>

Source: Both these tables are the official SAPS statistics available at [www.saps.gov.za](http://www.saps.gov.za).

As a result of the broadening of the legal definition of rape referred to above,<sup>3</sup> it is likely that a number of sexual assaults that would previously have been classified as “indecent assaults” will be classified as rapes. If rates of rape and the reporting of rape remain roughly the same during this time period, this should contribute to an increase in the figures for rape in official statistics. The statistics prior to the

<sup>3</sup> See 1.2.1, Changing legal definitions of rape, page 15.

coming into force of the Sexual Offences Act are therefore based on a narrower definition of rape (and a broader definition of indecent assault). The crime statistics report produced by the SAPS in June 2008 therefore used the end of December as a cut-off point for rape and indecent assault statistics. These statistics (for the nine-month April–December period) suggest that in the most recent year for which statistics are available, rape figures have dropped by 9% (from 39 304 to 36 190 cases), while indecent assault cases dropped by less than 1% (from 6 812 to 6 763 cases).

## 2.2 Provincial and regional variations in rates of sexual violence

TABLE 3: Reported rates of rape (per 100 000 population) in South Africa for the period April to March 2002–03 to 2006–07

PROVINCE	2001–02	2002–03	2003–04	2004–05	2005–06	2006–07
Northern Cape	178	179	187	173	156	143
North West	138	136	132	133	131	131
Free State	142	137	140	135	126	121
Gauteng	142	133	127	135	128	121
Western Cape	150	142	133	150	132	121
Mpumalanga	118	111	115	122	124	119
Eastern Cape	105	93.9	108	105	127	111
<b>RSA</b>	<b>121</b>	<b>115</b>	<b>114</b>	<b>118</b>	<b>117</b>	<b>111</b>
KwaZulu-Natal	99	99	95	100	101	99
Limpopo	91	84	77	87	78	81

In so far as recorded rape and projected population figures are a reliable measure, there are significant variations in rates of rape between the different provinces, with those in Northern Cape (143 per 100 000) 75% higher than those in Limpopo (81 per 100 000), according to the 2006–07 SAPS statistics. According to these figures,<sup>4</sup> five of the provinces appear to have experienced significant declines in rape rates, with the top five provinces listed in Table 3 reflecting their lowest figures in the 2006–07 year. The position of North West as the province with the second-highest rape rate is a relatively recent development, with Western Cape consistently having occupied second position until the 2006–07 year. Though North West has also experienced declines in its rate of rape, these have not been as significant as those in Northern Cape and Western Cape. According to these figures, Northern Cape has experienced a 31% decline since its 2003–04 high point. The recorded decline in Western Cape is 24% in the two-year period since 2004–05.

<sup>4</sup> The figures are calculated based on projected figures for population growth.

## 2.3 Past and present rates of sexual violence?

It is difficult to ascertain to what extent the high rate of sexual violence in South Africa is a “new” problem that has arisen out of the complex dynamics that have accompanied the country’s transition to democracy, or whether the rates of sexual violence have always been disproportionately high but that, in the past, they were systematically unreported due to racial and gender oppression. One interviewee, for instance, argued that sexual violence against children had always been a feature of life in South Africa.

It has always been a high number of cases. You know, I think there is a misconception or misperception that people are raped by unknown people... It may not necessarily be your family member, but it is generally more than often someone known to the victim... And in some communities in the past, you would find that if somebody had been raped we would deal with it in the family. So we did not know at the courts what happened to her. But because of the publicity and the manner in which cases like these are handled, now children are able to report cases without the support of family members (Cape Town prosecutor).

But while it is not clear exactly what the underlying trends in the prevalence of sexual violence have been, what is clear is that reported rape in South Africa escalated dramatically from the mid-1980s to the late 1990s.

TABLE 4: Statistics for rape, 1990–98

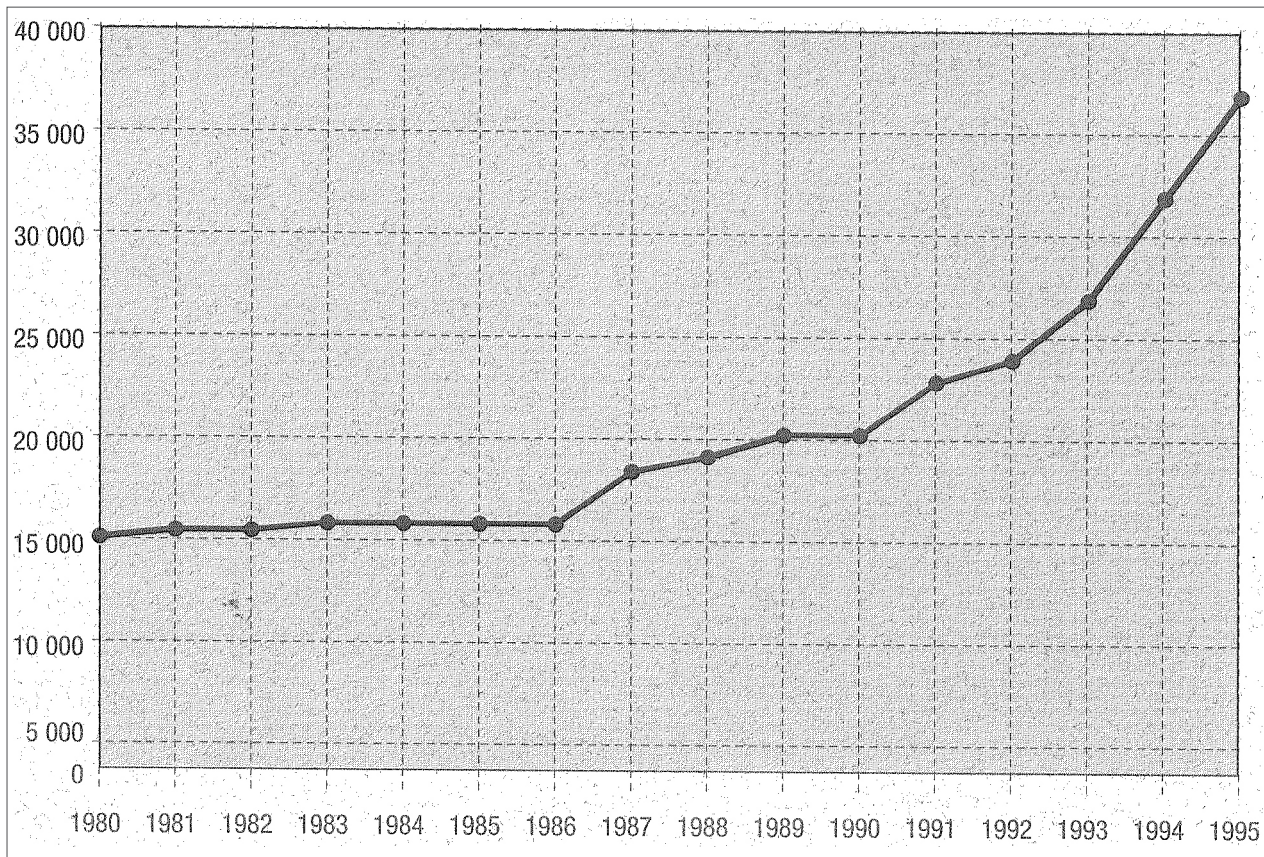
	SAPS STATISTICS			NEDCOR PROJECT ON CRIME, VIOLENCE AND INVESTMENT	UNSPECIFIED GRAPHS
	Rape	Statutory rape	Indecent assault	Rape	
1990				20 321	17 849
1991				22 749	19 542
1992				24 316	19 085
1993				27 039	21 543
1994	42 429	787	3 874	32 003	25 298
1995	47 506	666	4 873	36 888	
1996	50 481	580	5 220		
1997	52 159	537	5 053		
1998	49 280	474	4 851		

Source: SAPS 1999; Nedcor 1996. Note that unlike the figures in tables 1, 2 and 3, these figures are for the calendar year (January–December).



Table 4 provides statistics on rape from two different sources covering the period 1990–98. Despite the substantial discrepancies between the two sets of figures,<sup>5</sup> the table nevertheless appears to indicate that reported rape increased dramatically during this period, which coincides with the period of political transition in South Africa. Figures that appear to be the same as those provided by the Nedcor study (see Table 4) are also provided in Figure 1, which cover the period from 1980 onwards. These appear to indicate that rape figures started increasing most dramatically from roughly 1986 onwards, and that the upward trend that continued up to the end of the 1990s was in some ways merely a continuation of this trend. The peak figure for reported rape (55 114 cases) was recorded in 2004–05 (Table 1). Very roughly, then, it seems that police figures for recorded rape steadily increased at a dramatic rate from the mid-1980s to the late 1990s. Thereafter rape figures have remained consistently in the lower 50 000s, peaking in the 2004–05 year.

FIGURE 1: Number of rapes in South Africa, 1980–95<sup>6</sup>



5 It is difficult to make proper sense of the discrepancy between these two sets of figures as it may be assumed that the Nedcor report also relied on official (SAPS) statistics. Presumably, prior to 1994, the South African statistics would have excluded homeland areas. But this does not explain the discrepancy in the post-1994 period.

6 Nedcor-Institute for Security Studies 1997: B1.

## 2.4 Reporting and levels of sexual violence

All forms of violence, with the exception of murder, are underreported in police statistics. Many acts of violence are not seen by participants as sufficiently serious to warrant a criminal charge. Often violence is not even identified as “criminal” and therefore worthy of being reported to the police, partly due to the fact that violence as a means of expression or as a way to negotiate conflict has become normalised in South African society, especially in intimate relationships. This means that some victims have internalised the violence acted out on them to such a degree that they might not see it as something worth reporting.

Among serious forms of violence, rape is probably more underreported than others. For an incident of sexual violence to be reported to the police it first needs to be recognised as such by the victim. First, some victims may not recognise acts of sexual violence as criminal acts. Second, there are many barriers to reporting sexual violence, which impact to a greater or lesser degree on victims of sexual violence in all countries. These include: feelings of shame and self-blame; societal attitudes and discrimination against those who have been victims of sexual violence; community taboos around sexual violence; reluctance about or threats against reporting a family member or intimate partner; discriminatory police attitudes; and the secondary victimisation experienced by sexual-assault victims in the criminal justice system. Citing a range of sources, Jewkes and Abrahams (2002:1 232) note that:

Many women will only try to report to the police incidents which fall within popular notions of ‘rape’ because of fear of not being believed. These fears are confirmed by police assertions that many women lie about rape. As a result these types of incident are more likely to result in a docket being opened, in other words to become rape ‘cases’. There are a range of other barriers to reporting to the police including problems of physical access to police, fear of retaliation by the perpetrator and fear of the legal processes including experiencing rudeness and poor treatment by the police. Many women do not go to the police because they anticipate that ultimately their action will not lead to the perpetrator being punished. Few rape cases go to court ... and ... result in conviction and custodial sentences. Corruption in the form of perpetrators paying to ‘lose’ dockets is widely acknowledged as a problem in the system, in Umtata a docket will be ‘lost’ for R20... In Southern Johannesburg, one in twenty dockets were estimated to be ‘lost’ in a fraudulent manner. This report also outlined a range of other corrupt practices described by police who were interviewed, which when they become known would dissuade women from reporting cases. These included police, prosecutors and other court officials being paid to destroy the case, taking the suspect to the complainant to tell them to accept money and drop the case, asking for payment to complete the investigation and having sex with the rape survivor to ‘check if she was raped’.

Taking into account the changing levels of rape recorded in official statistics in South Africa as reflected, it would seem best to assume that various factors should be seen as contributing to the variations in levels of reporting of rape as reflected in statistics covering the last two decades in South Africa. These factors could be seen to include:

- **Increases in (particular types of) rape:** It seems safe to assume that a key factor contributing to the increase in these numbers during the post-1990s period was an increase in rates of reporting by victims of sexual violence. But this would not explain the increase during the latter 1980s, which, if anything, appears to have taken place notwithstanding intensified community antagonism to police. It therefore seems reasonable to assume that the period from the mid-1980s onwards saw an increase in the incidence of rape. The key drivers of this incidence may be seen to be the entrenchment and proliferation of a culture of criminality among marginalised young men associated with factors such as urbanisation and intensifying structural unemployment. Rape was not the only form of crime to increase; dramatic increases in robbery were also recorded from the mid-1980s onwards,<sup>7</sup> a trend that continued into the early years of the current century. While the violent masculinised culture of young men was probably associated with an increase in violence against women generally, it seems possible that the key driver of increases in rape statistics may have been dramatic increases in the incidence of forms of stranger and other non-partner rapes, frequently involving young men involved in a generalised predatory criminal lifestyle.
- **Police practice and attitudes:** The transition to democracy has been associated with dramatic changes in policing in South Africa. A key focus of “police transformation” was on inculcating a professional service orientation, which was effectively a radical departure. In itself the process of democratisation, and with it the idea that the state’s role was to serve all South Africans, would probably have motivated many more black women to consider reporting cases of sexual violence to the police on the basis that these complaints would be properly received. Elements of the police transformation process specifically focused on creating awareness among police officers about gender issues and sensitising police officers to the risk of secondary victimisation. Victim empowerment programmes also to some extent gave precedence to issues relating to victims of sexual violence, while victim-orientated rape centres were created to support victims during the reporting process.
- **Legal definitions:** A further factor likely to have impacted on the reporting of sexual violence is the way sexual violence is defined in law. As indicated,<sup>8</sup> legal definitions of sexual assault in South Africa have been modified in various ways in recent years. In the early 1990s South African law for the first time provided that a man could be prosecuted for raping his wife, while the definition of rape was modified by statute in December 2007. The fact that these other forms of sexual violence were not recognised, or were in some ways trivialised, by the law may have discouraged people from reporting them. While the Sexual Offences Act will only begin to impact on statistics in 2008, the clear criminalisation of rape within marriage would have resulted in acts that previously, if reported, would have only been recognised as acts of assault,<sup>9</sup> being recorded in statistics on sexual violence.
- **Awareness:** Along with greater access to and a more positive disposition towards the police, another factor that is likely to have contributed to increased levels of reporting have been ideas of female

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7 Ibid.

8 See above as well as footnote 3, page 84.

9 Snyman 1984: 401.



equality, changing normative beliefs about sexual practices, and increased awareness of legal definitions of rape. These changes in awareness are partly a byproduct of the transition to democracy, but also distinctively a result of public campaigns that have promoted understanding and encouraged women to speak out about sexual abuse. As a result of the work of government departments and civil-society organisations to create awareness around sexual violence, women in particular are now more able to speak out and denounce sexual violence. This seems to be the case also with child sexual abuse, a crime that the country has been more aware of in recent years.<sup>10</sup> Hence, the perception that the levels of sexual violence are higher now than before could be attributed to an increase in the reporting of these crimes. (However, it may be assumed that greater awareness would not simply have translated into greater levels of reporting but also, at least in part, into discouraging coercive sexuality. Some women who have been empowered by greater awareness would more firmly assert their refusal to cooperate with the coercive sexuality of men. It may also be assumed that some men would modify their conduct on the basis of changing awareness about sexual norms and would, as a result, refrain from coercive sexual practices.)

Overall, then, it seems reasonable to identify trends in rape statistics as both products of changes in the actual incidence of (particular types of) rape, as well as increases in rates of reporting related to changes in police attitudes and practice, legal definitions and awareness about rape.

Finally, it may also be noted that changes in levels of reporting are likely not to be uniform in different parts of the country. Not only may trends in the underlying level and nature of rape, and regional variations in culture, impact on variations in reporting between different provinces, but improvements in policing or awareness campaigns are not implemented uniformly throughout the country.

## 2.5 False reporting on sexual violence

As indicated above by Jewkes and Abrahams, police frequently appear to assert that “many women lie about rape”. The Tracking Justice study of rape dockets in Gauteng, in fact, finds evidence to partly substantiate these assertions by police, finding that 3% of cases may have been false complaints, including 4% of cases involving young girls, 6% of those lodged by teenagers and 2% of complaints by adults,<sup>11</sup> and noting in particular that: “There did appear to have been some false allegations made by teenage girls fearful of being punished by their parents for having sex. There were also some withdrawal statements where the victim merely stated that the sex was consensual.” While such withdrawals “may be the

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<sup>10</sup> Posel 2005.

<sup>11</sup> Vetten et al. 2008: 43. The report notes that 40 dockets (4,4% of 918) were classified by the police as false or unfounded (ibid: 44-45), and that roughly another 27 (8,1% of 331) cases were withdrawn by the prosecution (filed as *nolle prosequi*) on the basis that they were false reports (ibid: 49). It is not clear if these roughly 67 cases are the same as the 68 referred to, or whether the cases classified by the researchers as possible false reports were so classified independently.

result of intimidation”, and are not necessarily proof that the complaint was false, it seems reasonable to acknowledge that a small percentage of rape complaints lodged with the police may indeed be false.

Police or other people who believe that rape complaints are sometimes false are not wrong. But the problem is the degree to which police or others often lay emphasis on and generalise about the prevalence of false rape allegations. Many police, for instance, appear to turn the fact that some allegations of rape are false into a generalisation to the effect that rape complaints are generally false and not to be relied upon.<sup>12</sup> The fact that, in a small percentage of cases, rape complaints are false is therefore used by some police officers as a way of generally discrediting rape complainants and as a justification for treating many rape complaints with a dismissive or doubtful attitude. This is not to say that police should suspend judgment in dealing with rape (or any other) complainants, but rather that in such situations they should seek to combine a disposition to compassion and empathy with objectivity.

## 2.6 Other data on the prevalence of sexual violence

Some research studies in South Africa have attempted to quantify the rates of sexual violence in South Africa. These have often been studies with small sample sizes that are limited to specific localities.

A 2005 study on sexual violence among men and women in Cape Town reported that more than 40% of women in their sample had experienced at least one sexual assault, and more than one in five men openly admitted to having perpetrated sexual assault against women.<sup>13</sup> Though it cannot be taken as representative of prevalence among all women in the area, a study of women in antenatal clinics in Soweto found that 9,7% disclosed rape by an intimate partner in the year prior to the study, and 20,1% had experienced it at some stage in their lifetime.<sup>14</sup> Similarly, in a survey of working men in Cape Town, one in six (15,3%) reported “sexually coercing a female partner” in the previous decade.<sup>15</sup>

Some of the studies that have tried to estimate prevalence focus on women’s lifetime experiences of sexual coercion or, for instance, experiences over the past decade. However, for purposes of comparing the prevalence of sexual violence with police statistics, and therefore being able to estimate reporting rates, the studies that are most useful are those that attempt to quantify sexual coercion over the past year.

Possibly the most important study in terms of attempting to quantify the degree to which reported sexual violence reflects actual reporting rates is the “Three provinces study of violence against women”.<sup>16</sup>

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12 Newham 2008.

13 Kalichman et al. 2005: 299–305.

14 Jewkes et al. 2006: 2 950, quoting Dunkle et al. 2004.

15 Ibid, quoting Abrahams et al. 2004.

16 The study is reported in Jewkes et al. 1999. Also see Jewkes and Abrahams 2002: 1 231–1 244.

The study was characterised by a high degree of care with measures taken to “create supportive environments for the study ... with special training around violence against women for interviewers, training to interview in private, handing out of referral sheets with non-governmental organisation contact numbers and regular debriefing”.<sup>17</sup> The study found that among women in the 17–48 age group in the three provinces in which it was conducted (Limpopo, Mpumalanga and Eastern Cape), there were 2 070 such incidents per 100 000 women per year. Projections based on this figure (which covers a group that constitutes roughly 24,1% of the population) suggest that at the time of the research roughly one in every four rapes in South Africa was reflected in crime statistics.<sup>18</sup> This is consistent with the study’s own findings to the effect that 25% of women raped in the previous year said they had reported it to the police.<sup>19</sup>

However, even within the three provinces in which the study was conducted, the study can at best be seen to provide only a partial depiction of the prevalence of sexual violence victimisation. This is, firstly, because, even though care was taken to try and ensure the reliability of the study, it was still likely that some women had not reported their victimisation. As the report notes, “[n]on-consensual sex in marriage and dating relationships is believed to be very common but is usually not well reported in surveys”.<sup>20</sup>

Secondly, the report used a very conservative definition of rape. Women were asked if they had been “forced or persuaded to have sex against your will by being threatened, held down or hurt in some way”, and the question therefore excluded other types of non-physical coercion.

Thirdly, while the number of rape victims over 48 years of age probably constitutes a relatively small proportion of the overall total, girls under 17, particularly in the later teenage years, have high rates of rape victimisation. According to one source, forced sexual initiation “is reported by almost a third of adolescent girls”.<sup>21</sup> The report of a national survey of 4 409 young people in the 12–22 age group indi-

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17 Jewkes and Abrahams 2002:1 235.

18 The “Three provinces study” provides a figure of 2 070 rapes (or attempted rapes) per 100 000 women in the 17–48 age group. However, the 17–48 age group makes up 47,4% of the female population (Statistics South Africa 2007: 9). This works out as 981 rapes per 100 000 women (based on the entire female population, including female children). The police statistics of roughly 120 per 100 000 people provide a figure of roughly 240 per 100 000 women (based on the entire female population, including female children). This implies that police statistics (using the national figure) represent a rate of reporting rape by women that is roughly a quarter of the rate of rape as reported to the “Three provinces” survey.

19 Ibid: 1 236. In another study only 15% (or one in seven) of women said they had reported an incident where physical force had been used to make them have sex against their will to the police (Department of Health 1999, as reported in Jewkes and Abrahams 2002: 1 235). Note that the Department of Health study interviewed women about any experiences of sexual violence throughout their lives, and therefore is not strictly comparable to the “Three provinces study”.

20 Jewkes and Abrahams 2002: 1 231–1 244.

21 Ibid. See also 137. A study on sexual violence among girls in South Africa reports that only 55% of females aged 14–24 who have had sex reported themselves as having been “willing” at their first sexual encounter (versus those who were persuaded, tricked, forced or raped) (Hallman 2004).

cates that 4,2% reported sexual assault in the last 12 months. Assuming that it was largely girls or young women (who constituted 50,8% of the sample) who were sexually assaulted, it may be estimated that roughly 8% of female respondents to the survey reported sexual assault within the past year.<sup>22</sup>

A recent study of rape dockets in Gauteng found that the highest levels of reported rape involved victims between the ages of 13 and 22, with 45% of rape victims falling in this category.<sup>23</sup> In this study, the 17–48 age group accounted for 63% of victims,<sup>25</sup> which could be taken to imply that the “Three provinces study” accounts for a similar percentage of rape victims as this age group is the focus of the study. The “Three provinces study” was therefore not a comprehensive survey of potential rape victims, and would have come up with higher levels of rape if it could have obtained information about victimisation among teenage and pre-teenage girls younger than 17, and women older than 48.<sup>25</sup> If this is so, extrapolation from the “Three provinces study” would suggest that reported rape accounts for less than one in six rape victims.<sup>26</sup>

The “Three provinces study”, which is regarded here as the best estimate of reporting rates, is now somewhat dated. It is possible, for instance, that reporting levels have improved since the late 1990s when it was conducted.<sup>27</sup> However, if one uses 52 617 rape cases reported in SAPS statistics in 2006–07, and a figure of one in six based on extrapolation of data from the “Three provinces” and “Tracking justice” studies, this suggests that rape may continue at a rate of over 300 000 cases a year in South Africa.

## 2.7 Levels of sexual violence in South Africa and other countries

According to the *Eighth United Nations Survey of Crime Trends and Operations of Criminal Justice Systems, Covering the Period 2001–2002*,<sup>28</sup> South Africa does have the highest rate of rape per capita among the 49

22 Leoschut and Burton 2006: 46. Note that a later national study focusing on violence in schools indicated that 4,8% of female respondents at secondary schools reported having been forced to engage in sexual behaviour within the past year. The figure for male respondents was 1,4%. At primary schools a far higher proportion of male children (2,5%) as opposed to female children (0,2%) responded positively to the question (with the younger group it was asked with flash cards) (Burton 2008).

23 CSVR analysis of data from “Tracking justice” study, November 2008.

24 Ibid.

25 Including potential male victims in the data would have meant that the data was not comparable with official statistics on rape as these, at the time, only acknowledged women as potential victims.

26 Note also that some of these victims — for instance, those who are involved in marriages or other relationships where they are exposed to coercive sex repeatedly — would be victimised several times a year, so that a figure based on “incidents” rather than “victims” would be higher.

27 The reverse possibility also applies: there may be a greater tendency on the part of police to not record cases. It is also possible that some victims may be reluctant to report cases because of the likelihood that, if convicted, the perpetrator would receive a substantial jail sentence in terms of the minimum-sentencing laws that were brought into operation in the late 1990s, for instance because the perpetrator is a breadwinner or because of family or other social ties to the perpetrator.

28 United Nations Office on Drugs and Crime 2005.

countries listed. However, the report uses crime statistics as the basis for comparison and the countries listed in this report are mostly developed countries. South Africa's prominent position in the report may reflect nothing other than the fact that the country records and reports incidents of rape more reliably than do most other developing countries. Official rape statistics, however, are not a reliable basis for making such comparisons for various reasons, including inconsistent definitions of rape,<sup>29</sup> dramatic social differences between different countries in attitudes to rape victims, contributing to major differences in reporting rates, and major differences in capacity and practice between different countries and areas in relation to the recording of reports of rape.

What is not known, therefore, is how South Africa compares with other developing countries in terms of actual rates of victimisation. The World Health Report, for instance, refers to city-based international victimisation surveys conducted during the 1990s, which appear to indicate that Johannesburg has lower rates of sexual assault than do cities in Brazil (Rio de Janeiro), Argentina (Buenos Aires), Uganda (Kampala) and in Albania, Lithuania and Indonesia.<sup>30</sup> But, again, such comparisons, even if emerging from very rigorous studies, cannot be taken as definitive. Whether women, and men, recognise sex as taking place in coercive circumstances is itself partly a product of cultural and political consciousness. Some interviewees argued that the levels of sexual violence in South Africa are not different from the levels experienced in other developing countries. Countries such as Kenya and India may report lower rape rates than South Africa, but it is impossible to tell if this is because rates of rape in these countries are *in fact* lower or because there is less reporting. Sexual violence may be endemic in countries like these, but social taboos and oppressive patriarchal power structures ensure that sexual violence is seldom reported.

There is a certain irony, then, in South Africa's sexual violence statistics. While on the one hand demonstrating that sexual violence is taking place at distressingly high levels, they appear to also show that women in current-day South Africa feel empowered and supported enough to report their experience of sexual violence. This, in turn, suggests that they generally have a reasonable sense of confidence that their cases will be properly recorded by the police, though it does not necessarily mean that police practice in recording allegations of sexual violence is uniformly of a high standard.<sup>31</sup>

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29 For instance, in the US, rape is defined differently by different states. And in many legislatures in the world, some non-consensual sexual acts are not defined as rape at all (they may only be considered an illegal form of sexual assault); in some jurisdictions, male-female rape is the only form of rape considered rape, while in others male-male, female-male or female-female rape may also be included as a legal form of rape.

30 Krug et al. 2002: 150–151.

31 For allegations of non-recording of rape cases, see Vetten et al. 2008: 16; Bruce, Newham and Masuku 2007: 112.

## **3. THE NATURE OF SEXUAL VIOLENCE**

### **3.1 Sexual violence against adult women**

#### **3.1.1 Regional and local variations in sexual violence**

This is intended as a national-level report on the nature of sexual violence in South Africa and one of the questions that needs to be asked is to what extent it is valid to generalise about the nature of rape, taking into account the fact that there are likely to be variations between provinces and regions in relation to the form rape takes.

One of the factors that is likely to play an important role in shaping differences in the nature of sexual violence are differences in the nature of relationships between people in different areas. Thus it is probably true to say that the presence of people who are relative or complete strangers is far more characteristic of urban, and particularly metropolitan, areas than is the case in rural and small-town areas. Related to this it is likely that sexual violence in urban and metropolitan areas is probably far more likely to involve people who are strangers, than in rural areas or small towns. It follows from this, also, that in so far as stranger rape may tend to have certain characteristics, such as being more likely to involve weapons and injury to the victim, this is more likely to be a characteristic of rape in urban/metropolitan areas. Certain phenomena associated with rape, such as group or gang rape, though they may take place in different regions, may also vary substantially between them, so that the practice of group rape in metropolitan areas is in some ways entirely different to group rape in rural or small-town areas.

In so far as sexual coercion within marriages or, perhaps, other intimate relationships, is legitimated by traditional or patriarchal culture, sexual coercion that is shaped by such culture is also obviously more likely to be a characteristic feature of areas where such culture predominates.

#### **3.1.2 Relationship of victim to perpetrator**

##### **3.1.2.1 “Acquaintance” versus “stranger” sexual violence**

The most recent and probably most rigorous study that provides figures on the type of relationship between victim and perpetrator that characterised incidents of sexual violence is a Gauteng-based study of rape dockets relating to 2 064 rape victims. Among victims of 18 years and older, the “Tracking justice” study indicates that 48% of perpetrators were “strangers” or only “known by sight” by the victim.<sup>1</sup> How-

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<sup>1</sup> Vetten et al. 2008: 34.

ever, classifying relationships becomes difficult once people meet each other as there is no simple way in which to say when someone who is a stranger becomes someone who is an acquaintance. In addition to the 48% cases where perpetrators were “strangers” or only “known by sight”, in another 5% of cases the person was described as “someone just met”. Altogether it may be said, then, that in 53% of cases the person was raped by a stranger or virtual stranger. As the study notes, the high number of stranger rapes forms a significant part of the explanation for low conviction rates in these cases, as many of the perpetrators could not be found.<sup>2</sup>

Even higher figures for stranger rape were reported in a study of gang rape conducted at six police stations in inner-city Johannesburg.<sup>3</sup> This found that among rapes where there was a single perpetrator (426 incidents), just short of 50% of assailants were known either intimately by their victims (as either current or former partners) or by sight. In 90% of rapes involving two or more perpetrators (162 incidents), all of the perpetrators were not known to the victim. Combined, these results imply that close to 60% of recorded rapes at these inner-city stations were committed by strangers.

As a result of the fact that these were both studies of police dockets, they may both have been affected by a bias towards stranger rapes. While both stranger and acquaintance rapes are underreported, stranger rapes may be more likely to be reported than those involving acquaintances. Many acquaintances who commit rape would also calculate that they would be able to intimidate the victim against reporting the case. Stranger rapists would hope to be able to get away with rape as a result of their anonymity, rather than relying on their ability to intimidate the victim to not report the rape.

These high figures for “stranger” rape may also partly be a product of the fact that these studies had an urban base.<sup>4</sup> As Gauteng is a predominantly metropolitan province, it is likely that the proportion of stranger rapes is far higher in Gauteng, and potentially highest in the type of inner-city areas in which the gang-rape study was conducted.

Taking this into account, it is perhaps surprising that a predominantly rural survey conducted in Mpumalanga, Limpopo and Eastern Cape in the late 1990s, for instance, made findings fairly similar to those reported in Gauteng in the “Tracking justice” study, finding that 50% of cases of rape in the previous year were said to have been perpetrated by strangers.<sup>5</sup>

However, even though this was not only a rural area but survey research, it might also have been affected by a “pro-stranger” bias. Respondents to survey research, particularly in rural areas, may also tend to underreport sexual violence by acquaintances and, particularly, by intimate partners. Jewkes and Abrahams note that:

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2 Vetten et al. 2008: 44.

3 Vetten and Haffejee 2005a.

4 CSVR 2008: 109-112.

5 Jewkes and Abrahams 2002: 1 235.



The most common forms of sexual coercion are most vulnerable to unreporting in South African surveys and to the police.<sup>6</sup> These occur within marriages, dating relationships, families, or where sex is agreed to after blackmail, threats, trickery or persistent pleading. ... The difficulty in getting these actions recorded in surveys of adult women seems to be a matter of recall, and may well reflect the fact that most women have such low expectations of genuine sexual negotiation in relationships that being forced to have sex when men (husbands, boyfriends or often would-be lovers) want it, or provide it as a unit of exchange, is seen as ‘normal’.<sup>7</sup>

Particularly in social settings where women are, as it were, accustomed to sexual coercion, or don’t see themselves as having a choice in relation to whether or not to have sex with husbands or other partners, survey research may then also be likely to understate the prevalence of sexual violence involving partners.

A third, far smaller, figure on the proportion of stranger rapes is provided by the SAPS in its 2005–06 annual report. This indicates that of cases reported to the police (apparently on a national basis), 76% of perpetrators were known to their victims, implying that 24% of perpetrators were strangers to the victim.<sup>8</sup> Despite the lack of clarity about the methodology of this study, the absence of an alternative and more credible figure leaves this as the best available figure on the national picture. As it is possible that cases reported to the police overrepresent stranger rapes, this may indicate that the proportion of acquaintance rapes may therefore be higher than this.

Slightly higher, though in a similar range, an analysis of police docket in Northern Cape seems to imply that roughly one-third of rapes involved strangers (see “no relationship” in Table 5).

TABLE 5: Relationship between victim and perpetrator – analysis of 1997 Northern Cape dockets<sup>9</sup>

RELATIONSHIP OF PERPETRATOR TO VICTIM	RAPE % (N = 165)
Intimate partner, former partner, relative	19
Close friend	5
Other acquaintance	36
Colleague, boss	1
No relationship	32
None of these	2
<b>Total</b>	<b>(100%)</b>

<sup>6</sup> Wood et al. 1998.

<sup>7</sup> Jewkes and Abrahams 2002: 1 235.

<sup>8</sup> SAPS 2006: 56.

<sup>9</sup> Mistry et al. 2001. Note that one or two of the categories have been renamed to clarify the table in line with the terminology used in this concept paper. Totals may not add up to 100% due to rounding.



### 3.1.2.2 Prevalence of intimate-partner rape

One of the issues that is a specific focus of interest in studies of rape has been the degree to which rape is committed within marriage or by other intimate partners, partly in relation to the overall concern with the degree to which male intimate partners are responsible for violence against women.

The late-1990s study conducted in Mpumalanga, Limpopo and Eastern Cape (see above) found levels of intimate-partner rape that may be viewed as relatively low. Of women in the 17–48 age category who reported rape, 50% reported rape by a stranger, 18% by an acquaintance, 9% by someone from school, 9% by a landlord and 3% by others, with 9% reporting rape by a partner.<sup>10</sup>

A survey of young men in Eastern Cape provides what appears to be a quite different picture.<sup>11</sup> The study involved 1 370 male volunteers, aged 15–26 years, from 70 villages in rural Eastern Cape. Of the 287 (21%) young men interviewed who admitted rape, 223 admitted to non-partner rape, while 115 (8%) of the participants indicated that they had raped a female partner, with an overlap of 51 (4%) between the two groups.<sup>12</sup> However, the findings of the survey were complicated by the fact that certain types of rapes, perpetrated by groups of men, were interpreted in the analysis as “non-partner” rapes, despite the fact that these rapes were often initiated by and involved an intimate partner. However, because “when a boyfriend organizes for his girlfriend to be [raped by a group], it would terminate the relationship and is not open to reinterpretation”, this was the definition given to these rapes by victims of the rape.<sup>13</sup> Nevertheless, even within the framework of definition given to these rapes by the victims, these rapes could at the very least be said to have involved rape by a “former partner”. Of the 223 purportedly involved in “non-partner” rapes, 190 admitted only to having being involved in these group rapes. However, it is not clear what proportion of these group rapes involved raping current, or former, intimate partners.

Effectively, therefore, the study indicates that at least 40% (115 out of 187) of young men who admitted rape admitted to raping a current partner, and that an unknown number (including some who admitted to raping current partners and some others) were probably also involved in the group rape of former partners, with these rapes sometimes marking the termination of the relationship. While this is not necessarily so,<sup>14</sup> it would appear to indicate that rapes of current and former partners constitutes a very high proportion of rape involving this perpetrator group.

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<sup>10</sup> Jewkes and Abrahams 2002: 1 235.

<sup>11</sup> Jewkes et al. 2006.

<sup>12</sup> The figure of 8% may be compared with the finding of a study conducted in Cape Town in which 7,1% of the men reported forcing sex on an intimate partner during the preceding 10 years (Abrahams et al. 2004: 330–337).

<sup>13</sup> Ibid: 2 951.

<sup>14</sup> Participants were asked whether or not they had raped partners or non-partners but not how many such rapes they had committed. If they, for instance, had in general committed several non-partner rapes, but only single-partner rapes, then the proportion of actual non-partner rapes would be much higher.

The study of police dockets conducted in Gauteng<sup>15</sup> reports that, along with the 53% of victims in the 18 and older age category who were raped by strangers or virtual strangers, 19% indicated that they had been raped by a current or former intimate partner, 3% by other relatives and 25% by a friend, acquaintance or neighbour.<sup>16</sup> Among non-stranger rapes in Gauteng it therefore appears that cases involving intimate partners make up a substantial number but not the majority of cases, at least in terms of reported cases.<sup>17</sup>

The above studies are all methodologically different as well as distinct from each other in their geography and the demography of participants, with a period of close to a decade elapsing between the first and the last of them. There is therefore no figure that can be said to provide an answer to the position nationally.<sup>18</sup> Taking into account uncertainties in relation to reporting even among respondents to violence against women surveys, it therefore seems possible that in some geographical areas or among specific demographic groups (for example, as perpetrated by young rural men), intimate-partner rape may account for the majority of rape incidents, but that this is not necessarily the general pattern throughout the country.

### 3.1.2.3 International comparison: Britain

Data from the 1998 and 2000 British crime surveys provides one point of comparison with the figures provided above. Among the 4,9% of women aged 16 to 59 who had experienced rape since the age of 16, respondents indicated that the perpetrator in the last incident of rape had been:

- A current (45%) or former (11%) partner in 56% of cases.
- Parents, step-parents, other relatives, close friends or household members in 10% of cases.
- Dates in 11% of cases.
- Other acquaintances in 16% of cases.
- Strangers in 8% of cases.<sup>19</sup>

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15 Vetten et al. 2008.

16 Ibid: 34. Note that data on “other” relationships, making up about 10% of the total, seems to have been omitted from these figures.

17 See also the figure of 19% for rape reported in a study of police dockets opened in 1997 in Northern Cape, but note that this includes not only current and former intimate partners but also “relatives” (Table 5 above).

18 The SAPS 2002–03 annual report cited above, for instance, states that in 50%-80% of rape cases the victim and perpetrator are known to each other, while the 2005–06 SAPS annual report contains data from an analysis of 9 623 dockets dealing with various categories of “socially determined contact crimes”. Among the rape dockets from this sample, 16% of perpetrators were “relatives” (a category that presumably includes husbands as well as other relatives, including immediate and extended family, but not intimate partners who are not married), while the combined total of relatives with “friends and acquaintances” was 57%, and these combined with other persons “known to the victim” totalled 76%.

19 Myhill and Allen 2002: 30. Note that the study was conducted in England and Wales only.

These figures indicate that among women in England and Wales the lifetime prevalence of rape by current or former intimate partners is in the region of 2,7%, with prevalence of rape in the last year being 0,4%.<sup>20</sup>

### 3.1.3 Day and place of rape

Among adult women in Gauteng, almost two-thirds of rapes (64%) took place in the Friday–Sunday period, with half (48%) taking place on Saturday and Sunday.<sup>21</sup> Of all the rapes documented in the study, most took place over a period of less than a day, but roughly 10% took place over a prolonged period of “at least” a day.<sup>22</sup>

Data from the “Tracking justice” study of rape dockets in Gauteng on the place where the rapes occurred indicates that:

- Fifty-seven per cent of rapes of adult victims took place at a residence of one kind or another, including the residence of the victim (20%) and perpetrator (28%) and other residences (9%), and presumably including some residences that were shared by the victim and perpetrator, particularly in the case of intimate-partner rapes.
- A substantial but much smaller proportion (33%) took place in public space, including roadways or alleys (8%) and open space (25%), with 3% having taken place in vehicles such as cars or trains.<sup>23</sup>

As can be seen from Table 6 (*see opposite*), a very high proportion of rapes involving known persons took place at residences of one kind or another, including 92% of those involving relatives, 89% of those involving current or former partners, and 74% of those involving friends, neighbours or other acquaintances. By contrast, in relation to people classified as strangers or known by sight, 62% took place in public space or facilities or derelict or abandoned private spaces, while 31% took place in residences. In the case of people classified as “someone just met”, 35% took place in public spaces or facilities, but a higher proportion (41%) took place at the perpetrator’s residence and 49% altogether took place at a residence.

### 3.1.4 Circumstances of rape

In half of all cases (50%), the rape of adult women was preceded by an abduction where the women were accosted and then forced to accompany the perpetrator to another place. Most of these incidents

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<sup>20</sup> Ibid: 18.

<sup>21</sup> CSVR analysis of data produced as part of “Tracking justice” study in November 2008.

<sup>22</sup> Vetten et al. 2008: 28.

<sup>23</sup> Ibid: 35. Roughly 10% therefore would have taken place in other (7%) or unknown (2%) circumstances (n=1 219).

TABLE 6: Rape in Gauteng 2003: Location of rape by relationship between victim and perpetrator (%)<sup>24</sup>

	PERPETRATOR'S HOME/ RESIDENCE	VICTIM'S HOME/ RESIDENCE	OTHER RESIDENCE	OPEN SPACE	IN OR AT TRANSPORT NODE	ROAD / ALLEY WAY	PUBLIC TOILET, DERELICT / ABANDONED BUILDING	CAR / VEHICLE / TRAIN	OTHER / UNKNOWN	TOTAL
Known persons	Relatives (n=36)	53	8	3		6				100
	Current or ex-intimate partner (n=229)	30	7	4		0,4	0,4	2	4	100
	Friend / acquaintance / neighbour (n=272)	21	14	13		6	3	1	3	100
Virtual or total strangers	Stranger/ known by sight (n=525)	12	8	44	1	13	4	4	3	100
	Someone they just met (n=54)	4	4	24	2	9		13	3	100
	Other (n=66)	32	9	8	2	3			11	100
	Unknown (n=21)	14	5	5			5		52	100
	<b>Total (n=1 203)</b>	<b>20</b>	<b>9</b>	<b>25</b>	<b>0,7</b>	<b>8</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>100</b>

24 CSVR analysis of data produced as part of "Tracking justice" study in November 2008.

(78%) involved abduction on foot, with 21% involving abduction by car. Many rapes preceded by abduction took place at the perpetrator's home (36%) and in open space (33%).<sup>25</sup>

Data from the study of rape dockets in Gauteng on the circumstances surrounding the rape are summarised in Table 7.

TABLE 7: Summary of circumstances of rape in Gauteng, 2003<sup>26</sup>

BROAD CIRCUMSTANCES	%	DETAILS
Related to use of public space or transport	58%	Includes where women were walking alone or accompanied (42%), where they were offered a lift or accompaniment when walking (10%), when using public transport (3%) or when waiting outside shops or workplaces or for transport (3%)
In domestic or social circumstances of one kind or another	22%	Includes those raped during a conflict with a partner (5%), while visiting someone (6%), when at home by a known perpetrator (8%) or after proposition refused or as punishment (3%)
Raped by an unknown perpetrator during a housebreaking or house robbery	12%	
Perpetrator takes advantage of specific aspect of vulnerability of victim by deception or otherwise	7%	Includes when they were looking for or offered a job (2%), homeless and offered a place to stay (2%), or incapacitated as a result of being drunk, drugged or mentally or physically disabled (3%)

25 Vetten et al. 2008: 34-35.

26 Based on data provided in Vetten et al. 2008: 35. Total does not add up to 100% due to rounding (n=1 201). Note that in the third category the report only refers to "raped by an unknown perpetrator during a housebreaking". The words "house robbery" were inserted by the authors of this report.

TABLE 8: Place of rape relative to circumstances in Gauteng, 2003 (%)<sup>27</sup>

CIRCUMSTANCES OF RAPE	PLACE WHERE RAPE TOOK PLACE									
	Perpetrator's home / residence	Victim's home / residence	Other residence	Open space	In or at transport node	Road / alley way	Public toilet, derelict / abandoned building	Car / vehicle / train	Other / unknown	Total (%)
Related to use of public space or transport (n=690)	26	1	9	38	1	13	4	4	1	100
In domestic or social circumstances of one kind or another (n=261)	44	42	9	2	0	0	0	2	0	100
Raped by an unknown perpetrator during a housebreaking or house robbery (n=136)	9	75	9	4	1	0	1	0	2	100
Perpetrator takes advantage of specific aspect of vulnerability of the victim by deception or otherwise (n=67)	31	21	6	22	0	4	1	3	5	100
<b>TOTAL (n=1 157)</b>	<b>29</b>	<b>20</b>	<b>9</b>	<b>25</b>	<b>1</b>	<b>8</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>100</b>

Table 8 compares the “Tracking justice” data on the place of rapes against the data as provided in Table 7 on circumstances of rape. The table indicates that:

- Fifty-six per cent of rapes related to the use of public space or transport took place in public spaces or facilities or derelict or abandoned private spaces, although a substantial proportion of these rapes (35%) also took place at the perpetrator’s (26%) or another (9%) residence. Rapes in these circumstances were often stranger rapes. However, the rapes at the perpetrator’s residence probably included several intimate-partner rapes, as 33% of rapes at the perpetrator’s residence were initiated in circumstances related to the use of public space or transport by the victim.
- By contrast, rapes in domestic or social circumstances took place overwhelmingly (95%) at a residence of the perpetrator, victim or another person. Not surprisingly, a high proportion (84%) of rapes related to a housebreaking took place at the victim’s or another residence (the 9% of incidents said to have taken place at the perpetrator’s residence would seem to be an anomaly in the data).

<sup>27</sup> CSVR analysis of data produced as part of “Tracking justice” study in November 2008.

- The distribution of rapes related to specific vulnerabilities conceals something of the variation between the different subcategories included here. Rapes of people looking for jobs often took place in public spaces (12 of 20), those of people looking for a place to stay often took place at the perpetrator's home (15 out of 18), and those of incapacitated or disabled people often at a residence (20 out of 29), which was most often the victim's home (14 cases).

As indicated in Table 7, 5,1% of rapes of adult women in the "Tracking justice" study were described as taking place "during a conflict with partner". Also highlighted above is the fact that a significant proportion of rapes take place within intimate relationships, although estimates on this vary. It is likely that many of the relationships that involve rape are characterised by other violence. Other studies illustrating this point include:

- A study of a group of 32 Gauteng women experiencing domestic violence, in which 18 (56%) stated that their partner physically forced them to have sex when they did not want to.<sup>28</sup>
  - » Among respondents to the survey of 1 370 men aged 15-26 years from 70 villages in Eastern Cape, roughly 106 (47,5%) of the 223 men who admitted to raping a non-partner, and roughly 68 (59,1%) of the 115 men who admitted to raping a partner, also admitted to having been physically violent towards an intimate partner. By comparison, roughly 260 (22,7%) of the 1 147 men who said they had never raped a non-partner, and roughly 297 (23,7%) of the 1 255 who said they had never raped a partner, nevertheless admitted to being physically violent towards an intimate partner.<sup>29</sup> Thus, those who were most likely to admit to other physical violence against a partner were those who admitted also to raping a partner.

Based on his research, Vogelmann sought to generalise about the events leading up to a rape as follows:

Rapists tend to exploit situations in which women are vulnerable to attack. This may mean raping women who are psychologically and economically powerless, physically disabled, mentally retarded, sleeping, very young, or very old.<sup>30</sup> Rapists in [his] study took the opportunity of raping adult women who were hiking, standing alone, intoxicated, being sexually intimate, or in need of an escort home. The common threads running through the rape situations described in this study are that the victims were alone, and that they were not in a position to defend themselves. According to the rapists, many of the rapes were preceded by the woman being in a sexually intimate situation with another man or the offender himself. An example of the former is the rapist who waited for a friend to finish having sex with a 'girl', and then proceed to rape her with the assistance of another friend. ... Superficial sexual encounters were the final precursor to other rapists' rapes. Many men expect to

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28 Vetten and Hoosain 2006: 1.

29 Jewkes et al. 2006: 2 953-4.

30 Selkin 1975.

have sexual intercourse if the woman expresses sexual affection. Women's refusal to go 'all the way' is therefore frequently a forerunner to men's use of force and coercion.<sup>31</sup>

While Vogelmann's words resonate with much of the data generated – for instance, with the “Tracking justice” study – it is, of course, not always true that rape victims are alone.<sup>32</sup> In particular, where groups of men are involved, the victim may still be vulnerable, irrespective of whether she is in the company of other people.

### 3.1.5 Group rapes

Two of the main studies of group rape in South Africa have already been referred to in this section. In the discussion of the relative prevalence of “acquaintance” and “stranger” rape, reference was made to a study of gang rape conducted at six police stations in inner-city Johannesburg.<sup>33</sup> In the inner-city study, “gang rape” comprised a fairly substantial minority (27%) of the incidents of rape examined. Similarly to the statistics on circumstances of occurrence of rape, a high proportion of victims (41%) were walking at the time of the attack, while a significant minority (10%) were waiting for public transport. Roughly 11 out of the 162 group rapes (7%) “occurred in the context of another crime such as housebreaking or robbery”.<sup>34</sup>

In the discussion of the relative prevalence of intimate-partner rape, reference was made to the survey of young men in rural Eastern Cape.<sup>35</sup> Of the 1 370 15–26-year-old male volunteers who participated in the study, 287 (21%) admitted to rape. Among these 190 (66% of 287) admitted only to having being involved in a type of group rape, locally known as “streamlining”.

In the “Tracking justice” study of police dockets in Gauteng, 20% of reported rapes of women 18 years and older involved more than one perpetrator. In 12% of cases, two perpetrators were involved and in 5%, three were involved. In a further 3% of cases (possibly 38 out of 1 150 cases), four or more perpetrators were involved.<sup>36</sup> Looked at in terms of the relationship between victim and principal perpetrator, out of 228 rapes involving more than one perpetrator, in 78% (177) of cases the relationship was described as “stranger/known by sight”, while in 13% (51) the relationship was described as “friend, acquaintance or neighbour”. More than one-third (36%) of the “stranger/known by sight” rapes involved

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31 Vogelmann 1990, in McKendrick and Hoffman 1990: 96-134.

32 Note that the “Tracking justice” report refers to 28 cases (just over 1%) where a docket indicated that more than one person had been raped. However, this did not represent the sum total of incidents where more than one person was raped, as in other cases these different rape victims would have been dealt with by means of different dockets despite having been raped in the same incident (Vetten et al. 2008: 43).

33 Vetten and Haffejee 2005a. Also reported as Vetten and Haffejee 2005b.

34 Ibid: 3.

35 Jewkes et al. 2006.

36 Vetten et al. 2008: 32.



more than one perpetrator.<sup>37</sup> The “Tracking justice” study also draws attention to the phenomenon of others who collude in the rape but do not participate directly in it. Though this appears to be more prevalent in relation to the rape of teenagers (see later in this report), it was nevertheless a factor in 14% of rapes of adult women.<sup>38</sup>

In Western Cape, gang rape is also reported, sometimes as an initiation practice for gang members.<sup>39</sup>

Whatever the proportion of group or gang rapes, as opposed to rapes committed by an individual perpetrator, one aspect in relation to which there appear to be major differences from one geographic setting to another is in relation to the identity of perpetrators of group rape. While in inner-city Johannesburg virtually all group rapes documented in the study involved strangers, in rural Eastern Cape, even where the boyfriend or other partner is not involved, the social environment is one where there “aren’t a lot of true strangers” so that “true strangers” would be a small minority of rape perpetrators, whether acting individually or in groups.<sup>40</sup>

Something of the origins of some of the gangs involved in rape in the Johannesburg inner city are perhaps suggested by Mokwena’s depiction of the Zebra Force, a gang involved in a notorious group rape in Soweto in 1990.

The gang first started by stealing bicycles from Lenasia, and doing odd jobs like caddying at the golf course. Over the months the gang developed into a more criminally oriented gang as the operations became more ambitious. Many of the crimes involved ‘housa housa’ (housebreaking and theft), ‘spinning’<sup>41</sup> and mugging in the township. The gang is also said to have vandalised schools in the neighbourhood. ... The gang subsisted on ‘spinning’ as a means of survival and wealth generation. Many of them came from poor homes and had no chance of getting a job in the formal sector. Some of the gang members were involved in street vending. ... At its origin, the Zebra Force was a social network of adolescents. ... The evolution of the Zebra Force seems to confirm that young people gravitate towards gangs simply in an attempt to deal with their daily circumstances. The formation of these criminal youth gangs therefore should be seen primarily as a survival technique, in a society which has condemned many young blacks to a life of poverty and desperation.<sup>42</sup>

Some of the dynamics involved in group rapes are also referred to in an article about group rape on US campuses, which argues that:

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37 CSVN analysis of data produced as part of “Tracking justice” study in November 2008.

38 Ibid.

39 Merten 1999, quoted in Vetten and Haffejee 2005a.

40 Insights from email message, Rachel Jewkes, 4 June 2007.

41 The term “spinning” is here used to describe the activities of people who are involved in criminal activities such as theft and robbery. As one of Mokwena’s interviewees puts it: “When you spin is when you go into town to steal. ... You may steal from shops, or steal wheel caps, or do ‘gryp and naak’ (handbag snatching), or even ‘housa’ (housebreaking and theft). This is also inclusive of more serious crimes like car-theft and bank robbery” (Mokwena 1991).

42 Ibid.

Boys gang rape for each other, in a kind of frenzied machismo, to prove themselves, to show off, to be part of a gang, or at best, out of fear of being ostracised if they don't.<sup>43</sup>

In Eastern Cape villages, while the circumstances in which these rapes take place vary, a typical scenario involves a boyfriend who suspects his girlfriend of infidelity, or for other arbitrary reasons wishes to end his relationship with her. As one interviewee put it:

And that happens a lot, for example, in rural areas in the Eastern Cape ... where, for example, a girl would be traveling to another rural area to meet her boyfriend. Then the boyfriend would not be loving her anymore, and then that would lead to 'streamlining'. Where girls are getting streamlined... And to them it's not necessarily rape. That's the way they understand it. Young men do not think that is rape; rather it's one way of teaching a woman or girl self-respect. And it's a punishment for those girls who are perceived as being promiscuous.

Streamlining may therefore be seen as motivated by the desire to punish the young woman for having another partner (perceived as promiscuous, and therefore asking for sex), or any one of a number of other arbitrarily defined "transgressions".<sup>44</sup> "Streamlining" is therefore rationalised in judgemental terms by the perpetrators, and motivated, at least in part, by a vindictive desire to defile the woman through group rape. Rather than perceiving their actions as criminal, in many "streamlining" situations they see themselves as enacting a type of punitive justice. Though physical force is generally part of the rape, sometimes the female victim is tricked or emotionally manipulated into sex by one of the young men, after which others also force her to have sex.<sup>45</sup>

### **3.1.6 Rapes committed during the course of other crimes**

It is apparent that a significant minority of rape incidents occur as part of another crime. The Johannesburg inner-city study of gang rape also found that 7% of rapes by groups of men (roughly 11 out of 162) "occurred in the context of another crime such as housebreaking or robbery".<sup>46</sup>

The "Tracking justice" study of rape in Gauteng seems to allude to a similar, and slightly larger, category of rapes, indicating that 12% of adult women who were raped were raped by an unknown perpetrator during a housebreaking. However, it should be noted that the "Tracking justice" data does not specifically indicate that these rapes took place "in the context of another crime", and is therefore in some ways ambiguous. Someone who is primarily motivated by the prospect of rape may break into a house after completing the rape. Even if some household goods are taken after the rape, this might not have

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43 Benedict, quoted in Vetten and Haffejee 2005b.

44 Jewkes et al. 2006: 2 951.

45 Ibid, paraphrasing a sentence on page 2 952. See also Niehaus 2005.

46 Vetten and Haffejee 2005: 3.

been the primary motive, and therefore it is the theft that “takes place in the context of” the rape, rather than the other way round. Alternatively, a criminal, or group of criminals, who are stealing from or robbing a house, may rape one of the inhabitants “opportunistically” as part of the crime. Both rape and other motives (such as robbery) may also simultaneously motivate a crime. For instance, a few years ago a hijacking gang in Nyanga appears to have specifically targeted cars in which a woman was present, presumably intending to rape her and take the car.<sup>47</sup>

While 12% of rapes of adult women took place during a housebreaking or houserobbery it should be noted that the percentage of house robberies which result in rape is probably in general lower than this. An analysis of house-robbery dockets at a handful of police stations with high rates of house robbery found that rape had occurred in 4% of incidents.<sup>48</sup>

The report of the committee of inquiry into farm attacks provides figures from the SAPS indicating that a victim was raped during 70 (7%) of the 1 011 farm attacks during 2001, and that these 70 rape victims constituted 5% of the 1 398 victims during these incidents. The rape incidents covered here may plausibly include some from each of the above subcategories, including rape as the principal motive for the attack, rape as a partial motive, and “opportunistic” rape during a crime such as a robbery.<sup>49</sup>

### 3.1.7 Rape homicide

Some rapes may culminate in or be accompanied by a murder. The hijacking gang referred to above (see section on rapes committed during another crime) would, for instance, typically kill the woman’s male partner, rape and kill the woman, and steal the car. Some rapist serial killers appear to seek gratification by simultaneously killing and raping the victim.<sup>50</sup> Alternatively, rapists may kill the victim to prevent being identified and thus arrested and prosecuted.

On the basis of a study of homicides of women in 1999, a recent report estimates that 16% of murders of women were accompanied by the rape of the murder victim, suggesting that rape homicides constituted 11% to 22% of murders of women at the 95% confidence interval.<sup>51</sup> The report indicates that this is higher than the overall female homicide rate in the US, as well as 10 times higher than the rape homicide rate in the US and three times higher than that in Jamaica.<sup>52</sup> High proportions of female homicides in Western Cape (26%), and among coloured (24%) and white (32%) female (over the age of 14) homicide victims, were suspected rape homicides. Among female firearm homicides, suspected rape

47 Crimes by the gang are referred to in Centre for the Study of Violence and Reconciliation 2008: Table 40b.

48 Newham 2008b: 11.

49 Committee of Inquiry into Farm Attacks 2003: 16–17. Murder was committed during 15% of 1 011 incidents and accounted for 11% of the 1 398 victims.

50 Pistorius 2005: 177.

51 Abrahams et al. 2008.

52 Ibid: 5.

homicides were relatively low (7%), but much higher when the mechanism of death was a knife or other sharp instrument (25%), blunt force (44%), or strangulation (26%). “Multiple external injuries were associated with this form of homicide, with 23% of these victims having 30 or more external injuries.”<sup>53</sup>

Relative to other findings in the study, the proportion of suspected rape homicides among intimate-partner female homicides was relatively low (12%), while that among stranger female homicides was much higher (28%). Of female homicides where more than one perpetrator was involved, 24% were suspected rape homicides, while the figure was 16% where a single perpetrator was involved. The report indicates that in female homicides which also involved theft and/or another crime, roughly a quarter were suspected rape homicides.

In addition to being based on data that is slightly dated, the figure is essentially a figure for “suspected” rape homicides and may overestimate the prevalence of such homicides. A case was classified as a suspected rape homicide “if any one or more of the following were recorded: statement that rape was suspected; statement that underwear removed or dislodged; a vaginal swab had been taken; a pubic hair specimen collected and genital injuries were evident with no other explanations for these injuries”. The report goes on to state that these indicators “both represented evidence of some form of sexual component of the crime, and evidence that the post-mortem examiner or police had a suspicion that there was such a component”.<sup>54</sup> It may be argued that a vaginal swab is taken when the examiner has a very vague suspicion of sexual assault. If instances of this kind made a substantial contribution to the overall figure, this may provide grounds for reservations about these findings. A SAPS study dealing with murder dockets closed in 2001, on the other hand, is likely to underestimate the number of rape homicides closed in 2001. This found that 33 out of 452 female murder victims were linked to rape or attempted rape.<sup>55</sup> The CSVr report on murder in six high murder rate police station areas, while finding fewer confirmed rape homicides, concludes that its findings are not necessarily inconsistent with the 16% figure, partly as many homicides, including homicides of women, take place in unknown circumstances, with no details of the murder being provided in the docket.<sup>56</sup>

It should be noted that the finding, if correct, is a finding that a high proportion of female homicides in South Africa are rape homicides. On the basis of SAPS statistics indicating that 18 487 murders were recorded in 2007–08, and NIMSS statistics indicating that 13% of consistently 13% of homicide victims are women,<sup>57</sup> this would indicate that there were somewhere between 255 and 536 female rape homicide victims in the 2007–08 year (at the 95% confidence interval). This would mean that rape homicides account for between 1,4% and 2,9% of the overall murder rate. Relative to a projection of

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53 Ibid: 4.

54 Ibid.

55 SAPS, 2004: 10. The figure represents 2% of the total of 1 664 murders for which the motive was known.

56 Centre for the Study of Violence and Reconciliation 2008: 115.

57 See National Injury Mortality Surveillance System figures, [www.sahealthinfo.org](http://www.sahealthinfo.org).

300 000 cases of rape a year, this would also mean that between one in every 559 (0,179%) and one in every 1 176 (0,085%) rape incidents is connected to a rape homicide.

### 3.1.8 Violence, resistance, weapons and injury

As indicated at the beginning of this report, section 3 of the new Sexual Offences Act specifies that: “Any person (‘A’) who unlawfully and intentionally commits an act of sexual penetration with a complainant (‘B’), without the consent of B, is guilty of the offence of rape.” In fact, during the long process of drafting and consultation around the bill, some women’s rights activists argued strongly that the definition of rape should not hinge on the presence or absence of consent. In some cases a women might submit to sexual intercourse in circumstances that could be regarded as coercive. It could be said that the woman “consented” to sex, but in these circumstances, consent could not be said to have been freely given. Such instances should also be regarded as cases of rape, and therefore, rather than the concept of consent, rape should be defined by “coercive circumstances”, they said.

In so far as the crime of rape continues to be defined in South Africa by the absence of consent, there is possibly room for debate about when exactly consent may be said to be present or not. As indicated, the World Health Organisation’s *World Report on Violence and Health* describes “coercion” as “a whole spectrum of degrees of force. Apart from physical force, it may involve psychological intimidation, blackmail or other threats – for instance, the threat of physical harm, of being dismissed from a job or of not obtaining a job that is sought, and may also occur when the person aggressed is unable to give consent – for instance while drunk, drugged, asleep or mentally incapable of understanding the situation.”<sup>58</sup>

Clearly the presence of coercion should be a key factor in determining whether a woman could be said to have given her consent or not. Nevertheless, people can be expected to disagree on when exactly specific forms of coercion should be said to have removed, or dramatically constrained, the element of choice on a woman’s part, to such a degree that it can reasonably be said that she did not consent. In some cases perpetrators use non-physical forms of duress to pressurise the victim into the sexual act. Jewkes and Abrahams, for instance, observe that:

... Sexual coercion takes a number of different forms. Often it does not involve force, may ultimately be consensual, but still results in unwanted sexual intercourse. Wood et al. (1998) highlighted the importance of verbal persuasion tactics, of begging and pleading, which often are deployed with an underlying threat of violence if acquiescence is not forthcoming. Other tactics include for example, inviting a woman into the man’s room, locking the door and refusing to open it until she agrees to sex, which will happen as evening approaches because she fears being raped by other men if she has to go home in the dark or being beaten by her mother for being out late. Sometimes blackmail is used.<sup>59</sup>

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58 Ibid.

59 Jewkes and Abrahams 2002: 1 238.

While sexual coercion may therefore take different forms, rape can nevertheless be seen to *mostly* be associated with circumstances in which the perpetrator uses physical force and/or the threat of physical harm to overpower the victim. In such circumstances victims do not necessarily physically resist rape. As the “Tracking justice” report notes:

... fear may also have incapacitated some victims to the extent that they were unable to defend themselves and so submitted to the attack instead. In such cases submission is not to be confused with consent.<sup>60</sup>

In addition to fear, victims may be physically overpowered. When they are confronted with a physically powerful man, and particularly where there is more than one perpetrator, the victim may be physically subdued by them with relative ease. Related to this, the victim may perceive physical resistance as futile, or potentially as increasing the likelihood that they will be more severely physically harmed. The fact that a perpetrator is in possession of a weapon, even if he does not threaten the victim with it, may also be sufficient to intimidate the victim against physical, or other, resistance.

In incidents of rape, a substantial proportion of rape victims suffer genital, or anal, injuries of some kind as a result of forcible penetration by the rapist. In the “Tracking justice” study, 52% of adult victims had some type of injury to the genitals or anus.<sup>61</sup> Of these victims, 99%<sup>62</sup> had genital injuries, while 5%<sup>63</sup> had anal injuries. Though the harm done as a result of rape should not be conflated with its potential to cause physical injury, due to the fact that rape is highly likely to lead to this type of injury, the fact that a victim is raped signifies that the rapist was willing to physically injure the victim as part of the rape, at least in this way.

The “Tracking justice” study indicates that some form of bodily force (such as pushing/shoving, kicking, strangulation or slapping and hitting) was used in 70% of cases involving adult women. “This force often caused injuries with 80% of [all] victims who reported the use of bodily force in their statements also having non-genital injuries recorded” in forms in the rape docket. Overall, 39% of adult victims in the “Tracking justice” study had non-genital injuries.<sup>64</sup>

While also serving as an indication of the willingness of the rapist to physically injure the victim, non-genital injuries may also signify different things. On the one hand such injuries may serve as an indication of the initial physical force used by the rapist in intimidating and subduing the victim. Non-genital injuries may also signify that the rapist has an overtly sadistic, vindictive or hostile orientation so that,

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60 Vetten et al. 2008: 37.

61 *Ibid*: 41. This type of injury is even more likely where the victims are young children. See later in this report.

62 51,2% out of 51,8%.

63 2,7% out of 51,8%.

64 Vetten et al. 2008: 38 and 41.

in addition to raping the victim, the rapist deliberately physically harms her in other ways (possibly extending to killing her), with the rape itself, in whole or in part, orientated towards this purpose. Alternatively, non-genital injuries may primarily signify that the victim physically resisted the rape, and that the perpetrator used physical force to overcome such resistance. Different perpetrators are clearly willing to go to different lengths in terms of the type of, and extent of, physical force they are willing to use to overcome victim resistance. In other words, a certain level of physical resistance from the victim will lead some rapists to desist from their efforts, either because they themselves are physically overpowered or because they are not disposed to elevate their use of violence above a certain level. Others will simply intensify their efforts to overcome resistance by using greater physical force, including potentially a weapon, against the victim.

Figures from the “Tracking justice” study indicate that 24% of adult victims physically resisted the rape (though it notes that the abbreviated form of many police statements probably means that much detail of this kind was often not included, and that this figure is likely to be an underestimate).<sup>65</sup> In so far as injuries are related to efforts on the part of the rapist to overcome victim resistance, it is possible that incidents of injury are more likely to occur when the perpetrator is unarmed, and when there is only a single perpetrator. In the “Tracking justice” cases involving adult women, perpetrators were visibly armed with weapons (indicating that they probably displayed the weapon for purposes of threatening or intimidating the victim) in 55% of stranger rapes, 22% of rapes committed by intimate partners, and 7% of rapes perpetrated by relatives.<sup>66</sup> Though a higher proportion of perpetrators in stranger rapes were armed, and a high proportion (36%) of stranger rapes involved two or more perpetrators, stranger rapes were apparently less likely to be associated with non-genital injuries than were current or ex-intimate partner rapes (Table 9).

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65 Vetten et al. 2008: 37. Note that 51% of victims offered “some form of resistance”, either physical, verbal or non-verbal resistance, such as “crying or turning their head away”.

66 Ibid: 38.



TABLE 9: Rape in Gauteng, 2003 – adult female victims who received some form of non-genital injury by relationship with perpetrator<sup>67</sup>

	CASES WHERE VICTIMS ACQUIRED NON-GENITAL INJURIES	TOTAL VICTIMS IN THIS CATEGORY	%
Relative	5	26	19
Current or ex-intimate partner	74	166	45
Friend/acquaintance/neighbour	77	193	40
Stranger/known by sight only	167	433	39
Someone they just met	21	45	47
Other	12	44	27
Unknown	7	16	44
<b>TOTAL</b>	<b>363</b>	<b>923</b>	<b>39</b>

Table 10, however, appears to indicate that the fact that the perpetrator was armed was not a major determinant of whether the victim physically resisted or not, with 21% of victims physically resisting when the perpetrator was armed but 26% resisting when the perpetrator was unarmed. It should be noted, though, that some of these weapons could have been produced by perpetrators to intimidate or hurt victims because they resisted.<sup>68</sup>

TABLE 10: Impact of arms possession by perpetrator on whether victim physically resisted the rape<sup>69</sup>

	VICTIM PHYSICALLY RESISTED	VICTIM DID NOT PHYSICALLY RESIST	TOTAL	% WHO RESISTED	
Perpetrator armed	104	380	484	21	
Perpetrator not armed	183	519	702	26	
<b>Total</b>	<b>287</b>	<b>899</b>	<b>1 186</b>	<b>24</b>	

However, the fact that in one in four of the cases involving weapons (24,3%), where adult women were involved, the weapon was used to injure the victim<sup>70</sup> (indicating that weapons were used to hurt

67 CSVR analysis of data produced as part of “Tracking justice” study in November 2008.

68 In other words, in some cases the docket may record the fact that the perpetrator had a weapon because the victim resisted and the perpetrator produced the weapon to subdue her. Once the weapon was presented or used, this might have caused the victim to cease further resistance. It may be the case that weapons had a greater effect in discouraging resistance than is reflected in Table 10.

69 CSVR analysis of data produced as part of “Tracking justice” study in November 2008.

70 Vetten et al. 2008: 38.

roughly 120 victims), but that 39% of victims overall sustained non-genital injuries (indicating that at least 364 victims sustained non-genital injuries), appears to clearly indicate that weapons were not the main means used to injure victims. The perpetrator was armed in 44% (159) of the incidents where victims sustained non-genital injuries,<sup>71</sup> appearing to indicate that in roughly 25% of the incidents where the perpetrator was armed and the victim sustained non-genital injuries, these injuries were not caused by the perpetrator's weapon. Nevertheless, victims were slightly more likely to sustain injuries in incidents when perpetrators were armed than in incidents when they were not.<sup>72</sup>

Similarly, Table 11 suggests that those who resisted or tried to escape were slightly more likely than those who did not resist or try to escape, to receive non-genital injuries. For instance, 30% of those with injuries had physically resisted, while among the overall sample 24% had physically resisted.

TABLE 11: Adult victims with non-genital injuries – whether they resisted or tried to escape<sup>73</sup>

	YES, RESISTED OR TRIED TO ESCAPE	NO, DID NOT RESIST OR TRY TO ESCAPE	TOTAL	% OF THOSE INJURED WHO RESISTED/TRIED TO ESCAPE (N=360)	% OF OVERALL POPULATION WHO RESISTED/TRIED TO ESCAPE (N=1 205)
Physical resistance	109	251	360	30	24
Verbal resistance	129	231	360	36	32
Non-verbal resistance	72	288	360	20	20
Attempted escape during abduction	45	315	360	13	10
Attempted escape during rape	48	312	360	13	9

### 3.1.9 Impact of rape on the victim

Rape may therefore result in or be associated with various forms of physical injury to the victim and even the death of the victim. The “Tracking justice” study indicates that among the 39% of adult victims who had non-genital injuries, 68% had injuries to the head or neck, 36% to the upper limbs, 33% to the lower limbs, and 18% to the back, buttocks or side of the pelvis. Of the 52% who had injuries to the genitals or anus, 84% had injuries to the external genitalia. Rape may also result in the infection of the rape victim with HIV or other sexually transmitted diseases. HIV may cause the illness and death

71 CSVr analysis of data produced as part of “Tracking justice” study in November 2008.

72 This is implied by the statistics quoted in this paragraph to the effect that in incidents where the perpetrator (or accomplice) was armed, 44% of victims had non-genital injuries, but that in 39% of incidents overall the victim had non-genital injuries.

73 CSVr analysis of data produced as part of “Tracking justice” study in November 2008.

of the victim, as well as other consequences associated with the fact that the victim now has to live as an HIV-positive person.

Rape involves the intimate bodily invasion of a person, which involves a profound violation of a person's autonomy and sense of independent physical integrity. As a result, even where a person is not seriously physically injured, and does not contract a serious disease such as HIV/AIDS as a result of the rape, rape may nevertheless have a profound emotional and psychological impact on the victim. These, however, vary dramatically from one victim to another, not only according to the nature of the incident but also according to the personal circumstances and characteristics of the victim, including the victim's financial and social situation, mobility, age and personal psychological characteristics.

Zedner cites various studies indicating that sexual crimes, along with other violent crimes, may result in longer-term effects. In one study, 75% of victims of assault, robbery or rape interviewed two-and-a-half years after the incident, reported that they were affected at the time of the interview. Rape victims and victims of sexual abuse during childhood have been found to suffer persisting effects many years afterwards. Rape victims may experience profound distress for several months after the crime, and may "continue to experience problems with fear, anxiety, and interpersonal functioning for years after the event".<sup>74</sup> Victims of sexual crimes may also recover more slowly than other victims of crime, exhibiting emotional disturbance, sleeping or eating disorders, feelings of insecurity, low self-esteem or troubled relationships for months or years after the event.<sup>75</sup>

Multiple, or a series of, victimisations compound the experience and impact of crime. According to Zedner, "A minority of victims are so repeatedly victimised that it becomes impossible to distinguish separate crime incidents from the general impoverished quality of their lives."<sup>76</sup>

The costs of crime for the victim, or relatives of the victim, may include medical care, counselling, funeral costs or increased security.<sup>77</sup> Some victims may feel compelled to move house or leave the country as a result of traumatic incidents of violence. There may also be loss of earnings from taking time off work to report the crime and see through the criminal justice process, receive counselling, or receive medical care.

Sexual and other violence has impacts that extend beyond the impact on the immediate victims and their families or people in their immediate social circle. It is likely that fear of rape, as well as other sexual assaults and harassment, has a major impact on women in South Africa. As a result, women are restricted in their use of public space but fear and anxiety about sexual violence is not restricted to this context.

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<sup>74</sup> Zedner 2002: 429, citing Resisck 1987.

<sup>75</sup> Zedner 2002: 429.

<sup>76</sup> Ibid: 430.

<sup>77</sup> Ibid: 430.

### 3.1.10 Profile of female victims of rape

According to the “Tracking justice” report, 89% of adult victims in Gauteng were black African women, while 5% were white, 4% coloured and less than 1% (0,4%) Indian. The report indicates that Africans make up 73% of the population, while whites make up 21% of the population in Gauteng, suggesting that African women are at greater risk of being raped than white women.<sup>78</sup> The data indicated that disabled victims constituted 1% of adult victims, though the report suggests that this is probably an under-representation of the number of disabled women.<sup>79</sup> Among adult women, 58% were unemployed, 10% were school or college students, 9% were employed as domestic workers, cooks or working in child care, and 8% were employed in blue-collar jobs such as in factories, shops or waitressing.<sup>80</sup>

## 3.2 Men as victims of rape

The main work that has been done on the subject of male sexual victimisation relates to rape and sexual coercion in male prisons. A report based on interviews with 311 inmates at a correctional facility for young men in Gauteng found that 2% of participants said that they had had sex out of fear while in prison at the facility, and just less than 2% said that they had been pressured into having a long-term sexual relationship against their will.<sup>81</sup> These figures are therefore comparable to the figures on rape prevalence among adult women generated by the “Three provinces” study.<sup>82</sup> It is not clear to what degree these statistics are unique to this facility, or to what extent they may be generalisable to other prisons for young men or to prisons generally. However, it is widely recognised that sexual violence is a significant problem in many male correctional facilities in South Africa.

A distinguishing feature of these rapes is the strong investment that the perpetrators have in defining the victims as “women”. By doing so they are able to identify their sexual acts as heterosexual in nature, avoid being identified as homosexual, and retain their claim to an overtly masculine identity.<sup>83</sup>

Cases have sometimes been publicised of male victims of vehicle hijacking being raped by male hijackers. There have also been occasional press reports, given some prominence as a result of the apparently unique character of the incidents, of men being raped by groups of women.<sup>84</sup>

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78 Vetten et al. 2008: 30.

79 Ibid: 28.

80 Data from Vetten 2008.

81 Gear 2007a; see also Gear and Ngubeni 2002.

82 See Jewkes et al. 1999; also see Jewkes and Abrahams 2002. Discussed under “Other data on the prevalence of sexual violence”, page 26.

83 Gear 2007b.

84 Mabuza 2008.

As discussed at the beginning of this report, until the Sexual Offences Act became law in December there was no provision in law for men to be victims of rape, and no acts of rape against men should therefore be recorded in rape statistics up to the end of 2007.<sup>85</sup> Where men have been victims of sexual violation, these would be recorded as cases of indecent assault along with cases where women are victims of sexual assault, which also fall outside the common law definition of rape.

Now that the Sexual Offences Act provides for men to be recognised as rape victims, cases of the rape of men may start to be recorded in crime statistics. At this point we may only speculate about the contribution this is likely to make to overall rates of rape and, therefore, whether the inclusion of men will contribute to a significant increase in statistics. It, however, seems reasonable to suggest that this is unlikely.

There is no doubt that the overwhelming majority of victims of rape are women. One report cites western Australian data,<sup>86</sup> indicating that 6% of rape victims were men; however, it seems unlikely that the figure for South Africa is this high. As will be discussed later on in this report, rape is widely legitimated by men in relation to ideas about male sexual rights over women. The perpetrators of sexual violence against men in prisons, which is where sexual victimisation against men is believed to be most prevalent, generally see themselves as heterosexual. In so far as they are likely to rape when outside of prison, it would seem that they are more likely to victimise women. Notwithstanding the fact that victims of prison rape and sexual coercion divulged their victimisation in the context of a survey, the social pressures and potential for further victimisation they face in prison would appear to make it unlikely that many of them would report such incidents to officials. Even outside of the prison context it appears that such violence may be even less likely to be reported than it is when perpetrated against women, due to the taboos and social stigma attached to it.

Male victims of sexual violence are likely to suffer many of the adverse affects associated with sexual victimisation of women, including injury, risk of HIV, low self-esteem as a result of feelings of humiliation, isolation, shame and emotional pain, and other consequences. One aspect of this may be difficulty in reconciling masculine identity with the experience of this type of victimisation. It is also suggested that they may be more likely to manifest violence in retribution against former victimisers, or to silence others who know about their victimisation history.<sup>87</sup>

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85 However, see Mistry et al. 2001: 29, where two of the 171 victims of rape among cases of violent crime studied in Northern Cape were men.

86 Greenberg et al., cited in Lievore 2004.

87 Gear and Ngubeni 2002: 74–81.

## 3.3. Children as victims of sexual violence

### 3.3.1. Distinguishing children by age category: the legal position

The legal position in South Africa, in terms of the Sexual Offences Act, is that children are defined as those under the age of 18 years.<sup>88</sup> The Act effectively distinguishes three categories of children:

- Children under the age of 12 are regarded as being incapable of consenting to a sexual act as a result of being incapable of appreciating its nature, and any sexual act involving such children is regarded as by implication non-consensual.<sup>89</sup>
- Special provision is made for children of 12 to 15 years of age in Sections 15 and 16 of the Act, to the effect that, in so far as a person who is involved in consensual acts of “sexual penetration” or “sexual violation” with such children, this person will be guilty of a specific offence (statutory rape or statutory sexual assault) provided for in section 15(1) and 16(1). If both of the parties are children (in terms of these sections, between the ages of 12 and 15) then prosecution for one of these offences can only be authorised by the National Director of Public Prosecutions.<sup>90</sup>
- The age of consent for both male and female children is by implication defined as 16 years of age or older. The legal position regulating sexual acts with 16 and 17-year-old children is therefore essentially the same as that for adults.

Any discussion of the problem of sexual violence as it relates to children must make reference to the above legally distinguished age categories, which may roughly also be seen to coincide with the categories of pre-adolescent (0–11), adolescent (12–15) and post-adolescent (16–17) children.

Though in reality these are not categories that can be strictly distinguished from each other, and different children go through the transitions between these different developmental stages at different ages, they will be used in the following discussion. Not only at law but also more generally it would seem that, in so far as the problem of sexual violence pertains to post-adolescent children, then the problem is very strongly associated with and has many features in common with sexual violence as it relates to adults. To some extent this is also true of adolescent girls, though, as observed in the “Tracking justice” report, reflecting “their state of transition between childhood and adulthood”<sup>91</sup> the rape of adolescent

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88 See section 1(1) of the Act. Note that for purposes of this report we generally use this (the 18th birthday) as the cutoff point in distinguishing adults from children, which is consistent with the Sexual Offences Act and the Constitution. However, in relation to certain matters, adulthood is only regarded as being fully attained at 21 years of age. Note also that from birth until seven years of age, a child is regarded as an infant, while from 7–14 there is a rebuttable presumption that the young minor is incapable of performing wrongful (criminal) acts. The presumption can be rebutted by showing that the child can understand the difference between right and wrong, and has the ability to act accordingly. From 14 onwards a child has full criminal capacity and can be held responsible for any criminal actions (Skelton 1998).

89 Ibid: section 1(3)(d)(iv)).

90 Ibid: section 15 and 16, read with section 1(1)).

91 Vetten et al. 2008: 7.

girls reflects characteristics of both child and adult rape.

This section of the report, therefore, first focuses on sexual violence against adolescent and post-adolescent girls (that is, girls in the 12–17 age category) before discussing the issue of sexual violence and abuse of young (pre-adolescent) children. However, all studies do not follow the same approach in terms of demarcating the distinction between different categories of children; therefore, some studies will be referred to, particularly in the section on young children, that cut across this divide.

**A note on incest:** At law incest is defined as “acts of sexual penetration” involving persons who may not marry each other on account of consanguinity, affinity or an adoptive relationship.<sup>92</sup> Acts of incest, therefore, do not necessarily involve children and can involve two adults who, but for the fact of the relational proximity between them, would otherwise be involved in a lawful sexual act. However, incest frequently takes place within a family context where an adult man (such as the father) is involved in sexual relationships with his children. Incest is not specifically discussed in what follows, but is by implication discussed in so far as the acts of sexual violence and sexual abuse that are discussed in this section are also acts of incest.

### 3.3.2 Adolescent and post-adolescent girls<sup>93</sup>

It would appear that girls and young women, from roughly the beginning of the adolescence period into their early 20s, are the group that has the highest levels of sexual violence victimisation. For instance, data from the “Tracking justice” study indicates that 65% of victims (1 317 out of 2 013) were in the age group 12–29.<sup>94</sup> Ages in the spectrum 15–20 each contributed roughly 5% to the total number of victims (see Table 12). The ages immediately prior to this (13 and 14) and immediately after this (21 and 22) each contributed roughly 4% to the total number of victims. No other individual age contributed more than 3% to the total number of victims. Altogether the girls and young women in the 10-year age band 13–22 contributed 45% (905 out of 2 013) to the total number of victims.<sup>95</sup> Looked at in terms of 10-year age bands, the next biggest group was women in the 23–32 age category, who contributed less than half (22% or 450) of this number to the total number of victims.

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92 Section 12 SOA Same as before

93 The term “adolescents” is generally used to refer to young women in this category.

94 Apart from the age of 6 (44 victims), these were the only ages that each registered more than 40 victims.

95 By comparison population estimates for 2007 were that women in the 10-year 15–24 age band made up 17% of the female population of Gauteng. Those in the overlapping 10–19 band were estimated to make up 16% of the population (Statistics South Africa 2007: 10).



TABLE 12: Girls and women of ages 12–29 and 13–22 as a percentage of overall rape victims in Gauteng, 2003<sup>96</sup> (n=2 013)

Age of victim	12–29 YEARS OLD		13–22 YEARS OLD	
	Number of victims	% of total number of victims	Number of victims	% of total number of victims
12	48	2,4		
13	72	3,6	72	3,6
14	80	4	80	4
15	110	5,5	110	5,5
16	100	5	100	5
17	101	5	101	5
18	98	4,9	98	4,9
19	92	4,6	92	4,6
20	96	4,8	96	4,8
21	80	4	80	4
22	76	3,8	76	3,8
23	57	2,8		
24	58	2,9		
25	51	2,5		
26	61	3		
27	45	2,2		
28	46	2,3		
29	46	2,3		
<b>Total</b>	<b>1 317</b>	<b>65,4</b>	<b>905</b>	<b>45%</b>

Using a fairly broad definition of sexual assault, which included unwanted kissing and touching, the 2005 National Youth Victimization study (respondents 12–22 years of age) would appear to confirm the high level of exposure to sexual assault among adolescent girls, particularly in the 15–20 age group. Overall 4,2% of respondents, including 5,8% of female respondents (and by implication 1,3% of male respondents), indicated that they had been victims of sexual assault in the past year. Relative to the 4,2% of all respondents who indicated that they had been victims of such assault, young people be-

96 CSVR analysis of data generated as part of the “Tracking justice” study, November 2008.

tween the ages of 18–20 (5,7%), followed by those in the 15–17-year-old age cohort (4,6%), were most likely to indicate an experience of sexual assault.<sup>97</sup>

Jewkes and Abrahams refer to various small-scale studies, pointing to very high levels of experiences of rape (defined by some victims as “forced sex” rather than “rape”) among adolescents and young women:

Studies of adolescents are an important source of data on sexual coercion, which strongly suggest that both household studies and police statistics substantially underestimate the degree of sexual coercion in society. Surveys of adolescent sexuality have found consistently that a high proportion of young women describe forced sexual initiation. This was reported by 28% of a sample of Transkei school students (n = 999) (Buga, Amoko, & Ncayiyana, 1996) and 28% of a random sample of young women (n = 449) from Khayelitsha, Umlazi and Soweto (Richter, 1996). A case control study of teenage pregnancy in Khayelitsha found that 30% of pregnant teenagers (n = 191) reported forced sexual initiation and 18% of the controls (n = 353) (Jewkes, Vundule, Maforah, & Jordaan, 2001). Amongst adolescents there are marked differences in perception of “rape” and unwanted dating sex. At the time of interview (mean age 16.5 years)<sup>98</sup> 11% of cases and 9% of controls said they had been ‘raped’ and 72% of cases and 60% of controls reported being forced to have sex against their wishes (including at initiation of sexual activity). Although these data is from a non-probability sample and was collected in part of one city, they suggest that experiences of non-consensual, sexual intercourse could be very common indeed.<sup>99</sup>

While adolescents appear to be part of the highest risk group, reflecting “their state of transition between childhood and adulthood”,<sup>100</sup> in the “Tracking justice” study the features of rape incidents involving this group often fell somewhere in a spectrum between those affecting adults and young children (see Table 13). For instance, adolescents were less likely than children, but more likely than adults, to be raped by relatives or types of acquaintances (with the converse applying in relation to stranger rape). Notwithstanding the fact that they fall between adults and young children, in relation to many measures they more closely resemble the rape of adult women than they do those of children. Thus, on a number of measures listed in Table 13, such as resistance, whether the perpetrator was armed, or whether the perpetrator had used force, statistics relating to the characteristics of rape incidents involving adolescent girls tended to resemble those of incidents involving adult women. However, the percentage of adolescents raped at a residence (69%) very closely resembled that for young children (71%). A key difference was that a greater percentage of young children (29%) as opposed to adolescents (17%) were raped at

97 Leoschut and Burton 2006: 60. The description of sexual assault as used in the survey questionnaire was: “Sometimes people are forced to do things with their body, or have things done to their body, by others that they do not want. Has anyone ever forced you to have sex; kissed, or touched your body without your consent; tried to insert their penis or other foreign object into places you were not happy with; forced you to touch them in places you were not happy with; or forced you to behave in any other sexual way?”

98 Note that the mean age of women in the 13–22 age category in the “Tracking justice” study was 16,9.

99 Jewkes and Abrahams, 2002: 1 237–1 238.

100 Vetten et al. 2008: 7.

the victim's home. For rapes at the perpetrator's home this was reversed, with the figure for young children (34%) being lower than that for adolescents, among whom this was the location of rape in 40% of incidents.

TABLE 13: Comparison of selected features of rape in Gauteng across three age bands<sup>101</sup>

	0–11	12–17	18+
<b>Relationship between survivor and main suspect</b>	<b>Relatives 32%</b> <b>Friend/acquaintance/neighbour 52%</b> <b>Stranger/known by sight/just met 16%</b>	<b>Relatives 14%</b> <b>Current/ex-intimate partner 9%</b> <b>Friend, etc. 43%</b> <b>Stranger, etc. 34%</b>	<b>Relatives 3%</b> <b>Current/ex-intimate partner 19%</b> <b>Friend, etc. 25%</b> <b>Stranger, etc. 53%</b>
Victim had been raped previously by same suspect	16%	13%	3%
Proportion of rapes preceded by abduction	16%	45%	50%
Location where rape took place	Victim's, perpetrator's or another's home 71% Open space, roadway or alley 9%	Victim's or other home 69% Open space, etc. 19%	Victim's or other home 57% Open space, etc. 33%
Day of the week	Friday, Saturday or Sunday 51% Saturday or Sunday 29%	Friday–Sunday 57% Saturday–Sunday 42%	Friday–Sunday 64% Saturday–Sunday 48%
Others present in same room but not participating in the rape	12%	10%	8%
Type of resistance offered	Physical resistance 7% Some form of resistance offered 29%	Physical 18% Some, etc. 47%	Physical 24% Some, etc. 51%
Perpetrator or accomplice armed	Armed with some type of weapon 5% Armed with gun 1%	Weapon 27% Gun 13%	Weapon 41% Gun 19%
Force and threats used by perpetrator	Bodily force 25% Threatened to kill, hurt or injure 19%	Force 55% Threat 36%	Force 70% Threat 38%
Coercion included abuse of power or authority	50%	19%	3%
Any non-genital injury	3%	16%	39%
Distribution of race of survivors	African 92% Coloured 3% White 1% Indian –	African 84% Coloured 5% White 8% Indian 2%	African 89% Coloured 5% White 4% Indian 0,4%

101 All data here is from the "Tracking justice" report (Vetten et al. 2008), except that on the day of the week, which is from a CSV analysis of data from the study.

Related to the data on relationship and location of rape in Table 13, Table 14 summarises the circumstances in which adolescent girls were raped. As can be seen, a significantly smaller number were raped while in circumstances related to the use of public space or transport. Of these, 31% were raped when walking alone or accompanied as opposed to 42% of adult women.<sup>102</sup> On the other hand, the percentage raped in domestic or social circumstances was similar for adolescents and adults, though among these the percentage of adolescent girls who were raped at home by a known perpetrator was 15% while, for adults, it was 8%.<sup>103</sup> Not surprisingly, the 6% of adolescents who were raped by “perpetrators” who took advantage of vulnerability did not include any who were offered employment, unlike the adult group. The table also makes reference to a set of “other” circumstances, some of which are more relevant to the rape of young children (see below), although 19% of adolescent rapes were classified as fitting within these circumstances. However, this includes the category of “statutory rape”, which applies strictly to 12–15-year-olds. Of the 511 victims in the 12–17 age group, 310 were aged 12 to 15 years. Of these roughly 34 (11%) were involved in having sex, apparently consensually, although related to the fact that they fall under the legally accepted age of consent, these acts are defined as “statutory rape”. As noted above, the “Tracking justice” report also estimated that roughly 6% of rape complaints lodged by teenagers *may* have been false.<sup>104</sup>

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102 That is, 69% (31 out of 45) of adolescent girls and 72% (42 out of 58) of adults who were accosted when walking alone or accompanied.

103 That is, 63% (15 out of 24) of adolescent girls and 36% (8 out of 22%) of adults who were raped when at home by a known perpetrator.

104 Vetten et al 2008: 43. It is possible that statutory rape cases included some of the cases that were possibly false.

TABLE 14: Summary of circumstances of rape in Gauteng, 2003, 12–17-year-olds<sup>105</sup>

BROAD CIRCUMSTANCES	% (n=506)	DETAILS	COMPARABLE % FOR ADULT WOMEN (n=1 201)
Related to use of public space or transport	45	Includes when women were walking alone or accompanied (31%), where they were offered a lift or accompaniment when walking (10%), when using public transport (1%) or when waiting outside shops or school or workplace or for transport (3%)	58
In domestic or social circumstances of one kind or another	24	Includes those raped during a conflict with a partner (1%), while visiting someone (7%), when at home by a known perpetrator (15%) or after proposition refused or as punishment (1%)	22
Raped by an unknown perpetrator during a housebreaking or house robbery	6		12
Perpetrator takes advantage of specific aspect of vulnerability of victim by deception or otherwise	6	Includes homeless and offered a place to stay (2%) or incapacitated as a result of being drunk, drugged or mentally or physically disabled (4%)	7
Other	19	Includes: victim was a child and abducted, lured away (10%), statutory rape (7%) and child victim reports symptoms of rape or rape suspected by another (3%)	

Rapes of adolescent girls involved more than one perpetrator in 16% of cases, whereas with adult women the figure was 20%. In these rapes the relationship with the first perpetrator was defined as stranger/known by sight in 48% of cases, while in 31% the relationship was friend/acquaintance or neighbour. By comparison with adults the proportion involving strangers was far higher (78%), while that for “friend acquaintance neighbour” much lower (13%). Almost half of stranger/known by sight rapes of adolescent girls (44%) involved more than one perpetrator. For adults the corresponding figure was 36%.

<sup>105</sup> Based on data provided in Vetten et al. (2008: 35). Total does not add up to 100% due to rounding. N=1 201. Note that in the fourth category the report only refers to “raped by an unknown perpetrator during a housebreaking”. The words “house robbery” were inserted by the authors of this report.

Adolescent girls were slightly more likely to have genital or anal injuries (66%) than either young children (64%), with the difference with adults (51%) being slightly greater.<sup>106</sup> Just over 3% of adolescent victims had some form of disability, with the figure for young children (1,3%) and adults (1,1%) being lower.<sup>107</sup> On certain other measures, rapes involving adolescent girls also demonstrated the highest rates, though these rates were often similar to those for adult women.

- In 19% of rapes involving adolescent girls other people colluded in the rape, for instance, by luring or summoning the victim to the perpetrator. The comparable figure for adults was 14%. For 0–11-year-olds it was 8%.<sup>108</sup>
- In incidents where perpetrators were armed, they were more likely to use their weapons to inflict injury upon adolescent girls (28,1%), than on adult women (24,3%) or young girls (19%).<sup>109</sup>

### 3.3.3 Sexual violence against and sexual abuse of young children and infants

#### 3.3.3.1 Issues of definition

There seems to be some agreement that the problem of improper sexual conduct in relation to children under the age of roughly 12 should be seen as in many ways distinct from that of older children. In the words of Townsend and Dawes, “the reasons for the abuse of young children are likely to be different from the case of children who have reached puberty”.<sup>110</sup>

In relation to young children, the term “sexual abuse” is often used in preference to the term “sexual violence”. Though there are different definitions of child sexual abuse, one useful definition is provided by Susan Sgori, who states: “Child sexual abuse is a sexual act imposed on a child who lacks emotional, maturational, and cognitive development. The ability to lure a child into a sexual relationship is based upon the all powerful and dominant position of the adult or older adolescent perpetrator, which is in sharp contrast to the child’s age, dependency and subordinate position. Authority and power enable the perpetrator, implicitly or directly to coerce the child into sexual compliance.”<sup>111</sup>

In terms of Sgori’s definition, therefore, child sexual abuse is defined in part by the “all powerful and dominant position of the adult or older adolescent perpetrator”, and the “sharp contrast” between the perpetrator and the child’s “age, dependency and subordinate position” and level of development. While she defines child sexual abuse as involving coercion, this is based on “authority and power”.

106 Vetten et al. 2008: 41.

107 Ibid: 28. See the points above in the brief section on the “Profile of female victims of rape” regarding the likely underrepresentation of rapes of disabled people in rape statistics.

108 Ibid: 32.

109 Ibid: 38.

110 Townsend and Dawes, in Richer, Dawes and Higson-Smith 2004: 55.

111 Sgori, cited in Townsend and Dawes 2004: 61, note 3.

Though her definition does not exclude the possibility that child sexual abuse may involve direct physical coercion, it allows for the fact that child sexual abuse frequently involves coercive or manipulative techniques of another kind.

It should be noted, however, that a certain category of actions that may be understood as acts of sexual violence relating to young children are implicitly excluded by Sigori's definition. Because of her emphasis on the age and developmental difference between victim and perpetrator, incidents where young children are involved in victimising other young children are implicitly excluded from Sigori's definition. Thus, in the "Tracking justice" study, 16 (10%) of 160 identified perpetrators of sexual violence against children of 0–11 years were also in this age bracket.<sup>112</sup>

Following this approach, therefore, it could be said that the term "sexual violence" is a broader term than the term "child sexual abuse". Sexual violence against young children could be seen to involve both the type of actions Sigori refers to, as well as incidents where young children are coerced into sexual acts by their peers.

In terms of this approach, therefore, it is not so much the nature of the act that differentiates child abuse as a specific subcategory of sexual violence, but rather the age and developmental differential between victim and perpetrator. In this report, therefore, the term "sexual violence" will be used generally, while, guided by the Sigori definition, the term "sexual abuse" will be assumed to apply specifically in relation to incidents where the perpetrators are significantly older than the victims. This should not only imply that they are physically stronger than the victims, but that the age and developmental differential enables them to manipulate or otherwise take advantage of the child's greater innocence or naivety. The implications of this terminology in terms what types of situations are covered by the terms, and where there is overlap between them, are set out in Table 15.

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112 CSVr analysis of data from "Tracking justice" study, November 2008.



TABLE 15: Comparison of terms “rape”, “child sexual abuse” and “sexual violence” as used in this report in relation to victims 0–11 years old<sup>113</sup>

NATURE OF SEXUAL CONTACT WITH CHILD	CHILD (VICTIM) PARTICIPATES VOLUNTARILY OR INVOLUNTARILY	PERPETRATOR OF SIMILAR AGE TO CHILD (as a rough rule, age difference is less than five years)	PERPETRATOR OLDER THAN CHILD (as a rough rule, age difference is five years or more) <sup>114</sup>
Sexual penetration	Involuntary	Is an act of rape and of sexual violence. Not sexual abuse	Simultaneously is an act of rape, sexual violence and sexual abuse, irrespective of whether the involvement of the child is voluntary or involuntary
	Voluntary	Not sexual violence or abuse – nevertheless, evidence that children are engaging in this behaviour indicates that they require adult intervention and guidance <sup>115</sup>	
Sexual acts not involving penetration	Involuntary	Is an act of sexual violence. Not sexual abuse	Are simultaneously acts of sexual violence and sexual abuse, irrespective of whether the involvement of child is voluntary or involuntary
	Voluntary	Not sexual violence or abuse – nevertheless, evidence that children are engaging in this behaviour indicates that they require adult intervention and guidance <sup>116</sup>	

The term “abuse” may be seen to better capture many of the types of conduct that are in question here as they frequently involve strategies of emotional manipulation and exploitation of the naivety of children, rather than overt physical force. Nevertheless, in terms of a broad approach to understanding sexual violence, which also sees the manipulation of vulnerability as a form of coercion, these types of “abuse” may also be seen as forms of sexual violence.

113 This table is not concerned with the legal position but merely with delineating the overlaps and differences between the terms “sexual violence” and “sexual abuse” as used in this report.

114 This column could not apply where the perpetrator is five years older than the child, but is still less than seven years old (and is therefore not regarded as criminally responsible at law). Similarly, if the child is 7–14, they could still benefit from the rebuttable presumption that the young minor is incapable of performing wrongful (criminal) acts.

115 Note that this category of sexual activity is illegal (see section 15 of the Sexual Offences Act).

116 Note that this category of activity is illegal (see section 16(1) of the Sexual Offences Act).

### 3.3.3.2 Characteristics of incidents involving young children

NOTE: In this section, as elsewhere in this report, the “Tracking justice” study is relied on extensively. However, while other sections are restricted to the topic of rape, this section is intended to cover sexual violence against young children as more broadly defined, including, most notably, the topic of sexual abuse which, as defined here, includes but is not restricted to rape incidents. The “Tracking justice” data should therefore only be seen to deal with rape as one dimension of sexual abuse of young children.

However, although sexual violence against and abuse of pre-adolescent children is, to some extent, a distinct phenomenon, it is itself not a phenomenon that is uniform in its nature and is to some extent heterogeneous. Incidents involving young children may be differentiated from each other in relation to a number of factors including:

(i) **The nature of the sexual activity:**

Sexual violence against children may variously involve oral, anal or vaginal intercourse, or attempted rape, or kissing, touching, fondling or stroking in a sexual way. Some definitions also include “non-contact forms of sexual abuse such as exhibitionism, voyeurism, and men making sexual comments and noises”.<sup>117</sup>

- A profile of child sex offender participants in a community-based rehabilitative programme, for instance, indicates that 75% of those who had been convicted were convicted for indecent assault, while 12% were convicted for rape.<sup>118</sup>
- In a study of rape in north Durban, which, though conducted prior to the passage of the Act, made use of an expanded definition of rape consistent with that in the Sexual Offences Act, nine out of 10 cases (89,1%) involved penile-vaginal penetration. Penile-anal penetration was involved in 6,7% of cases, manual-vaginal penetration in 4,1% of cases, and the insertion of an object into the vagina in 0,1% of cases.<sup>119</sup>

With some perpetrators, less overt forms of abuse may be related to “grooming”.<sup>120</sup> The child may, for instance, be introduced to pornography with the purpose of getting the child to lower her or his sexual inhibitions and initiate the idea of engaging in or allowing the perpetrator to engage in more overt sexual behaviour, such as penetrative sex.<sup>121</sup>

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117 Studies quoted in Townsend and Dawes 2004: 60.

118 Londt and Roman 2007. Note that, until the Sexual Offences Act came into effect in December 2007, “indecent assault” could have included penetrative sex with boys, and non-vaginal penetrative sex with girls.

119 Collings et al. 2007: 5. See additional discussion below under age of the victims.

120 See below under type of coercion or manipulation.

121 See Kreston (no date).

**(ii) The gender profile of victims:**

One of the features of sexual violence against young children is that, while female children appear to be the primary risk group, male children appear to feature far more prominently than they do in other age categories, although figures on this vary.

- In a study of child rape in the 2001–06 period in north Durban, 94% of survivors were female.<sup>122</sup>
- A small-scale study of adolescent offenders responsible for sexual violence against or abuse of other children in KwaZulu-Natal indicates that, of the 54 victims who were interviewed, 40 (74%) were girls.<sup>123</sup>
- A presentation on child abuse provides figures suggesting that roughly two-thirds of victims of child abuse in South Africa are girls.<sup>124</sup> In a typology of seven paedophile types Kreston identifies, for instance, “situational/regressed” paedophiles as tending to victimise girls, while “preferential/sadistic” types tend to victimise boys. According to her, in South Africa the peak age for victimisation of males is 7–9.
- In a study of children infected with HIV/AIDS in the US, 26 children in the age range 3–12 were identified as having been sexually abused, with this identified as the likely source of their HIV infection in most cases. Of these children, 22 (85%) were girls.<sup>125</sup> Western Australia data indicates that 81% of victims of child molesters are female.<sup>126</sup>

A completely different set of findings is contained in a recent South African report on violence at schools. Among primary school children (roughly up to age 12), 1,4% indicated that they had been forced to engage in “sexual behaviour”. Somewhat surprisingly, however, the study reveals that 2,5% of primary school boys had answered positively to this question, while, among girls, the figure was 0,2%. These figures, if correct, indicate that rates of sexual victimisation of boys at primary schools are 12 times higher than those for girls. Victims identified perpetrators as mostly having been “classmates” (84%), and educators (10%), with “others” having been responsible in 5% of cases and “family members” in 1%.<sup>127</sup> In terms of the approach to defining child sexual abuse taken in this paper, the 84% victimised by classmate would not be regarded as victims of child sexual abuse, although they may be regarded as victims of forms of sexual violence that could possibly mostly amount to juvenile forms of sexual harassment and bullying.

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122 Collings et al. 2007: 4.

123 Dhabicharan 2002.

124 Kreston (no date).

125 Lindegren et al. 1998: 102. For the 17 children with confirmed sexual exposure to HIV infection, 19 male perpetrators were identified who were either known to be HIV infected (n=18) or had risk factors for HIV infection (n=17), most of whom were a parent or relative.

126 Greenberg et al. 2002, cited in Lievore 2004: 44.

127 See Burton, 2008. See also Brooks and Higson-Smith 2008, Responses to gender-based violence in schools in Richter, Dawes, Higson-Smith. 2004: 110-129.

**(iii) The age of the victim:**

In the “Tracking justice” study, between 14% and 15% of victims were younger than 12. As indicated in Table 16, according to data from this study, young children of 3, 6 and 7, and 10 and 11 seemed to have higher risks of victimisation than other children. Concern around the rape of children has sometimes been specifically focused on the rape of babies, infants or toddlers.<sup>128</sup> Victims aged three years and younger accounted for 2,8% of victims in the study, and 20% of victims are in the 0–11 age band.<sup>129</sup>

TABLE 16: Ages of child victims of rape in Gauteng, 2003<sup>130</sup>

AGE	NUMBER OF VICTIMS	% OF VICTIMS AGED 11 AND YOUNGER	% OF ALL VICTIMS (n=2 013)
1 year or younger	4	1	0,2
2	19	7	0,9
3	35	12	1,7
4	20	7	1
5	27	9	1,3
6	44	15	2,2
7	34	12	1,7
8	24	8	1,2
9	17	6	0,8
10	28	10	1,4
11	36	13	1,8
<b>Total</b>	<b>288</b>	<b>100</b>	<b>14</b>

A study of child rape in north Durban in the period 2001–06 appears to have found slightly higher rates of rape of very young children. On the basis of an analysis of 5 308 cases of the rape of children of 17 years and younger, the study concluded that 2% were less than two years old, with 0,03% (two children) less than one year of age, and the youngest four months old.<sup>131</sup> Note that the age profile of this sample was significantly different from that in the “Tracking justice” study, with the average age of survivors

128 See, for instance, Posel 2005; Bird and Spurr 2004.

129 Vetten et al. 2008: 29. The report notes: “In just over half of these [0–3-year-old category] cases (58%) there were genital or anal injuries. It cannot be concluded that rape had not occurred in the other cases where no such injuries were found.” See the discussion later on in this section on injuries as well as Kreston 2007: 81-96.

130 CSVr analysis of data produced for “Tracking justice” study.

131 Collings et al. 2007: 4.

being 10,1 years. The study indicates that the average age of the participants was 10,1 years, indicating that more than 50% of victims were younger than 11.<sup>132</sup> By contrast, in the “Tracking justice” study the average age of survivors younger than 18 was 11,9 years, and the percentage of this group younger than 11 was 31%. If it is true that adolescent girls, particularly those in the 15–17 age category, are among the group most at risk of rape,<sup>133</sup> then the average age is possibly a bit low, and it seems possible that older teenagers were therefore underrepresented, with younger children and infants being overrepresented as a result.<sup>134</sup> It may therefore be the case that the figure of 2% slightly overrepresents the proportion of rapes of children of younger than two, and that the figure in that area is between 2% and the 0,5% of victims of rape 17 years and younger who were younger than two in the “Tracking justice” study.

**(iv) The age differential between the victim and the perpetrator:**

One phenomenon that is believed to have become more widespread in recent years is sexual violence against a child by other young children. This, disturbingly, involves children as young as pre-schoolers. Some reports of this behaviour are clearly consensual experimentation between children, while others are obviously abusive and painful.<sup>135</sup> One of the interviewees reported that, in research conducted with young sexual offenders, many of them could not differentiate between sex and rape, thinking that sex was inherently rough and violent. The interviewee commented that:

What is interesting is we find ... that more and more younger children are acting out sexually aggressive behaviour, where they're using coercion, threats, game play, forcing the victim to engage or participate or to cooperate. They would also use bribery and tokens like sweets to lure the victim. We find that children as young as six-year-olds are perpetrating on other children; be it age mates or younger children. That is, children find themselves in a significant position of power ... the children, particularly from the ages of 10, 11 and 12, are more likely to engage in more severe forms of sexually aggressive behaviour. And the kind of sexually aggressive behaviour we're looking at is your full-blown rape, which is more common and prevalent in this age ... and also attempted rape. With the 12-year-olds you will find that they will also resort to a lot of force, coercion and threats to lure their victims. So their modus operandi is more sophisticated than the younger child.<sup>136</sup>

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132 Ibid.

133 See discussion above of rape of adolescent girls and Table 12.

134 The study was based on all cases of rape of children under 17, whose cases were referred to a crisis centre attached to a hospital in north Durban. Most cases were referred to the hospital after being reported to the police, presumably with police assistance. Possibly police were less rigorous in referring cases of older children to the hospital. It may be noted that the north Durban study includes the rape of male children (6% of the sample). If these are concentrated in the under-12 age group, this would also be a factor shaping the age profile of the group that formed the population for this study. However, this group would not on their own account for the difference of 20% points between the proportion of those younger than 11 between the two studies.

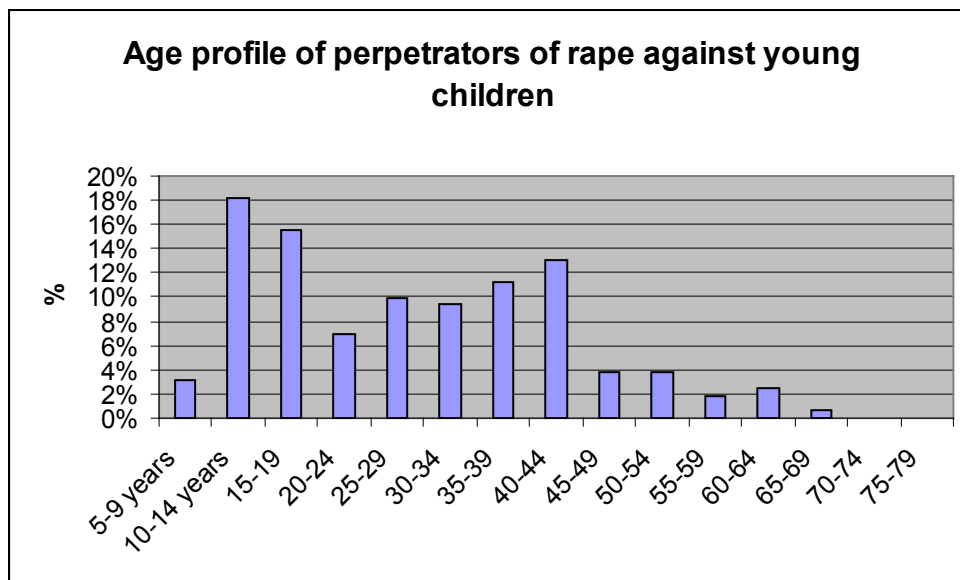
135 Note the point from footnote 88, page 53, that the presumption regarding criminal incapacity on the part of 7–14-year-olds is rebuttable.

136 Interview, November 2007.

More widespread than sexual violence against young children by other young children may be the abuse of young children by children who are somewhat older, frequently in their adolescence. For instance, a study conducted a few years ago among participants in a Childline programme in Durban, in which 25 adolescent offenders and 54 victims were interviewed, found that the most vulnerable age group of the victims was 8 years and younger, with nine of the 25 offenders (36%) being brothers of the victims and 23 of the offenders (92%) knowing their victims. The most common sexual offences were penetrative acts, with 31 victims (57%) being exposed to these acts.<sup>137</sup>

But despite the fact that sometimes the perpetrators of sexual violence against young children are of a similar age or are children who are slightly older than their victims, in the vast majority of cases it appears that they are adults. Figure 2 shows the age profile for perpetrators of rape against children of 0-11 years in Gauteng, according to data from the “Tracking justice” study of dockets for 2003. As mentioned earlier, 16 of the 160 identified perpetrators were also in the same age band, with five (3%) of these being 5-9 years old, and 11 (7%) being 10 or 11 years of age. A further 18 (11%) were 12-14 years of age so that, altogether, 34 (21%) of the identified perpetrators were 14 years of age or younger, while roughly one-third (37%) of them were at least 19 years of age or younger. Almost two-thirds of perpetrators (63%) were therefore 20 years or older, and therefore at least nine years older than their victims; 46% were 19 years or more older (at least 30 years of age); while 26% were 40 years and older and therefore at least 29 years older than their victims.

FIGURE 2: Age profile of perpetrators of rape against young children



137 Dhabicharan 2002.

**(v) The relationship between the victim and the perpetrator:**

- According to the “Tracking justice” report, 84% of perpetrators were people who were known to the victim or the victim’s family, including 32% who were relatives, and 52% who were in the “friend/acquaintance/neighbour” category. Altogether 16% of perpetrators were classified as either “stranger/known by sight” (15%), or “someone just met” (1%).<sup>138</sup>
- A study of rape among patients younger than 12, conducted at the Red Cross Children’s Hospital Trauma Unit in Cape Town between 1996 and 1999, found that a slightly lower proportion of children (75%) knew their assailants. In the relationship classification system used in that study, neighbours proved to be the most common group of perpetrators (23%).<sup>139</sup>
- A press article states that, of 139 rapes of children 5 years of age and younger reported in Cape Town in February 2007, in 80% of cases the perpetrator was the mother’s boyfriend, an uncle, a grandfather, a father or another older family member. Of another 14 rapes of children in the same age group in a three-week period in March–April 2007, seven (50%) were committed by the boyfriend of the victim’s mother.<sup>140</sup>
- The study of rape of children in north Durban, in which more than 50% of the victims were younger than 11, one in every five perpetrators were family members (20%), six out of 10 (60%) were non-family members but were known to the child, and another fifth (20%) were strangers. Thus, eight out of 10 children (80%) were raped by a person known to them. Father figures, defined as “fathers, stepfathers, or mother’s boyfriends”, constituted 7% of all perpetrators and uncles 6% of all perpetrators.<sup>141</sup>

**(vi) Locations:**

- In the “Tracking justice” study nearly three-quarters (71%) of rapes of young children took place at someone’s residence. The percentage that took place at the victim’s home (29%) was higher than that for teenagers (17%) and adults. However, the percentage that took place at the perpetrators home (34%) was lower than that for teenagers (40%), though higher than for adults (28%).<sup>142</sup> Rapes that took place in roadways or alleys or open space accounted for 9%, while 4% took place at school premises or at children’s homes or health facilities.<sup>143</sup>
- Figures for the study in north Durban, although they cover children in the 0-17 age category, were similar in some respects. Seven out of 10 children (71,2%) were raped indoors: either in the home of

138 Vetten et al. 2008: 34. As already noted for adolescents, strangers or virtual strangers constituted 34% of perpetrators and for adult women 53% of perpetrators.

139 Van As 2000 and van As et al. 2001, as quoted in Dawes 2006: 67.

140 Joubert 2007. Note that the statement in the article that all of the 139 rapes were recorded at a single police station is likely to be an error, as it would imply a rate of rape at that station dramatically higher than recorded infant rape at any police station in South Africa.

141 Collings et al. 2007: 5.

142 Vetten et al. 2008: 35. A further 9% of rapes of young children took place at “another residence”.

143 Ibid: 34.



a friend or acquaintance (38,6%), in their own home (30%), or while they were attending school or day care (2,8%). Possibly reflecting the difference in age profile, a greater proportion (28,8%) were raped outdoors, including “while they were playing in the neighbourhood (16,7%), or while they were in a public place (e.g., a public building, the beach, walking to or from school, etc.) (12,1%)”.<sup>144</sup>

- In the study at the Red Cross Children’s Hospital Trauma Unit in Cape Town, conducted between 1996 and 1999, cases of rape among patients younger than 12 found that over 50% of the incidents occurred near or inside the children’s own homes, or the homes of neighbours and friends.<sup>145</sup>

**(vii) Repeat victimisation:**

The fact that sexual abuse and sexual violence against children frequently involves someone who is closely related to the victim or who lives in the same residence as the victim, or nearby, is related to the fact that it frequently involves repeat victimisation. This may include incest, sexual abuse by a care-giver or neighbour. One interviewee reported the case of a young girl who was staying with her father for three years after he had divorced the mother and was sexually abused by the father. Similarly, another interviewee explained a case where a father sexually abused his daughter because his wife was sick and he felt that morally he could not go to a prostitute. In the “Tracking justice” study, for instance, “Repeat and chronic abuse was most evident amongst girls aged 0–11, of whom 16,4% stated that they had been raped at least once before by the same accused.”<sup>146</sup> In the north Durban study of child rape victims, of whom more than 50% were younger than 12, repeat victimisation was dramatically higher. One-third (34%) of victims had been exposed to multiple incidents of rape, with the number of incidents ranging from two to 12.<sup>147</sup>

Table 17 provides data on repeat victimisation from the “Tracking justice” study of reported rape in Gauteng. Note that while the overall number of victims of repeat victimisation in the 12–17 age group (59) is greater than that for the 0–11 age group (41), in the latter age group repeat victims make up a higher percentage of the total number of victims. As can to some extent be expected:

- Relatives are much more likely to be implicated in acts of repeat victimisation, with the relative being the alleged perpetrator in 49% of all cases of repeat victimisation, 56% of cases involving young children, and 59% of cases involving adolescents.<sup>148</sup>
- Current or former intimate partners were most likely to be implicated in the rape of older girls (10%) and particularly adult women (50%), and were not significantly implicated in the rape of young children.

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144 Collings et al. 2007: 5–6.

145 Van As 2000 and van As et al. 2001, quoted in Dawes 2006: 67.

146 Vetten et al. 2008: 28.

147 Collings et al. 2007: 4.

148 Of 23 repeat cases involving 0–11-year-olds, perpetrated by relatives, six involved a biological father, six a stepfather, one a foster parent or guardian, and 10 an “other male relative”. Of 35 repeat cases involving 0–11-year-olds, perpetrated by relatives, nine involved a biological father, 14 a stepfather, two a foster parent or guardian, and 10 an “other male relative”.

- People classified as “friend/acquaintance/neighbour” or “friend of person victim lived with” were also a major contributor to repeat victimisation, being responsible for 32% of cases overall and 41% of cases involving young children.

TABLE 17: Relationship to perpetrator in cases of repeat victimisation<sup>149</sup>

	ALL VICTIMS		VICTIMS IN AGE CATEGORY 0–11		VICTIMS IN AGE CATEGORY 12–17		VICTIMS IN AGE CATEGORY 18 YEARS AND OLDER	
	All	Repeat victims	All	Repeat victims	All	Repeat victims	All	Repeat victims
	n=1 488	n=128	n=192	n=41	n=364	n=59	n=932	n=28
Relative	10%	49%	32%	56%	14%	59%	3%	18%
Current or former intimate partner	14%	16%	0.5%	2%	9%	10%	19%	50%
Friend/acquaintance /neighbour/friend of person victim lives with	33%	32%	52%	41%	43%	25%	25%	32%
Stranger / known by sight only / someone they just met	43%	2%	16%	0%	34%	5%	53%	0%

(viii) The number of perpetrators:

Incidents of rape tend to involve an individual perpetrator, as was demonstrated in the “Tracking justice” study. In incidents involving child victims, this tendency seems to be most pronounced, with 92% of incidents involving a single perpetrator as opposed to 84% of incidents involving adolescent and post-adolescent children, and 80% of incidents involving adult victims. In just over 8% of cases involving young children, more than one perpetrator was involved, including 5,5% involving two perpetrators and just under 3% involving three or more. Similarly, in the north Durban study, in which more than 50% of victims were younger than 11, nine out of 10 cases (90%) involved a single perpetrator, with 6% involving two perpetrators and more than two perpetrators involved in just under 4% of cases.<sup>150</sup> Con-

149 The table combines figures from Vetten et al. 2008: 34, as well as data from a CSVR analysis of data from the “Tracking justice” study. Note that the table excludes cases where the relationship was described as “other” and “unknown”. Columns do not necessarily add up to 100% due to rounding.

150 Ibid: 5. The report states that the range here was 3–11. However, on the basis of the “Tracking justice” study, where no rapes of 0–11-year-olds involved more than four perpetrators, but where eight rape incidents in the 12–17 age group involved more than four, it appears possible that it may be reasonable to speculate that victims tended to be older children in most rapes involving larger groups of perpetrators in north Durban as well.

sistent with the figures on victim-perpetrator relationship, in over half of the multiple perpetrator cases in the “Tracking justice” data (52%) the first of the perpetrators was defined as a “friend/acquaintance neighbour”, while in 10% (two out of 21 cases) this person was either a “stranger/known by sight” or “someone just met”.<sup>151</sup> The “Tracking justice” report notes that “[m]ost of the gang rapes of pre-teenage girls were perpetrated by groups of children”.<sup>152</sup>

**(ix) Complicity of other persons:**

One key issue that pertains to the sexual abuse of young children concerns the involvement of others as accomplices in the sexual abuse. As noted above, the “Tracking justice” report in fact highlights this issue as being particularly significant to the rape of adolescent girls, with 19% of their rapes involving other people who colluded by, for instance, luring or summoning the victim to the perpetrator. The comparable figures for adults was 14%, while that for 0–11-year-olds was 8%, appearing to imply that this issue is least significant in relation to the rape of children. Without other statistical information to compare to the “Tracking justice” data, it is difficult to know whether this is true or not. It would also appear that the issue of complicity in so far as it pertains to young children may be regarded as having a number of points in common with that pertaining to adolescent girls.

One example of such complicity is provided in a press article dealing with the issue of “baby rape” in Cape Town. The article describes a 23-year-old mother, who initially chooses to ignore the repeated rape of her two-year-old daughter by her boyfriend. “We were living in his shack. He was busy with the baby a couple of times and I thought it’s better to let him do this business because at least we’ve got somewhere to sleep and he bought us food,” the mother says. Eventually the woman reports the rape with the consequence that “Now he has kicked us out and my family took the baby and told me to go away and never come back. My boyfriend said he will kill us if he goes to jail. Now I stay here in Khayelitsha and I drink every day and I sleep where my head falls.”<sup>153</sup>

This example is perhaps related to what Richter and Higson-Smith refer to as the “abuse of a child to serve the needs of an adult relationship”, which is typically referred to in “accounts of adults who ignore signs of abuse or signals for help from children because the sexual abuse of the child in some ways serves an adult relationship”. While in the Cape Town example cited above it appears that the mother avoids dealing with the abuse as a way of retaining a relationship that provides her with access to a home and food, Richter and Higson Smith indicate that such abuse may also be tolerated because it may “increase the range and intensity of the couple’s relationship, it may deflect one partner’s unwanted sexual acts

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151 The figure of 8% is from Vetten et al. 2008: 33. The latter figures are based on a CSVr analysis of “Tracking justice” data. Of 239 cases, 21 involved group rapes, with 11 of these falling into the “friend, etc.” category and one each falling into the other two categories mentioned. In three (14%) cases the first perpetrator was defined as a relative.

152 Vetten et al. 2008: 32.

153 Joubert 2007.

away from the other, it may increase one partner's sexual hold over the other, or it may serve the psychological exchange between the couple".<sup>154</sup> This links to the phenomenon of women perpetrators of sexual violence and abuse against children (female child sex offenders) of whom one subcategory can be seen as women who co-offend with a male partner. While some of these may be coerced into colluding in the abuse, it appears that some are more active collaborators and may "lead, or even initiate the assault of the child in the presence of a co-perpetrator male".<sup>155</sup>

In the Cape Town example, economic factors obviously also played a major role. In some cases, children may be more overtly sexually exploited for financial gain. According to Richter and Higson-Smith, this is "typically facilitated by adults known to the child who benefit financially from the abuse", and refer to an example of a father who sends his daughter, who is in Grade 6, to prostitute. The abuse eventually comes to light after she is assaulted by her father for not returning with enough money.<sup>156</sup>

Adults may be presumed to generally be the clients of child prostitutes, but it is not clear to what extent child prostitutes in South Africa are encouraged or coerced into prostitution by adults who wish to make money from them.<sup>157</sup> An in-depth study of prostitution in Cape Town identified five girls involved in street prostitution. The girls were aged between 13 and 17, with the 13-year-old girl stating that she had been selling sex since she was 10. However, the study indicates that these girls were selling sex to earn money for themselves and that none of them appeared to have been led into prostitution by their families or other adults who were exploiting them.

Brothel owners generally seemed to be averse to employing child prostitutes, some due to moral distaste for the practice but also due to the likelihood that this would create trouble for them with the law.<sup>158</sup> One street-based adult sex worker, however, indicated that she had started prostitution while still at school partly as a means of paying for food. Though she was staying with her father and stepmother, her stepmother would not pay her school fees or give her food, despite having money, while her father just didn't "see nothing".<sup>159</sup>

Another variation on this theme are the words of a child quoted in a 2005 report on child prostitution, who says of her mother: "She keeps on telling me I'm a prostitute but when there's no food in the house then she eats from the money that I make."<sup>160</sup> Even where they don't themselves send the child out to

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154 Richter and Higson-Smith 2004: 27.

155 Gannon and Rose 2008: 6.

156 Ibid: 31–32.

157 Note that the Sexual Offences Act defines these as different offences. Compare sections 17(1), 17(2), 17(3) and 17(4).

158 Gould and Fick 2008: 75–79.

159 Ibid: 119.

160 Songololo 2005: 120, as quoted in Dawes 2006: 28.

do sex work, parental neglect may be a factor in motivating the child to engage in this work, or parents may knowingly benefit from the child's involvement in prostitution.

Two more overt, though apparently isolated, cases of parental collusion in the rape of their children are referred to in a chapter discussing the "virgin cleansing myth" (discussed further below). In one case a mother sells her four-year-old child to a man for sex, while in another a woman had given her child to her HIV-positive brother for sex.<sup>161</sup>

**(x) Reason for vulnerability:**

The issue of complicity of others, including sometimes parents, in the rape or other abuse of children, raises a more general question about who was responsible for taking care of the child victims and how perpetrators, with or without the collusion of others, were able to get access to the child. For instance, some paedophiles seek out children who are "neglected or unpopular",<sup>162</sup> as this aspect of their vulnerability may be something that can be exploited.

A child's parent or caretaker may not be directly responsible for, or complicit in, sexual violence against children. But their neglect may still be a factor that contributes to the vulnerability of children to sexual violence. Both the "Tracking justice" and north Durban studies also provide figures on the primary caretakers of child victims. In the north Durban study, 68% were living with one or both biological parents, while in the Gauteng study the percentage of those whose caretaker was known was 77% overall, including 81% among 0-11-year-olds, and 67% among 12-17-year-olds.<sup>163</sup>

The "Tracking justice" report, however, notes that the Gauteng figures are higher than those in the general population.<sup>164</sup> While it may be assumed that some children who are in the care of elderly grandparents, or who do not have adult supervision, may be prone to neglect, these figures in their totality do not therefore in themselves explain if or why the victims in these two studies experienced additional vulnerabilities that contributed to them becoming targets for sexual violence.

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161 Jewkes 2004, in Richer, Dawes and Higson-Smith 2004.

162 Kreston, undated: 21.

163 These percentages are all calculated by excluding the "unknown" figure from the calculation for best comparison with the north Durban study, in which the same appears to have been done.

164 Vetten et al. 2008: 31.

TABLE 18: Primary caretaker of child rape victims in north Durban and “Tracking justice” studies<sup>165</sup>

	NORTH DURBAN	TRACKING JUSTICE	
	0–17	0–11 only (n = 296)	12–17 (n = 805)
Mother (as single parent)	42	46	32
Both biological parents	21	26	16
Father (as single parent)	5	2	5
Grandparent	–	8	5
“Other” relatives <sup>166</sup>	25	5	6
Community members	3		
No adult caretaker/ sibling <sup>167</sup>	5	1	3
Other	–	3	5
Unknown	–	9	29

**(xi) The type of coercion or manipulation:**

According to the “Tracking justice” study, for cases in the 0–11 age group, perpetrators used bodily force in 25% of cases, threatened to kill, hurt or injure in 19% of cases, used coercion involving “abuse of power or authority” in 50% of cases, and used “trickery, blackmail, false pretences or abuse of trust” in 28% of cases.<sup>168</sup>

It should be noted that these statistics deal specifically with cases of child rape while, in relation to the more diverse phenomenon of “child sexual abuse”, it is possible that the picture would be different, with factors such as “abuse of trust” playing a more prominent role. This phenomenon was apparent in Limpopo, where an interviewee explained that:

... with the elderly offenders, it is different; they don’t use force. Usually they charm their victims. In most of the villages, old men receive grants, they have a disposable income and there are needy and neglected children in the village. They need basic stuff like food and these guys have power over these children. They would lure the kids to their homes by giving them food and all the nice stuff... You don’t know where to begin in such cases because it is not a question of aggression, it is just that

165 Collings et al. 2007: 5; Vetten et al. 2008.

166 “Tracking justice” study notes that this category includes stepfathers.

167 The term “no adult caretaker” is used in the north Durban study, while “sibling” is used in the “Tracking justice” study. It is possible that some siblings were adults. Those without an adult caretaker may not have been living with or under the care of anyone, so the categories are not necessarily comparable.

168 Vetten et al. 2008: 38. Note that the only one of these categories where 0–11-year-olds received the highest rankings was that of coercion involving “abuse of power or authority”.

the victims need to be educated more and protected more. I mean, realistically speaking, at the age of 85, what do you correct? Where do you begin?<sup>169</sup>

Some paedophiles rely on elaborate “seduction” type methods that are sometimes referred to as “grooming” to “court” children using “attention, affection and gifts”, and apparently being willing to take some time on this process until the child’s inhibitions have been lowered.<sup>170</sup> Whereas one might assume that children are generally involved in incidents of abuse involuntarily, in these kinds of incidents the child might seem to virtually be complicit in the abuse so that the encounter seems to be consensual, though, as indicated, the law, appropriately, does not regard children of less than 12 as being capable of consenting to a sexual act.

Paedophiles are said to use grooming to manipulate the child into feeling or believing that she or he has “consented” to the abuse, and that the perpetrator “loves” her/him and even that what the paedophile is doing to her/him is responding to the child’s needs.<sup>171</sup> How prevalent this practice is among child abusers in South Africa is not clear, partly because it is more strongly associated with “preferential paedophiles” who probably are not the majority of child abusers in South Africa.<sup>172</sup> One dimension of this may also be manipulation of the child’s sexuality itself. It is also possible that in some situations the child may “consciously or unconsciously initiate or provoke sexual encounters with adults”, though “how and why such provocation may incite an adult to engage in sexual behaviour with a young child remains to be explained”.<sup>173</sup>

#### **(xii) Injuries:**

Related to the fact that older perpetrators are often in a position of authority over the victim, the disparity in physical strength between adults and young children, and the forms of coercion involved, non-genital injuries are much less common among young children who are victims of sexual abuse or violence. In the “Tracking justice” study, 3% of young children who were victims of rape had non-genital injuries as opposed to the 16% of teenagers and 39% of adults. On the other hand, genital injuries are far more likely than with adults, though in the “Tracking justice” study the disparity between levels of genital injury between adult women and young children was perhaps less than might be expected, with 65% of young children and 52% of adults experiencing genital injury. The overall percentage experiencing genital or anal injury was almost exactly the same among teenagers (66%) as for young children. In fact, the levels of genital injury were far higher than has been the case in other studies of child sexual abuse, where physical evidence of penetration was found in approximately 20% and 30% of cases.<sup>174</sup> Part of the

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169 Interview, 14 September 2007.

170 Kreston (no date): 20.

171 Ibid: 26, 48–49.

172 See below under discussion of perpetrators of sexual violence.

173 Richter and Higson-Smith 2004: 26.

174 McKerrow 2007, citing approximately 30%; Naidoo 2007, citing approximately 20%, quoted in Kreston 2007: 5.



explanation for this would probably be that the “Tracking justice” study dealt specifically with cases of rape, while child sexual abuse more generally does not necessarily involve penetration but may involve other practices that “do not generally result in physical findings”. Other reasons for the absence of injury may include elasticity of the hymenal opening (possibly the result of “physical grooming” by the perpetrator) or healing of injuries related to delays in reporting.<sup>175</sup> Thus, in the study of rape of children 17 years and younger in north Durban, the medico-legal assessment took place more than three days but less than a month after the rape in 28% of cases, and in 18% of cases took place more than a month after the rape.<sup>176</sup> However, while the percentage of children experiencing genital injuries as a result of rape may not be that much greater than for adults, particularly for very young children, the potential exists for severe physical trauma that “can cause infants to die from haemorrhage or abdominal sepsis despite medical care”.<sup>177</sup>

### (xiii) Circumstances:

The “Tracking justice” study indicates that in one-third of cases involving young girls (33%), “rape was suspected from the victim’s behaviour, even though she had not stated that she had been attacked” (see Table 19). Another “third of young girls were abducted or lured away to a place where they were raped”.<sup>178</sup> For reasons that are not clear, this description of the circumstance of rape is regarded as distinct from that involving older girls and adults. However, the report indicates that older girls and women suffered more from abductions than did young girls, which may imply that young girls whose rapes were described as taking place in these circumstances were mostly “lured away” rather than abducted, and probably included many who were raped at the home of a perpetrator which was possibly close to the victim’s home.<sup>179</sup> These two categories, therefore, accounted for close to 70% of rapes of young girls. As compared to adolescent girls and older women, very few rapes of young girls were classified as taking place in circumstances related to the use of public space or transport (7%), although a significant minority (17%) were classified as being related to domestic or social circumstances.

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175 Kreston, 2007: 6–8.

176 Collings et al. 2007: 4.

177 Pitcher and Bowley 2002: 274, quoted in Richter and Higson Smith 2004: 24.

178 Vetten et al. 2008: 34.

179 See discussion of location of rapes above.

TABLE 19: Summary of circumstances of rape in Gauteng, 2003, 0–11-year-olds<sup>180</sup>

BROAD CIRCUMSTANCES	% (n=290)	DETAILS	COMPARABLE % FOR ADOLESCENTS (n=506)	COMPARABLE % FOR ADULT WOMEN (n=1 201)
Related to use of public space or transport	7%	Includes when walking alone or accompanied (4%), offered a lift or accompaniment when walking (2%), using public transport or waiting outside shops or school or workplace or for transport (1%)	45	58
In domestic or social circumstances of one kind or another	17%	Includes while visiting someone (5%), when at home by a known perpetrator (12%)	24	22
Raped by an unknown perpetrator during a housebreaking or house robbery	2%		6	12
Perpetrator takes advantage of specific aspect of vulnerability of victim by deception or otherwise	1	Includes homeless and offered a place to stay or incapacitated as a result of being drunk, drugged or mentally or physically disabled (1%)	6	7
Other	72%	Includes: victim was a child and abducted, lured away (36%), child victim reports symptoms of rape or rape suspected by another (33%), and victim raped during baby-sitting or in foster care (2%)	19	

180 Based on data provided in Vetten et al. 2008: 35. Total does not add up to 100% due to rounding. N=1 201. Note that in the fourth category the report only refers to “raped by an unknown perpetrator during a house-breaking”. The words “house robbery” were inserted by the authors of this report.

**(xiv) Significance of the “virgin cleansing” myth:**

It is probably appropriate for this paper briefly to address the question of to what extent child sexual abuse, and specifically child rape, is motivated by beliefs that sexual intercourse with a virgin can cure HIV/AIDS, and, therefore, whether the myth is a key driver of the rape of young children, and potentially also a significant contributor to the spread of HIV/AIDS. One authoritative article on this question argues strongly that the myth is not a major contributor to levels of rape of young children.<sup>181</sup> The article, for instance, refers to evidence from a survey that indicates that very few people actually believe that AIDS can be cured by sex with a virgin, while other qualitative research conducted in Mpumalanga and Windhoek indicates that “while the idea is well known, it is also universally known to be untrue”, though the article acknowledges that other qualitative research conducted in Durban in the mid-1990s found that the idea was highly prevalent.<sup>182</sup>

Noting also that service providers, such as the Teddy Bear child sexual abuse clinic, have identified extremely few cases as being motivated by the myth, the article therefore concludes that: “It seems very unlikely that the practise of virgin cleansing” is a common motivation for child rape, given the infrequency with which service providers see cases and the fact that the number of child rape cases has not increased nationally over the (five years prior to 2004), a time in which the HIV pandemic and HIV-related deaths spiralled.<sup>183</sup> The article argues that, rather than the virgin cleansing myth, there are likely to be other avenues that are far more significant through which HIV may influence the prevalence of child sexual abuse, and child sexual abuse contribute to the spread of HIV. For instance:

When parents or other caregivers become ill with HIV and are less able to work, home circumstances may deteriorate or children may find themselves orphaned and living with relatives who are forced to support more people on their meagre income. Girl children may be prostituted to survive or have ‘sugar daddy’ relationships to make their lives more financially bearable. Deepening poverty may also force them to engage in activities in which rape is a considerable risk, such as staying out late or travelling very early for hawking.<sup>184</sup>

Poverty or a desire for increased income is therefore likely to lead girls into transactional-type sexual relationships, whether these are overtly in the role of prostitutes or through “sugar daddy” type relationships. They are thus likely to lead girls into relationships with men who are significantly older.

A study of HIV infection in teenage girls in the Eastern Cape found that having a partner more than 5 years older was associated with significantly elevated risk of being HIV positive in girls. Research has also shown that communication is poorer in relationships which are marked by a substantial age difference, and the likelihood of the woman being able to suggest condom use is lower.<sup>185</sup>

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181 Jewkes 2004.

182 Ibid: 133–134.

183 Ibid. 134.

184 Ibid: 135.

185 Ibid: 139.

Likewise another report argues that:

Child prostitutes are less able to control the sexual transaction than their adult counterparts, and thus are prone to violence from their exploiters and pimps. They are also more likely to be persuaded or pressured into unsafe sex practices, and as a result, are at greater risk for contracting sexually transmitted infections including HIV/AIDS and unwanted pregnancies.<sup>186</sup>

### 3.3.4 Reporting and rates of sexual violence against children

The issue of reporting and rates of sexual violence is discussed briefly earlier on in this report and will not be discussed in detail here other than in relation to a few brief points.

- Firstly, it seems clear that the issue of child sexual abuse is partly affected by different dynamics which impact on whether or not it is reported. For one thing, as indicated in the discussion of the circumstances of child rape, the fact that some children have been raped or subjected to other abuse is not reported to adults by them but, rather, is inferred from the fact that the child victim reports symptoms of rape or because it is suspected by another person for some other reason. Very young children are obviously not able to communicate the fact that they have been abused to anyone, so whether anyone else becomes aware of this depends on an adult noticing the (sometimes but not always obvious) signs of physical trauma. Even where they can communicate, other children might for various reasons not divulge the abuse. On another level, where sexual abuse takes place within families, even those who are well-motivated sometimes seem to choose not to deal with it through official channels, but rather through resources available in civil society or the private sector. This is done on the grounds that state intervention is likely to do more harm than good, and that the perpetrator's harmful behaviour can be brought to an end through him receiving some type of psychological assistance or therapeutic intervention.
- These dynamics seem in some way to differ from the factors impacting on the reporting of rape or other sexual assault by adults. Nevertheless, they hardly provide any basis for firm deductions to be drawn about whether the rate at which sexual violence against children, or any specific subcategory of children, is reported, is likely to be higher or lower than it is for older people.
- Finally, it seems obviously necessary that anyone trying to talk about sexual violence against children in South Africa needs to specify very clearly how they are defining sexual violence, or what aspect of sexual violence they are referring to, as well as the age category they are referring to.

The approach of this report to calculating the rates of underreporting and the age profile of rape victims was outlined earlier on.<sup>187</sup> This relies on the combined statistics (on rates of reporting) from the "Three provinces" study and (on the age profile of rape victims) the "Tracking justice" study. Using this

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<sup>186</sup> Dawes 2006: 29.

<sup>187</sup> See the section on "other data on the prevalence of sexual violence".

approach, the report concluded that “rape may continue at a rate of over 300 000 rape victims a year in South Africa”. The “Three provinces” study is now fairly dated and this is not a very rigorous methodology for calculating overall rates of rape. Nevertheless, it is not clear that, in the light of information currently available on this issue, any attempt at a more rigorous approach would be any more conclusive.

In order to exploring questions about prevalence, three different tables are presented which provide projections on levels of rape using different statistics from earlier parts of this report:

- Table 20 uses a figure of 300 000 rape victims per year to project estimates of the total number of rapes taking place in specific age categories, using the age profile for rape derived from the “Tracking justice” study.
- Table 21 uses figures from the study of child rape in north Durban to project an annual national figure for reported rape of children of 1 year of age or younger (that is, less than 24 months of age).
- Table 22 uses data from the 2005 National Youth Victimization study to project a national figure for sexual assault of women in the 15–20 age band.<sup>188</sup>

TABLE 20: Projected number of child rapes in specific age categories, using age profile of victims in “Tracking justice” study and projected figure of 300 000 rapes

	PERCENTAGE OF ALL RAPES OF WOMEN AND FEMALE CHILDREN	PROJECTED PORTION OF 300 000 FEMALE RAPE VICTIMS
1 year of age or less (less than 24 months)	0,2	600
2 years or less (less than 36 months)	1,1	3 300
3 years or less (less than 48 months)	2,8	8 400
5 years or less	5,1	15 300
11 years or less	14,2	42 600
17 years or less	39,6	118 800
13-22 age band (highest 10-year age band)	44,95	134 850
15-20 (six-year age band)	29,8	89 400
18 years and over	60,4	181 200

188 Leoschut and Burton 2006: 60. The description of sexual assault as used in the survey questionnaire was: “Sometimes people are forced to do things with their body, or have things done to their body, by others that they do not want. Has anyone ever forced you to have sex; kissed, or touched your body without your consent; tried to insert their penis or other foreign object into places you were not happy with; forced you to touch them in places you were not happy with; or forced you to behave in any other sexual way?”

TABLE 21: Projected annual figure for reported rape of children of less than 24 months of age, based on reported child rape in Durban North policing area

Total reported rapes of children 0–17 over six-year period (2001–06)	5 308
% rapes of children 1 year or less (less than 24 months)	2%
Estimated rapes of children of 1 year or less in six-year period	106
Annual rate of rape of children of 1 year or less	18
% of national population in Durban North policing area <sup>189</sup>	3%
Projected annual national figure for reported rape of children 1 year or less	600

TABLE 22: Projected national number of sexual assault victims in age band 15–20, based on 2005 National Youth Victimization Survey

AGE BAND	ESTIMATED POPULATION	OVERALL VICTIMISATION	FEMALE VICTIMS (69% OF TOTAL)
15–17 age band (4,6%)	2 985 360	137 327	94 756
18–20 age band (5,7%)	2 925 200	166 736	115 048
Total (15–20 age band)	2 474	1 366	1 013,69

Categories in Table 21 and 22 overlap with categories in Table 20 and may therefore be compared with each other.

- On the one hand, the projected figure of 600 reported rapes of children of less than 2 years of age reflected in Table 21 would appear to expose possible shortcomings in the projection methods used in Table 20. Table 20 is based on a projection that child rape makes up 0,2 of all rape, and that the overall rape rate is roughly six times higher than the rate for reported rape. However, the projected figure for all rape of young infants in Table 20 is the same as that only for reported rape of children in the same age category, based on the north Durban statistics. This may suggest that Table 20 seriously underestimates overall rates of rape of children of less than 2 years of age. Alternatively, rates of rape of children in this age category may differ substantially between different parts of the country, and Table 21 may overestimate overall rates of reported rape of children in this age category.
- On the other hand, the statistics in tables 20 and 22 relating to rape and sexual assault of women in the 15–20 age band are possibly more consistent with each other. Table 20 provides an estimate of an annual rate of 89 400 victims of rape in this age category, while Table 22 provides an estimated annual figure of 209 804 sexual assault victims in this age category. While the figure from Table 20 represents only 43% of that from Table 22, the former figure is based on projections of rates of

<sup>189</sup> Based on estimate of an average of 1 345 000 people in the Durban North policing area in this period.

rape that are based on women being asked if they had been “forced or persuaded to have sex against your will by being threatened, held down or hurt in some way”, while, as indicated, the figures from the National Youth Victimization Survey are based on a much broader definition of sexual assault. While it is not necessarily so, this comparison indicates that these two figures could possibly both be reasonably good approximations of the overall level of rape and sexual violence affecting women and girls in this age category.

Overall, then, this comparison using statistics that have emerged from four different studies of sexual violence has had mixed results. At the one end of the age spectrum of child rape it would appear to suggest that annual rates of rape of children of less than 24 months of age lie somewhere between 600 and 3 600 cases. At the other end of this age spectrum it appears to indicate that more than 200 000 girls and young women in the 15–20-year-old category suffer sexual assaults each year, including more than 89 000 who suffer rape.



## 4. THE CAUSES OF SEXUAL VIOLENCE

### 4.1 Sexual entitlement

#### 4.1.1 Patriarchy and male sexual entitlement in relation to marriage

It seems clear that the widespread nature of sexual violence in South Africa can partly be explained as the legacy of practices associated with male-dominated social orders that gave little attention to female concerns in relation to sexuality. According to the World Health Organisation's *World Report on Violence and Health*:

Sexual violence committed by men is to a large extent rooted in ideologies of male sexual entitlement. These belief systems grant women extremely few legitimate options to refuse sexual advances. Many men thus simply exclude the possibility that their sexual advances towards a woman might be rejected or that a woman has the right to make an autonomous decision about participating in sex. In many cultures women, as well as men, regard marriage as entailing the obligation on women to be sexually available virtually without limit, though sex may be culturally proscribed at certain times, such as after childbirth or during menstruation.<sup>1</sup>

Ideologies that privilege male sexual entitlement can be understood as characteristic of patriarchal social systems. Simply phrased, patriarchy is a form of social organisation marked by the supremacy of the father in the clan or family, the legal dependence of wives and children and the reckoning of descent and inheritance in the male line. More broadly, the word "patriarchy" has come to articulate a societal system whereby men hold most or all of the power and control.

Patriarchal systems are strongly associated with certain definitions of what it means to be a man, emphasising purported differences between men and women in terms of their attributes and roles. Ideas about maleness are articulated in terms of a masculine ideal that may vary depending on social context, and can be constructed from the physical (athletic, strong, brave), the functional (breadwinner, provider for family), the sexual (virile) and other attributes. Patriarchal ideas frequently embody ideas about men's superiority or right to dominance over women, beliefs that are ultimately premised on men's greater physical strength and therefore ultimately on their access to violence as a means of exercising their power. Tribal societies that are prone to rape, for instance, tend to be societies that emphasise distinctions between men and women, prioritise male dominance and are characterised by high levels of interpersonal violence. Other tribal societies, where less emphasis is given to distinctions between men and women and to male dominance, tend to be less violent and have substantially lower levels of rape.<sup>2</sup>

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1 Krug et al. 2002: 162.

2 Sanday 1981: 25.

Patriarchy implies that men hold more power and control than women. Masculine power implicitly requires that men are able to effect their will in their relationship to women, and characteristically requires that women subordinate themselves to male control. A key dimension of this subordination within marriages and other sexual relationships is that special privilege is given to the satisfaction of male sexual desires. This is reflected in the fact that in many legal systems, including that in South Africa, a man could not be prosecuted for raping his wife.<sup>3</sup> In South Africa the historical basis of this rule was related to:

... the inferior status of married women: the man was regarded as the woman's moral and intellectual superior and the woman had to be protected by the man. Under the patriarchal system of the Roman-Dutch law the woman was subject to the guardianship of her husband which gave him a right over her property as well as her person and marriage necessarily included a right to intercourse.<sup>4</sup>

Belief in the “right” of the husband to sexual access to his wife was also an attribute of African traditional cultures. According to Sathiparsad, in rural KwaZulu-Natal, “Payment for the woman in terms of the *ilobolo* custom seemed to serve as a guarantee for sex, which, if not readily forthcoming, could be taken by force.”<sup>5</sup> She notes that the responses she received from the participants in her focus groups “suggest that sexual entitlement within marriage is an entrenched feature of cultural norms”.<sup>6</sup>

Other cultural practices legitimated sexual coercion as part of the process of initiating marriage. Wood refers to the example of *ukuthwala*, or “bride capture”, which is the culturally legitimated abduction of a woman through which a circumcised (therefore adult) man can take a wife. The practice persists in some rural areas of the former Transkei. As Wood observes:

Even in cases where the girl had to be held down by other men for penetration to take place, most elders the author spoke to did not equate this with rape... This was primarily on the basis of the man's intentions: the act of penetration – violently enacted or not – was one crucial part of the process of turning a girl into a wife, and thus enabled her attainment of an adult status (assuming her prior virginity), and thus could not be equated with contemporary urban rape, which had no decent intention.<sup>7</sup>

Writing about the social context of group rape, Wood suggests that *ukuthwala* “forms part of a context in which male collective coercion has long been deemed historically acceptable (as long as certain rules are followed)”. The practice is a further illustration of cultural practices, which, rather than giving priority to questions of consent, privilege men in seeking sexual access to women.

3 In South Africa the law was eventually amended in 1993 by means of the Prevention of Family Violence Act, 33 of 1993.

4 South African Law Commission 1985: 26.

5 Ibid.

6 Sathiparsad 2005: 14.

7 Wood 2005: 313–314.

One of the ways in which traditional culture continues to influence the lives of South Africans is through the continuing role of beliefs such as these in shaping attitudes to sex in marriage and in other sexual relationships. Despite the fact that traditional cultures have significantly been undermined by “modernity”, their ideas about sex, or adaptations of them, still play a powerful role in relationships between men and women. Many men, and women, continue to believe that men have a right to sex within marriages and other “love” relationships. Sexual compliance is seen as part of the female duty to obey male authority. In so far as women too have internalised a belief in their obligation to be sexually compliant, sex does not necessarily involve overt violence or even coercion. Even when it is unwanted it may be consensual, in the sense that the woman believes that she is under an obligation to consent.

The prevalence of these types of beliefs is reflected in the findings of the CIETafrica study, that 30% of all students said that girls did not have the right to refuse sex with a boyfriend.<sup>8</sup> Such views were even more widespread in a study that canvassed women in a survey in Eastern Cape, Mpumalanga and Northern Province, which reported that three-quarters of the rural women (74%) said they understood that in their culture, if a man paid *lobola* for his wife, it meant that she had to have sex whenever he wanted it. Similar ideas were found across different types of marriages: in two of the provinces, 60% of women reported that they did not believe that a married woman could refuse to have sex with her husband.<sup>9</sup>

## 4.1.2 Contemporary adaptations of ideas about entitlement

### 4.1.2.1 Forced sex in dating relationships

Rape can therefore partly be understood in terms of the continuity of practices and beliefs associated with the patriarchal order. But understanding sexual violence in contemporary South Africa appears to be as much about understanding processes of change as understanding continuities. From a historical point of view it is also evident that broad processes of change over the last century, associated initially with industrialisation, urbanisation and colonial and racial domination, and subsequently with de-industrialisation, democratisation and the growth of the consumer economy, have contributed to the breakdown of social structures which, while they may have exploited women and enforced their sexual subjugation in relation to marriage, also served to provide a certain level of protection to them against sexual violence.<sup>10</sup>

Delius and Glaser indicate that, prior to conquest, African communities were relatively open in relation to intergenerational communication on sexual issues. The power of adolescent sexuality was recognised

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8 CIETafrica 2002.

9 Jewkes and Abrahams 2002: 1 239.

10 Delius and Glaser 2001.

and techniques and controls existed to help minimise its socially destructive dimensions, while peer groups also played a part in monitoring and managing adolescent sexuality. “In the twentieth century these forms of sexual socialisation crumbled under the combined onslaught of Christianity, conquest, migrant labour, urbanisation and western education... The peer group pressures that had previously restrained adolescent sexuality now urged youth on to greater levels of sexual experimentation, and helped to entrench models of masculinity which celebrated the commodification, conquest and control of women.”<sup>11</sup>

Young people now grew up in a cultural space created by modernity and apartheid in which parental and cultural authority was undermined, while the concentration of young people in the urban areas brought to the fore the emergence of “youth cultures” strongly defined by male peer groups. These initially emerged in a cultural space created by the apartheid politics of rape in South Africa, which gave primacy to anxieties about the rape of white women, while the violence done to black women [by white or black men] was “utterly neglected”,<sup>12</sup> no doubt facilitating the emergence of social practices among young men that expand their own domain of “entitlement” and which were antithetical to the well-being of women.

In this context, where young men frequently had little hope of being able to command the type of resources that would enable them to finance marriage and a home, the emphasis traditional societies placed on linking participation in sex to marriage<sup>13</sup> has been jettisoned, thereby dramatically expanding the domain in which young men can claim sexual entitlement. Wood and Jewkes, for instance, talk about the town of Umtata, and the nearby township of Ngangelizwe, in Eastern Cape. Umtata is a town:

... without industry, where there are few job opportunities or recreational facilities for young people. Unemployment and its ramifications are widespread. Ngangelizwe police report escalating levels among local youth of illegal fire-arm possession, alcohol abuse, as well as hard-drug use and dealing (cocaine and Mandrax). Young men whose families are without the means to further their education have few options, and frequently drop out of school to ‘hang around’ the streets of Ngangelizwe and central town, begging for money, harassing schoolgirls and other township residents, and committing petty crimes. ... [E]lders complain that their children are ‘out of control’, disrespectful and idle. In this context, poverty, mind-numbing boredom and the lack of opportunities or prospects for advancement contribute to young people investing substantial personal efforts in the few arenas where entertainment and success are achievable, most notably their sexual relationships.

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11 Delius and Glaser 2002: 20; see also Steinberg 2008.

12 Vetten 2007: 435.

13 For instance, it appears that among the Mpondo there was a strict prohibition on premarital intercourse. Teenagers were permitted a great deal of sexual contact, but not in lonely, isolated places, and they were not permitted to have intercourse. Only married people were permitted that. Which is not to say that, once married, one had to confine having intercourse to one’s spouse, only that one had to have a spouse, or be divorced, in order to have intercourse with anyone! (e-mail message from Johnny Steinberg, 26 November 2008).

In this context, many young men are ruthless in enforcing their concept of entitlement to sex.

If a girl accepted a male ‘proposal’ to love, she would be expected to have sex whenever he wanted it in return for presents, money, being visited frequently and taken out to parties and films. Thus, sexual refusal on the part of girls, which contradicted this ‘contract’ as well as challenging dominant ideas about (male) sexual entitlement in relationships and female sexual availability, was an important catalyst for assault and was seen (by some men) to legitimise the ‘taking’ of sex, by force if necessary.<sup>14</sup>

These attitudes and expectations do not only play themselves out on a one-to-one level within relationships. One of the dynamics driving sexual coercion and other violence is the anxiety many men have that they will lose face in the eyes of their peer groups and community members if they are seen not to be able to exercise control over women in this way.

The legacy of patriarchy, therefore, is a cultural space where priority is given to men’s interest in sexual access and where issues of consent are not given primacy in sexual relations. Rape is perceived as wrongful, but is defined by many young men and women as perpetrated by criminals on women who are strangers, in an overtly violent manner. “Forced sex” is seen as distinct from rape, particularly within the context of a relationship, though this supposed ambiguity is also exploited in other contexts. Katherine Wood, for instance, outlines the justifications given by young men for distinguishing “streamlining” (a colloquial term for gang-rape) from rape referring to “the often fine line in local sexual culture between ‘force’, ‘persuasion’, and ‘seduction’... These young men explained that the tactics used to ‘find’ victims, such as trickery and coercion rather than outright violence, as well as the lack of voiced refusal on the part of the victim, legitimised the sex act with that person.”<sup>15</sup>

Similarly, in a study of young men in KwaZulu-Natal, Sathiparsad found that “rape was [seen to be] characterised by force and violence and usually occurred with a stranger or someone outside of either a serious or casual relationship. In other words, they did not construe forced sex within marriage as rape.” She notes that the comment from one of the respondents that “They say it is nice because it is spiced” drew much laughter from other participants, where “spiced” “appears to be used here as a euphemism to cover up the brutality, roughness and ruthlessness involved in forced sex”.<sup>16</sup>

#### **4.1.2.2 Transactional sex**

A concept of entitlement is relied on by some men, not only in the context of relationships but also elsewhere. As noted by Wood and others, in some South African settings, buying something (such as a beer) for a woman in whom he has a sexual interest is taken, at least by some men, to imply sexual

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14 Wood and Jewkes, 2001: 327.

15 Wood 2005: 310–311.

16 Sathiparsad 2005: 11–12.

entitlement – and hence the irrelevance of consent.<sup>17</sup> In these cases, the perpetrators do not seem to regard it as necessary to engage with whether the woman actually wants to have sex or not. Instead, apparent acts of generosity are in effect a disguised way of establishing an entitlement to sex. The notion of “courting” does not exist, or courting is equalled to “buying a beer”, which would entitle the perpetrator to have sex with the victim, even without her consent. This forms one of a number of different situations in which material transactions are understood by men as a means of acquiring an entitlement to sex. As Dunkle et al. state:

Women often assert that accepting financial or material assistance from a man means accepting sex on his terms, which very often means without condoms. Women may also face rape and physical violence from men who anticipated that financial outlay would be reciprocated by sex, and women often tolerate physical or sexual violence in order to sustain relationships which provide critical income... Financial and material exchange as a motivating force underlying sexual relationships is a well-recognised dynamic in the HIV pandemic, particularly in sub-Saharan Africa. Often referred to as transactional sex, it is a motive for women to have sex in situations where they might otherwise refrain, and has been noted as a potential source of women’s vulnerability to gender-based violence and sexual exploitation.<sup>18</sup>

In relationships of dependency, which often result from the low economic status of women, women may find it difficult to contest the beliefs of male partners in their sexual entitlement. As a result of poverty, some women may also choose to engage in forms of transactional sex, and this may also contribute to blurring the issue of sexual consent and feed into beliefs on the part of men that buying something for a woman provides them with a right to sex.

### **4.1.3 Social class and entitlement**

In a study involving young men in rural villages in Eastern Cape, Jewkes et al. found that “more advantaged men, defined through maternal education, earning power or wealth”, were more likely to rape women, especially non-partners. The authors suggest that this is because these men have an exaggerated sense of sexual entitlement.<sup>19</sup>

These findings may be correct. Wealthier men, for instance, may find that women tend to be more easily available to them, and almost take for granted women’s sexual availability, making them more likely to interpret sexual refusal as an affront. On the other hand, these types of findings could reflect inherent biases in survey research relating to matters of sexuality. Discussing another survey, for instance, Jewkes and Abrahams note that: “Rape was much more commonly mentioned in the survey in urban

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<sup>17</sup> Wood 2005: 310–311.

<sup>18</sup> Dunkle et al. 2007: 1 235–1 248.

<sup>19</sup> Jewkes et al. 2006: 2 958.

than rural areas, amongst white and coloured women and amongst women with more education.”<sup>20</sup> In a completely different context, a survey on the prevalence of masturbation in Britain reported that: “Higher educational achievement and higher social class were both associated with high prevalence of reporting masturbation,” while “men and women who self-reported their ethnicity as ‘White’ were significantly more likely to report masturbation than those in other ethnic groups”.<sup>21</sup> Cultural factors that are shaped by class may have systematic impacts on how people respond to survey questionnaires, dealing with sexual violence or other behaviour related to the sexual domain.<sup>22</sup>

#### 4.1.4 Endorsement of ideas about male sexual entitlement by women

Ideas about male entitlement also shape women’s attitudes around sexual behaviour. As discussed above, many women in South Africa believe that the payment of *lobola* means the man owns her and, as such, she has to have sex with him: women have also internalised the idea that married women cannot refuse to have sex with their husbands. Women’s constructions of sexuality thus become responsive to and in service of male sexuality: women believe that an agreement to love equates specifically with penetrative intercourse, being available sexually for a male partner, and complying with male sexual demands.

In youth relationships in Eastern Cape, girls also distinguished between forced sex and rape, where rape was an act violently enacted by a stranger but forced sex was seen as stemming from overwhelming affection or marking the commencement of a relationship. “Forced sex in relationships was never described as ‘rape’ by the girls, as ‘it is with your boyfriend’.”<sup>23</sup> Forced sex, and other male violence and coercion is, however, a major source of resentment for girls,<sup>24</sup> though on another level beatings in some circumstances are perceived positively, with violence perceived as an indication of the depth of feelings, and intense male jealousy (characterised by violence) “seen as an explicit sign of love”.<sup>25</sup> This normalisation among women of coerced sex indicates the absence of expectations of genuine sexual negotiation within relationships.

Another part of the inherited culture of sexuality that forms part of and feeds into a culture of male sexual coercion is what appears to be an obligatory coyness on the part of women. Katherine Wood, for instance, refers to the reputation-protecting “game” expected to be played by women, in particular

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20 Jewkes and Abrahams 2002: 1 235.

21 Gerressu et al. 2008: 268–270.

22 Based on ethnographic research in Ngangelizwe, Wood and Jewkes (2001: 323) observed that “young men from working class backgrounds were more likely to report having practiced regular violence against (potential or actual) sexual partners”, and that “poorer women from the squatter camp were more likely to have been assaulted more regularly and violently by a series of partners”, which would appear to imply that poorer men and women were also more likely to be perpetrators and victims of sexual violence.

23 Wood and Jewkes 2001: 334, footnote 12.

24 Ibid: 326.

25 Ibid: 324–5.



saying “no” even if they were interested in a potential sexual relationship.<sup>26</sup> This was also reflected in research among school students by CIETafrica, which found that “50% of all learners either believed that a girl means yes when she says no, or were not sure whether ‘no’ in fact means no. Although this belief was more widespread among boys, it was also commonly expressed by girls, particularly in some areas of the country.”<sup>27</sup>

It seems reasonable to acknowledge that this type of conduct also may blur the line between consent and coercion so that the sexual signals sent by women are at best ambiguous or muted. These practices would appear also to have their origin in patriarchal ideas to the effect that women are not entitled to take the initiative or have any control in sexual relationships. This is supported by Sathiparsad’s research, where she found that “Participants were clear that it was unacceptable for women to initiate sex. At most, women must be passive.”<sup>28</sup> A fear of violence from male partners is frequently cited in a casual, by-the-way manner, as explanation for women not asserting their needs and desires in their relationships. Furthermore, the internalisation of feminine gender-role stereotypes such as passivity, submissiveness and a need to please men, means that women become ineffective communicators in sexual relationships and involved in conforming to a way of acting that is prescribed by male power.

Wood et al. also found that among young girls, peers deliberately mystified sex. As a result, there was a distinct lack of input by sexually experienced female peers, which served to preclude the creation of a space where male definitions of sex could be challenged and therefore served to reinforce them. The absence of sexual knowledge from female peers fosters misconceptions and bolsters the status quo, which is heavily in favour of destructive male notions of and attitudes towards sex and meant that women were initiated into sexual matters (and beliefs) by men.<sup>29</sup>

## **4.2 Insecure and threatened masculinity**

### **4.2.1 The multiple sources of male insecurity in contemporary South Africa**

Social and economic changes have not only brought about a breakdown of traditional structures and systems, but brought into being a cultural space that has enabled young men to be more assertive in defining sexual norms. Political changes have also profoundly challenged the patriarchal order, particularly since the advent of democracy in South Africa in the 1990s. In combination with other factors, these changes apparently contribute to a pervasive sense of insecurity among men, which is likely to manifest, and may feed into, sexual violence in different ways.

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<sup>26</sup> Wood 2005: 310–311.

<sup>27</sup> CIETafrica 2002.

<sup>28</sup> Sathiparsad 2005: 15.

<sup>29</sup> Wood, Maforah and Jewkes 1996: 4.

Sexual violence can therefore potentially partly be understood against the backdrop of dramatic and multilayered processes of social change that have taken place in South Africa over the last century. Over a period during which “modernity” has contributed to undermining traditional patriarchal ways of life, economic changes, which initially provided an alternative base for masculine identity and economic power within the industrial economy, have fallen into decline with de-industrialisation. “[A]cts and discourses of sexual violence are not isolated from broader political economic changes, particularly from experiences of de-industrialisation. High job losses amongst men often stand at the centre of the disintegration of domestic units, the disjuncture between men’s ideals and actual life situations and the prominence of criminal lifestyles.”<sup>30</sup>

For black men who were invested in patriarchal power, the end of official racial discrimination, which came with democratization, may have represented something of a double-edged sword. Political democratisation brought about women’s empowerment in diverse forms, one of which was their empowerment around sexual rights. The “better life for all” promised by democratisation is one where the labour market has been opened up more to women. Notwithstanding continuing gender discrimination, women may in some cases on merit, or because they can be employed for lower wages, be preferred over men for recruitment or promotion, something that may be experienced as deeply unsettling to men who are invested in patriarchal ideas about the male superiority and authority over women.

This “crisis of masculinity” would also have played itself out within the domain of the family. According to Wood, for generations of working-class men – historically disenfranchised and profoundly disadvantaged by the exploitative migrant-labour system that defined the colonial and apartheid economies – the family domain became the primary sphere in which they could (coercively, if necessary) reassert their sense of masculinity.<sup>31</sup> Since the first democratic elections in 1994, it has been argued that the redefinition of gender and the liberalisation of sexuality entailed by the democratic transition have posed serious challenges to orthodox, mainly authoritarian notions of masculinity, leaving many men with a disempowering sense of irrelevance in the domestic sphere.

Not only are systems of male privilege and dominance under threat, but men (and women) face multiple other sources of insecurity. The contemporary world is one characterised by overt and widening intra-communal inequality, a high premium on display of consumer goods, employment that is uncertain or perceived as demeaning, violence, crime and exposure through the mass media to local and global political change and turbulence. Not only is this a mentally and emotionally challenging world to engage with but many men encounter this world while burdened by the legacy of a childhood in a dysfunctional and/or poverty-stricken family, poor-quality education, and while encumbered with the psychological baggage of internalised questions about self-worth, which are the legacy of apartheid racism. In so far as they measure their performance against an ideal of masculinity that assumes gainful

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30 Niehaus, 2005:83.

31 Wood, 2005:304.

employment, economic success, household headship and the availability of a sexual partner, it is therefore likely that they will often regard themselves as deficient and feel threatened and insecure about their personal worth.

### 4.2.2 Insecurity and hostile masculinity

Notions about masculinity (or the qualities, behaviour and appearance that are socially accepted for men to display) are directly linked to how steeped in patriarchy their particular society, culture or community is. Ideals associated with masculinity are not necessarily all consistent with each other, and do not necessarily uniformly legitimise or excuse rape; they may also emphasise qualities of chivalry, protectiveness, self-control and respectfulness, which can be seen as not supportive of a rape culture. Even ultra-masculine cultures that place a lot of emphasis on machismo may stress a variety of values, including assertiveness or standing up for one's rights, a sense of responsibility, a general code of ethics (which is usually culture-dependent), and a need for respect, which may extend to (some) women while excluding others.

Men's actions, even including anti-social acts involving violence or crime, are not necessarily shaped by ideas about masculinity. Katz's work on the lived reality of crime suggests that at the moment when crimes are committed, "a specifically masculine identity may not be the most important element" shaping the perpetrator's behaviour.<sup>32</sup> All men also do not necessarily invest strongly in ideas about masculinity. For some men concerns about whether or not they are successfully fulfilling ideals about masculinity may be something that occasionally intrudes on their consciousness, while for others these issues may be a more persistent preoccupation. Men's conception of what type of behaviour they should display tends to be linked to their position in society as well as the cultural milieu they are part of. Some men are likely to feel pressured to act in an overtly masculine way, more than others. These men may feel that they have to prevail in situations that require physical strength and fitness. To appear weak, emotional or sexually deficient may be a major threat to their self-esteem.

Masculine gender-role stress may develop if a man feels that he has acted in a way that does not conform to ideals of masculinity. Conversely, acting in a "manly" way among peers will often result in increased social validation, respect or social advantage. Thus, as demonstrated by Woods and Jewkes in their examination of the involvement of young men in violence against women in Ngangelizwe, a key driver of male violence appeared to be the need to retain the respect of other members of their peer groups and community.

Under different circumstances, gender patterns, may be "more or less open to change."<sup>33</sup> Under circumstances of social and economic well-being it could be imagined that anxieties on the part of men about

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<sup>32</sup> Katz 1988, referred to in Heidensohn and Gelsthorpe 2007: 388.

<sup>33</sup> Connell 2000: 23.

whether they conform to ideals of masculinity may be more muted. On the other hand, the pressure to conform to masculine ideals may be driven largely by socially defined ideals of masculinity, such as ideas about male courage and fortitude promoted by governments as part of efforts to mobilise men in times of war. However, individual men, and groups of men, may to some extent define their own models of “admired masculine conduct” in a way that “suits their psychological” or emotional purposes, thereby “allowing them to ward off feelings of anxiety and powerlessness”.<sup>34</sup> In circumstances of widespread masculine insecurity it may therefore be more likely that some men, including some of those who feel most threatened or insecure, will directly invest in ideas about women that are overtly hostile to them, partly by investing in archetypal ideas derived from patriarchal norms.

It should be emphasised here that not all male attitudes that legitimate violence against women are overtly misogynistic. Wood and Jewkes, for instance, specifically caution against interpreting the violent acts of men in Nganglizwe as misogynistic,<sup>35</sup> drawing attention, for instance, to the overall culture of violence in the area. Nevertheless, it seems reasonable to assume that the motivations for investing in negative types of masculinity that are overtly hostile to women may be strongest in circumstances of widespread insecurity, where many men feel that their social status is uncertain. Thus it may be the case that these types of circumstances motivate some men, whether individually or in groups, to invest in some variation of what is known as “hostile masculinity”, which is said to be characterised by “a desire to be in control, to be dominating, particularly in relation to women” and “an insecure, defensive and distrustful orientation towards women”.<sup>36</sup> Hostile masculinity, in turn, may be particularly likely to translate into acts of sexual violence that are vindictive or punitive or directly intended to control women. As the *World Report on Violence and Health* puts it:

Several authors have argued that the relationship between poverty and perpetration of sexual violence is mediated through forms of crisis of masculine identity. Bourgois, writing about life in East Harlem, New York, United States, described how young men felt pressured by models of ‘successful’ masculinity and family structure passed down from their parents’ and grandparents’ generations, together with modern day ideals of manhood that also place an emphasis on material consumption. Trapped in their slums, with little or no available employment, they are unlikely to attain either of these models or expectations of masculine ‘success’. In these circumstances, ideals of masculinity are reshaped to emphasize misogyny, substance abuse and participation in crime – and often also xenophobia and racism. Gang rape and sexual conquest are normalized, as men turn their aggression against women they can no longer control patriarchally or support economically.<sup>37</sup>

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34 Paraphrasing Jefferson, (2002), as summarised in Heidensohn and Gelsthorpe 2007: 388.

35 Wood and Jewkes 2000: 232.

36 Malamuth et al., as quoted in Murnen, Wright and Kaluzny 2002: 361.

37 Krug et al. 2002: 161.

### 4.2.3 Insecure masculinity and sexual violence

The “crisis of masculinity”, then, is a reflection of widespread insecurity by men about their ability to meet their own and other people’s expectations in relation to conformity with ideals about masculinity. This is widely seen to have fuelled levels of domestic and sexual violence as men strive to reassert themselves, gain ascendancy over women, and deal with their feelings of humiliation and inadequacy.<sup>38</sup> These feelings of insecurity might be seen to feed into sexual violence in different ways, though these different types of motivations could, in turn, be intertwined with each other in specific acts of sexual violence:

- **Demonstrating and reasserting masculinity:** Men who feel insecure about their own masculinity may rape as a way of demonstrating their masculinity to themselves and sometimes (though rape is often very secretive) to others. Men may choose women perceived as “high class” as targets for rape as a way of proving their own power to themselves. In a gang-rape scenario, at least some of the participants may fear that their non-participation may be seen as implying that they are not able to participate and are therefore unmanly, and their involvement may be related to maintaining or achieve status within his gang. The act of rape itself may be a way of reassuring oneself that one is a “real man”, or securing social acceptance and respect from others. Thus, when Vogelmann studied a group of rape perpetrators from the Riverlea community in southern Johannesburg, it became apparent that the perceived feelings of inadequacy among the rapists – in relation to external stimuli such as their work, political, social or economic status, or often a combination of these – resulted in them exerting or asserting what power they felt they did have in an aggressive and coercive manner. This is illustrated by a comment made by one rapist that he felt: “I was the best, I had put her down... [Also] it made me feel even better ... to know I am a man because a woman is bowing down to you”.<sup>39</sup>
- **Controlling and subordinating women:** On an individual level sexual violence might be part of a generalised use of violence intended as a way of controlling the behaviour of a female partner. As highlighted by Wood and Jewkes, in Ngangelizwe violence, including sexual violence, was used as a means of imposing the (often “implicit”) “rules” underlying relationships or as a form of control or discipline when the female partner is perceived to have broken the rules or is resisting male attempts to enforce the rules and control their behaviour. On a more general level sexual violence might overtly be seen as a way of subordinating women, “showing them who’s who” or “putting them in their place”, and target those women who “don’t know their place”. Helen Moffett argues that, in post-apartheid South Africa, men who are experiencing the “crisis of masculinity” have used sexual violence to keep women in a subordinate position: “In other words, women (instead of black people) have become the potentially powerful, unstable subclass that must be kept in their place.” She refers to the example of a taxi-driver who openly described how he and his friends would cruise around at weekends, looking for a likely victim to abduct and “gang-bang”. The driver explains that “he and

38 See, for instance, Mokwena 1999; Niehaus 2005, in Reid and Walker 2005.

39 Vogelmann 1990, in McKendrick and Hoffman 1990: 96–134.

his friends picked only those women who ‘asked for it’”. When asked to define what he meant, he said: “It’s the cheeky ones – the ones that walk around like they own the place, and look you in the eye.”

- **Other vindictive rapes:** Some rapes appear to be overtly intended to punish or otherwise hurt a specific women, and may even be an act of anger against women in general or society more widely. While rapists in general would either be indifferent to and/or rationalise the suffering inflicted on the victim of rape, in these rapes the physical harm to the victim might feature more prominently as a key motivation for the rape. Referring to the practice of gang rape by young men in Eastern Cape, Jewkes comments: “Streamlining is ... an unambiguously defiling and humiliating act, and is often a punishment, yet at the same time it is an act that is often regarded by its perpetrators as rooted in a sense of entitlement, or legitimacy. A woman may be streamlined to punish her for having another partner; for behaving outside gender norms (e.g. when deeply intoxicated); for being successful, or for imagining she could be superior.” Similarly, Woods also indicates that these rapes are sometimes used as a punishment for a woman who has refused one of the group’s sexual advances, or as a vengeful kind of way to terminate a relationship, perhaps because he is “tired” of her and/or as a way of “teaching her a lesson” when she had been sexually unfaithful and made herself into an *isifebe* (“bitch”), or if she had been behaving in other ways that publicly undermined his sense of masculinity.<sup>40</sup> One informant in Abrahams’s study explained that “it happens all the time” that women suspected or known to have other partners were gang-raped by her partner’s acquaintances to “punish” her.<sup>41</sup> Even rapes where the anger appears to be quite individualised, such as rapes motivated by anger at romantic or sexual rejection, may in some ways be an expression of feelings of anger that are underpinned by anxieties and insecurities about masculinity.

### 4.3 Sexual violence and the problem of crime and violence in South Africa

Patriarchal attitudes of entitlement and a “crisis of masculinity” appear to be elements in explaining sexual and broader gender violence in South Africa. But there is also a broader problem of crime and violence in South Africa. It seems reasonable that the problem of widespread sexual violence might be related to the general problem of widespread criminality and violence in South African society.

Issues addressed in this report already may be seen to have alluded to or implied a link between crime and sexual violence. In this discussion of the causes of sexual violence, reference has been made to Sanday’s comparison of tribal societies in which she observed that societies that had lower levels of sexual violence tended to have lower levels of violence more generally,<sup>42</sup> and to the work of people such as

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40 Wood and Jewkes 2000: 309.

41 Interview, 3 September 2007.

42 Sanday 1981: 25.

Niehaus and Bourgois, who associated the crisis of masculinity not only with sexual violence but also with “criminal lifestyles” or “participation in crime”.

In the earlier discussion of “reporting and levels of sexual violence” (see the section on the prevalence of rape), the report also refers to one of the drivers of increased reports of rape as having been “the entrenchment and proliferation of culture of criminality amongst marginalized young men associated with factors such as urbanization and intensifying structural unemployment”, a phenomenon that was also discussed in relation to the issue of “sexual entitlement”. In addition, in discussions of the circumstances of rape, reference has been made to data from the “Tracking justice” study of reported rape in Gauteng in 2003 (see, for instance, tables 7, 8, 14 and 19). This indicates that rapes carried out by an “unknown perpetrator during a housebreaking or house robbery” accounted for an estimated 9% of rapes in Gauteng in 2003 overall, including 12% of rapes of adult women, 6% of adolescent girls, and 2% of rapes of 0–11-year-olds.<sup>43</sup> A study of gang rape in inner-city Johannesburg also found that 7% of the 162 gang rapes were committed during the course of another crime.<sup>44</sup>

### **4.3.1 Previous conviction data on perpetrators of sexual violence**

The link between sexual violence and other crime and violence is most directly manifested in the fact that some perpetrators of sexual violence are themselves also involved in other crime. This is most obvious in cases where predatory property crimes turn into acts of sexual violence, as highlighted above. However, as was noted in the discussion of rapes committed during other crimes, it is valid nevertheless to distinguish between potentially different scenarios here. In some housebreakings, for instance, rape might be a primary motive (with items of property being taken “incidentally” during the housebreaking), a joint primary motive with the motive of theft or robbery, or rape might be committed “opportunistically” if the circumstances for rape present themselves during a housebreaking or robbery.

An example of a rapist who may be seen to fall into the category of perpetrators with “dual” motives is an apparently notorious rapist active in the Bushbuckridge area, who is given the pseudonym “Solanka Khosa” by Niehaus.<sup>45</sup> Niehaus says of Khosa that he was eventually arrested in November 2001 on 13 counts of rape. But Solanka Khosa’s criminal activities are not restricted to rape. “He had acquired a legendary reputation as a housebreaker who could sneak into people’s locked homes to steal their cell-phones, revolvers and videocassette recorders while they slept.” He was arrested in 1999 for shoplifting but was released within a week. Niehaus indicates that “Solanka carefully observed his victims and only attacked when they were alone at home. He broke into their homes wearing a stocking over his head, and stole their money and possessions before he raped them.”

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43 Vetten et al. 2008: 36.

44 Vetten and Haffejee 2005: 3.

45 Niehaus 2005.



To what extent, then, are rapists in South Africa like Solanka Khosa in that they persistently and habitually carry out acts of sexual violence as well as other crimes?

#### 4.3.1.1 Perpetrators of rape in Gauteng, 2003<sup>46</sup>

Though criminal records generally do not provide a full picture of the criminal histories of many perpetrators of sexual violence, as some of the sexual or other crimes that they have been involved in may not have been solved, they nevertheless help to illustrate some of the variations in terms of “criminal careers” between different sexual-violence perpetrators. Data on previous convictions from the “Tracking justice” study indicates that roughly one in very five alleged perpetrators (18%) had previous convictions of some kind. The percentage of alleged perpetrators with previous convictions varied between the different victim age bands, with 18% of suspects with victims aged 1–11, 14% of suspects with victims aged 12–17, and 20% of suspects with victims aged 18 and older having criminal records.

As illustrated in Table 23, approximately 9% of perpetrators with previous convictions had previous convictions for rape, representing roughly 2% of all identified perpetrators.<sup>47</sup> However, roughly half (52%) of all alleged perpetrators with previous convictions had prior convictions for violence in some form if all those with rape, murder or attempted murder, culpable homicide, assault, robbery, abduction or illegal possession of a firearm or ammunition are taken together. Another half of these alleged perpetrators therefore did not have previous convictions for violence, including those who had convictions for property offences<sup>48</sup> and those who had convictions for “other” offences but not convictions for violence. There were 68 convictions for “other” offences, of which 36 were the only offence for which the individual had been convicted and 32 were combined with another conviction. Among these 63 convictions were at least 17 involving other property-related offences, such as malicious damage to property, fraud or possession of stolen goods; 16 cases involving drugs (mostly dagga), including two of dealing; 12 cases either involving drunk driving or other alcohol or liquor offences; three related to the administration of justice, such as failure to appear in court; and three involving loitering, trespassing or illegal immigration.<sup>49</sup>

46 All data in this subsection is from the CSV analysis of data from the “Tracking justice” study. Note the issue raised in the following footnote.

47 Note that there are significant differences between the data from the “Tracking justice” study as reported here and that as reported in the main report of the study (Vetten et al: 2008: 33). For instance, this report records roughly 2% (1,7%) of identified perpetrators as having previous rape convictions, while that report records the figure as 5,8%. Similarly, the figure for housebreaking and robbery (including hijacking) combined in this report is 8,8% of identified perpetrators (that is, significantly higher than figures for previous rape convictions), while in that report it is 4,7% (a lower figure). At the time of finalising this report in December 2008 it was not possible to clarify the reasons for these differences, but the figures here are an accurate reflection of the figures in the data set we have, which is consistent with the “Tracking justice” report on the overall percentage (18%) of perpetrators with previous convictions, as well as in relation to the percentage within the different victim age groups.

48 Note, however, the point made that housebreaking can be regarded as a “potentially violent offence” (Centre for the Study of Violence and Reconciliation 2007: 48).

49 No details were recorded in 12 cases.

TABLE 23: Types of previous convictions for each alleged perpetrator with previous convictions<sup>50</sup>

		%		PRIOR SEXUAL VIOLENCE CONVICTION (%)	PRIOR VIOLENCE CONVICTION (%)	NO PRIOR VIOLENCE CONVICTION (%)
Rape	18	9	- 10 rape - 2 rape and housebreaking / theft - 3 rape and hb / theft and assault / GBH - 1 rape, hb / theft and culpable homicide - 1 rape and assault / GBH - 1 rape and other	9	9	
No rape but have separate violence and property	20	11	- 15 hb / theft and assault / GBH - 2 hb / theft and illegal firearm / ammunition possession - 1 hb / theft and assault / GBH and culpable homicide - 1 hb / theft and assault / GBH and murder / attempt - 1 hb / theft and abduction		11	
No rape but have violent-property	14	7	- 8 robbery only - 3 hb / theft and robbery - 1 robbery and assault GBH - 1 hb / theft and robbery and culpable homicide - 1 hb / theft and robbery and assault / GBH		7	
No rape and no property but have other violence	47	25	- 30 assault / GBH only - 6 assault / GBH and other only - 2 assault GBH and murder / attempted murder - 1 assault GBH and abduction - 1 assault GBH and illegal possession firearm / ammunition - 3 culpable homicide - 1 murder / attempt and abduction - 1 murder / attempt - 2 illegal possession firearm / ammunition		25	
Property and / or other only	91	48	- 46 hb / theft - 9 hb / theft and other - 36 other only			48
	190	100%		9%	52%	48%

50 CSVR analysis of data from the “Tracking justice” study. Note that (1) the abbreviation “hb/theft” implies a conviction for housebreaking or theft or both. The abbreviation “assault/GBH” indicates a conviction for assault or for assault with intent to inflict grievous bodily harm (assault GBH); (2) For purposes of this table, violent offences are understood to include rape, murder, culpable homicide, assault, robbery and illegal possession of a firearm or ammunition and abduction. Cases of malicious damage to property (seven included among other convictions, of which five were combined with another type of conviction) were not recorded as cases of violence; (3) roughly 20 of the “other” category of convictions, which were combined with other types of convictions, were not included in this table.

As reflected in Table 24, there were some significant differences between different perpetrator groups (as defined by victim ages) in terms of the type of offence profile they demonstrated. While, due to reasons of the sample size, the overall numbers in categories such as rape or murder were very small and are not meaningful for purposes of comparison, some categories where larger numbers were recorded seem to justify comparison. For instance, both for offences of housebreaking and/or theft and for assaults, perpetrators in the young-child victim category recorded lower percentages than those in the teenager-victim age category, with those with adult victims recording the highest percentage of offences in these categories. This was particularly pronounced in relation to assaults, where the percentage of those with previous assault convictions among those with the youngest victims (14%) was virtually half of those alleged to have raped adult victims with previous assault convictions (26%).<sup>51</sup> By contrast for “other” offences, the percentages in the two groups demonstrate the opposite trend, with “other” convictions among those with the youngest victims (44%) being more than double that for alleged rapists of adult victims (20%).<sup>52</sup>

TABLE 24: Type of previous convictions by age group of victims<sup>53</sup>

	VICTIMS 0–11		VICTIMS 12–17		VICTIMS 18+		TOTAL	
	No.	%	No.	%	No.	%	No.	%
Rape / attempted rape	3	7	3	5	11	7	17	7
Murder / attempted murder	0	0	3	5	2	1	5	2
Culpable homicide	2	5	2	4	2	1	6	2
Robbery (including hijacking)	2	5	2	4	10	6	14	5
Housebreaking / theft	11	26	18	32	57	35	86	33
Assault or assault GBH	6	14	12	21	42	26	60	23
Illegal possession of a firearm/ ammunition	0	0	2	4	4	2	6	2
Other	19	44	14	25	33	20	66	25
	43	100	56	100	161	100	260	99

51 As a percentage of identified perpetrators the figures are 3,75% (six out of 160) and 7,6% (26 out of 552) respectively.

52 As a percentage of identified perpetrators the figures are 11,8% (19 out of 160) and 5,9% (33 out of 552) respectively.

53 Note: (1) The total in this table is different from that in Table 23 because the table records each type of conviction recorded by an alleged perpetrator individually. The table therefore reflects each individual type of conviction recorded by an individual separately. Neither Table 23 nor 24 in fact necessarily records the total number of convictions obtained by an individual. This is related to the nature of the data recorded in the questionnaire. For instance, data on an individual who had two or more previous rape convictions would only indicate that this individual had previous rape convictions rather than the number of convictions. (2) In this table the “other” category includes three cases of abduction that are recorded under the violent crime categories in Table 23.

The alleged perpetrators on whom we have data on previous convictions would generally have been those who were identified by the victim. These would overwhelmingly have been alleged perpetrators who were known by the victim in some way. However, as reflected in Table 25, there is no reason to assume that perpetrators involved in stranger rapes, a large majority of whom were not arrested, are on average more likely to be involved in active criminal lifestyles, than those involved in acquaintance rapes. Strangely, the only category of relationship in which it seemed significantly more likely that a perpetrator would have a criminal record was for the “someone they just met” category (40%), while in the other major categories the percentage of arrested perpetrators with criminal records was consistently between 18% and 24%. The type of link between rape and other criminality manifested in Gauteng is therefore not necessarily peculiar to Gauteng, which, as with other provinces with substantial urban and metropolitan areas, probably has a relatively high proportion of stranger rapes.<sup>54</sup>

TABLE 25: Rape in Gauteng, 2003 – whether perpetrator has a criminal record by relationship with victim (victims 18 years and older only)<sup>55</sup>

	TOTAL NUMBER OF PERPETRATORS	NUMBER ARRESTED	% ARRESTED	NUMBER WITH CRIMINAL RECORDS	% OF THOSE ARRESTED WITH CRIMINAL RECORDS
Relative	36	29	81	7	24
Current or former intimate partner	230	146	63	30	20
Friend / acquaintance / neighbour	274	165	60	30	18
Someone they just met	54	25	46	10	40
Stranger / known by sight only	527	149	28	29	19
Other	66	39	59	7	18
Unknown	21	8	38	1	13
<b>Total</b>	<b>1 208</b>	<b>561</b>	<b>46</b>	<b>114</b>	<b>20</b>

Rather than being an accurate indicator of overall levels of criminality, conviction data is likely to partly be correlated with the ages of perpetrators. Most individual incidents of criminality do not lead to someone being convicted but, it may be assumed, that those who persistently engage in criminality

54 This issue is at the beginning of Section 3 above. Note that more in-depth analysis might still reveal a difference between people involved in “stranger” as opposed to “acquaintance” rapes in relation to the type of criminal record.

55 CSVR analysis of data from the “Tracking justice” study, December 2008.

have a much higher chance of eventually being convicted of a crime. Table 26 indicates that this is so. In relation to all alleged perpetrators, and specifically those in the 0–11 and 12–17 victim age groups, the age band in which perpetrators were most likely to have previous convictions was 40–44. Overall, perpetrators aged 30 years and older were far more likely to have previous convictions than those less than 30 years of age. Though 58% of alleged perpetrators were less than 30, only 39% of those with previous convictions fell within this group.<sup>56</sup> The fact that perpetrators with victims aged 12–17 were on average slightly younger than those in the other two age bands therefore may be seen to partly correlate with the fact that a smaller percentage of them had criminal records. Alleged perpetrators in the 0–11 age category were on average 29 years of age, those in the 12–17 age category 27 years of age, and those in the 18+ age category 30 years of age.<sup>57</sup>

TABLE 26: Percentage of perpetrators with previous convictions by age band<sup>58</sup>

PERPETRATOR AGE	VICTIMS 0–11	VICTIMS 12–17	VICTIMS 18+	ALL KNOWN PERPETRATORS
5–9	0	0	0	0
10–14	3	0	0	3
15–19	0	9	2	5
20–24	0	8	16	12
25–29	25	20	19	20
30–34	20	18	23	22
35–39	28	21	31	28
40–44	48	38	28	36
45–49	17	20	33	28
50–54	33	29	18	25
55–59	33	0	20	17
60–64	25	0	50	25
<b>Total</b>	<b>18</b>	<b>14</b>	<b>20</b>	<b>18</b>

It may therefore be taken as a matter of absolute certainty that this data severely underrepresents the aggregate level of involvement of this group of alleged perpetrators, not only in rape but in criminality more generally. Even if we assume that some of the alleged perpetrators in this study are factually innocent (because police identified the wrong suspect or because of false accusations), it nevertheless can be

<sup>56</sup> The last sentence is based on data that is not reflected in the table. In relation to Table 26, note that no previous convictions were recorded among perpetrators older than 64. This, and the relatively lower rate of previous convictions (17%) in the 55–59 age band, is probably a reflection of the relatively small number of perpetrators of these ages included in this sample. In general there should be no reason to anticipate that levels of previous convictions would tail off as suspects get older, unless sexual-violence perpetration by more elderly men is in some ways a distinct phenomenon from that perpetrated by younger men.

<sup>57</sup> CSVr analysis of data from “Tracking justice” study. Note that this data applies to the alleged perpetrator classified in the questionnaire as the “1st”. In rapes where there was more than one perpetrator, the average age of other perpetrators was significantly lower than these ages.

<sup>58</sup> CSVr analysis of data from “Tracking justice” study, December 2008.

assumed with confidence that a substantial proportion of them have more elaborate criminal histories than the previous convictions data provides testimony to, as well as probably being guilty of the crimes for which they were accused in the cases that formed the subject of this study – this notwithstanding the fact that only 6% were eventually convicted for any sexual or assault-related offence.<sup>59</sup> Various studies of convicted perpetrators of crime document the fact that many imprisoned perpetrators of robbery, for instance, confirm that the crime for which they were convicted was only one of a series of crime incidents, sometimes running into the hundreds, and sometimes including sexual violence, in which they had been involved.<sup>60</sup> Robbery and housebreaking, for instance, probably enjoy slightly higher reporting rates than does rape, but the conviction rates on reported cases are similarly very low.

#### 4.3.1.2 Australian studies

A study that provides some indication of the degree to which conviction data in the Australian state of Victoria underestimates the level of involvement in sexual offending and offending more generally, looked at data on the apprehension of 629 individuals for alleged sexual offences during 2001.<sup>61</sup> At the time of their apprehension in 2001, 65% were processed only for one offence, and 35% were also processed for one or more additional sexual offences that occurred at other times. Police data covering the eight-and-a-half-year period from July 1993 to the end of December 2001 indicated that 90 (14%) of these individuals had also been apprehended on previous occasions for an alleged sexual offence, with 65 having been apprehended on one previous occasion and 23 having been arrested on two or three previous occasions. In addition, 35% (222) of these individuals had been arrested previously in relation to an alleged (non-sexual) violent offence, while 55% (348) had been arrested for other offences, such as housebreaking or other offences during this period.<sup>62</sup>

Data from Western Australia referred to in the same study indicates that while both child molesters and rapists tended to have similar levels of previous arrests for sexual offences (24% and 23% respectively), child molesters are far less likely to have prior arrests for other violent offences (21% as opposed to 43%) as well as being less likely to have any type of criminal arrest (53% as opposed to 78% respectively).<sup>63</sup>

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59 Vetten et al. 2008: 53.

60 See, for instance, the forthcoming report on case studies of perpetrators of violent crime, which is one of the components of the study of the violent nature of crime.

61 Lievore 2004. Apprehension may involve arrest (20%), caution (0,5%), summons (40%) or “other” (40%), the latter referring to cases that were later withdrawn, or in which the offender was under-age, insane or deceased (64).

62 Ibid: 67–69. Note that the data in the study is police data and is not matched with court data, so data on convictions for any of these categories of arrests is absent.

63 Greenberg, Da Silva and Loh 2002, cited in Lievore 2004: 44.

### 4.3.2 The “crime careers” of perpetrators of sexual violence

An unknown, but nevertheless probably quite large, proportion of perpetrators of acts of sexual violence, such as many of the alleged perpetrators identified in the “Tracking justice” study, are therefore likely to have an involvement in criminality that goes beyond an individual incident of rape. However, it is unlikely that the “crime careers” of these perpetrators would all conform to a single pattern. Though these are not distinct categories, and there are likely to be offenders who fall on the borders between them, it seems that one can nevertheless anticipate that the “crime careers” of perpetrators of sexual violence could be classified as roughly falling into the following categories:

- **Active general offenders:** Some perpetrators might actively engage in criminal lifestyles. Thus, 50% of the 2003 Gauteng perpetrators with criminal records (see Table 23) were linked to crime such as housebreaking and robbery, which are generally associated with an ongoing criminal lifestyle.<sup>64</sup> This category may, for instance, include perpetrators who “specialise” in rape/robberies so that the incidents of offending in which they engage may tend to include various forms of serious crime. They may also include perpetrators involved in criminal lifestyles who commit “stranger” crimes such as robbery or housebreaking, which mostly or never involve sexual offending, but then are also implicated in incidents of rape involving women who are known to them. In his outline of rapist characteristics, Knight, for instance, refers to those who are:

‘Opportunistic’ whose ‘sexual assaults appear to be impulsive, predatory acts, controlled more by situational and contextual factors (e.g., a woman being present during commission of another crime or a woman being encountered in a bar or at a party) than by protracted sexual fantasy or explicit anger at women. For these offenders the rape is one among many antisocial and predatory behaviors in the offender’s life.’<sup>65</sup>

- **Marginal lifestyle with diverse offending:** Rapists may be involved in a diversity of offending, but not as part of an active criminal lifestyle. Research in England and Wales, which used a court-based reporting system to assign offenders to “offence clusters”, classified most perpetrators of sexual violence in a “marginal lifestyle with versatile offending” cluster defined as “offenders involved in drugs, sexual offences, receiving stolen goods and less serious criminal damage”.<sup>66</sup> A lengthier description of this offence cluster notes that:

Most of the important offences for this cluster do have a common theme, reflecting a rather more marginal lifestyle involving drugs, illicit sexual behaviour, receiving stolen goods (‘they just fell off a lorry!’) and being involved in less serious criminal damage. Apart from any violence involved in their sexual behaviour, these offenders are not routinely involved in the

64 Out of the total of 190 perpetrators, 12 of the rapists, the 47 “no rape and no property” and the 36 “other only” (total of 95 equals 50%) did not have criminal records for housebreaking or robbery.

65 Knight (publication pending): 8.

66 Soothill, Francis and Fligelstone 2002a.



more serious property offending or in routine violence. Their criminal behaviour is largely opportunistic rather than planned; it is diverse rather than specialised. The members of [this] cluster ... seem to be on the margins of both the 'straight' and criminal worlds.<sup>67</sup>

Of those with criminal records among the Gauteng 2003 perpetrators, some only had criminal records under the "other" category. As indicated, this category included offences such as possession of stolen goods, drug possession or dealing, drinking or driving offences, among others. It may be reasonable to classify some of these individuals, who were most numerous among perpetrators of rape against young children, as falling into this category of criminality. Something of this kind appeared to be what one interviewee was referring to when she indicated that what she called "community-based" (as opposed to imprisoned) sex offenders were sometimes not linked to criminality but "just high-risk behaviour", which could involve things like "driving fast, getting away, being irresponsible with their finances".<sup>68</sup>

It can be assumed that many of the perpetrators referred to by Knight as "opportunistic" would also fall in this category, with the qualification that their rapes would tend to involve acquaintances or "women encountered in a bar or at a party" and not take place "during the commission of another crime".

- **More violence-prone offenders:** Some rapists can be associated with a large number of acts of apparently expressive violence, implying that they would tend to be linked to crimes of assault in addition to sexual violence. For instance, the characteristic of the "pervasively angry" rapists, identified by Knight in the US as the most prevalent of rapist "types",<sup>69</sup> is that they are "equally likely to express their unmanageable aggression towards both men and women".<sup>70</sup> On the other hand, "vindictive" rapists are characterised by the "exclusivity of their anger at women"

that distinguishes them from the Pervasively Angry offender, and the purported lack of sexualization of their anger and aggression that distinguishes them from the Sadists. The sexual assaults of these men characteristically include behaviors that are explicitly intended to harm the woman physically, as well as to degrade, denigrate, and humiliate her.<sup>71</sup>

67 Soothill, Francis and Fligelstone (2002b): 34. Note that in an analysis of offence clusters, the 1958 (as opposed to 1953) birth cohort also identifies a group involved in "lifestyle offending" who are described as "the group most likely to have sexual offences and misuse of drugs offences. They also assault police constables and are involved in dangerous driving. Over 16 year olds, mainly under 25" (ibid: 37).

68 Social worker treating court-mandated paedophiles and sexual offenders in prison.

69 Note that (1) Knight (publication pending) emphasises that his model does not envisage strict demarcations between different rapist "types", but rather that individuals will vary in the degree to which their sexually violent behaviour is linked to specific underlying characteristics such as sexualisation, impulsivity or a violent or callous/unemotional disposition so that "extreme offenders should no longer be described as 'types' but rather as individuals high on various components of the model"; (2) Knight primarily distinguishes between five groups of rapists labelled as "opportunistic", "pervasively angry", "vindictive", "sadistic" and "sexual non-sadistic". However, four of these groups (excluding the "pervasively angry") are subdivided into a further two groups, providing a total of nine.

70 Ibid: 9.

71 Ibid: 12–13.

It seems to be clearly implied that, whether it is directed exclusively at women, or at other people more generally, rapists who are characterised by anger would be likely to be linked to other types of physical assaults and not just sexual violence.

Once again the point should be emphasised that there are not rigid lines between the types of crime careers outlined here. Some of the perpetrators who might fit in this category might also fit in the categories of “generalised” or “diverse” offending outlined above. However, in addition to any rape and criminality associated with one or other type of criminal lifestyles what would distinguish them would be that they are repeatedly also involved in incidents of expressive violence, possibly largely directed at women, or at both men and women, whether this takes place in the course of other crimes or not. Thus, if involved in a robbery, for instance, perpetrators in this category may be less likely than some of the other “active general offenders” to restrict the use of violence to “instrumental” uses. Of the Gauteng 2003 alleged perpetrators, for instance, overall 47 of the 190 (25%) had criminal records for non-sexual violence only, and a further 15 (8%) were linked to crimes such as assault, assault GBH, murder, attempted murder or culpable homicide in addition to other offences.

- **Sexual violence specialists:** A certain proportion of perpetrators of sexual offences could be regarded as sexual offence “specialists”. Again, it may be unlikely that their criminality is exclusively related to sexual offending, but what distinguishes them would be that they place a far higher premium on sexual offending than do other rapists. This phenomenon is, for instance, reflected in the Western Australia data indicating that child molesters are far less likely than rapists (of adults) to have prior arrests for non-sexual violent offences, and less likely to have any type of criminal arrest. This group might include some of those who are driven to commit sexual violence and abuse, including both “preferential” paedophiles and serial rapists or serial-killer rapists. Thus, for many paedophiles the sexual offence is the primary and sometimes only crime, though there are also paedophiles with general offending records sometimes covering offences such as fraud or theft. Similarly, Knight refers to rapists who can be characterised as either “sadistic” or “sexual non-sadistic”, whose defining characteristic, in part, is their preoccupation with sex. The “sexual non-sadistic” are motivated by “sexual needs, rather than aggression or anger”, while the “sadistic type” are characterised by the fact that there is a synergistic relation between their sex and aggression<sup>72</sup> so that their offending behaviour is to some extent focused on aggressive sexual offending.<sup>73</sup> The latter group would presumably correspond with those rapists referred to by Lievore, who “show deviant sexual interests, particularly those who have aggressive or sadistic fantasies, or respond more to depictions of violent sexual activities than to consensual erotic stimuli”.<sup>74</sup> It would appear unlikely, though, that the 10 (5%) of Gauteng

72 Knight (publication pending): 10.

73 However, note the observation that: “Although it was not evident in their crimes, Vindictive types could not be significantly differentiated from the sadists in their sadism scales and were high on sexualization. This was just neither picked up in the archival files nor evident in their offense behavior. The data suggest that we need some reconceptualization of the differentiations among the highly aggressive types.” (Message from Raymond Knight, 3 December 2008.) See also Knight (publication pending): 10–12.

74 Lievore 2004: 45, citing Glaser 1991 and Hanson 2002.

2003 rapists who only had criminal records for sexual violence would represent the sum total of those whose motivation was in some way dominated by preoccupations with sex or sexual violence.

In addition to distinguishing between rapists on the basis of the overall pattern of criminality which they are involved in, it is also potentially valid to distinguish between them on the basis of the frequency with which they engage in rape. Very roughly the possibilities in this regard are summarised in Table 27. On the one hand, there may be perpetrators who are involved only in isolated cases of sexual violence (options A and B). On the other hand, there will be sexual-violence offenders who repeatedly engage in sexual violence. Some of these might “specialise” in sexual violence and be involved in little or no other offending (option C). Others might repeatedly be involved in both sexual offending and other offending, such as property crime (option D).

TABLE 27: Rough potential “crime career” for sexual offenders

	ISOLATED OR NO GENERAL OFFENDING	GENERAL PATTERN OF PROPERTY OR OTHER OFFENDING
Infrequent or isolated instances of sexual violence	A	B (may be “specialists” or “generalists” in relation to types of non-sexual offences)
Repeated instances of sexual violence	C (sexual offence “specialists”)	D (offending “generalists”)

### 4.3.3 Non-criminalised rapists?

Notwithstanding the attempt to differentiate between types of rapists in terms of their types of criminal careers, it is worthwhile to note the observation that:

‘On the whole, the evidence suggests that it is fruitful to think of the great diversity of antisocial and criminal behaviour as closely related at a deeper level.’ This approach is supported by the many studies showing a single factor underlying more specific forms of deviance, and by the widely corroborated finding that arrests and convictions show more versatile than specialised patterns of offending. Specific offences do tend to cluster into patterns within criminal careers, but because those with long careers typically switch between clusters, it is unlikely that clusters of offences correspond with well-defined criminal types.<sup>75</sup>

Similarly according to Lievore:

A large proportion of rapists show a propensity towards general criminality and some towards violent behaviour that is more widespread than sexual violence towards women. ... Low rates of sexual recidivism compared to general or violent re-offending undermine the hypothesis that sex offending

75 Smith 2007: 651.

is motivated by sexual preference alone. Sexual recidivism, as a form of criminal activity, is related to antisociality, which is evidenced by higher recidivism rates among young men with prior criminal records, or offenders who are socially marginalised in various ways.<sup>76</sup>

While rape might often be related to a general disposition towards criminality, perpetrators with criminal histories involving violence are probably more at risk of sexual offending.<sup>77</sup> One factor that links rapists to other violent people would appear to be the fact that rape appears to require some form of indifference to the fear or pain of another human being. This was put succinctly by one of the respondents in Vogelman's study, who said of one of his acts of rape: "I felt nothing at the time, I just wanted to have sex."<sup>78</sup>

The particular relevance of this set of factors to sexual violence was demonstrated in one study that compared a group of juvenile sex offenders to a group of violent juvenile non-sexual offenders and a group of juvenile offenders with only "noncontact" property and drug offences. The study found that the sexual offenders had higher scores than both other groups on the "callous-unemotional" factor ... reflecting less guilt and empathy and greater emotional restriction.<sup>79</sup> While a lack of empathy could to some extent be enhanced among rapists, these types of character traits nevertheless have much in common with many other perpetrators of crimes of violence, whose crimes require some denial, or absence, of recognition of the humanity of their victims.

But even if their acts demonstrate a lack of empathy, not all rapists are involved in lifestyles that are characterised by a generalised orientation towards sexual violence or other violence or criminality. One key risk factor for the perpetration of sexual violence, identified by many interviewees, is the fact that many offenders come from very violent communities or families, and have witnessed and exercised all kinds of violence on a regular basis during the course of their lives. Coercive and violent behaviour, which people witness in their communities, may also include sexual coercion or violence. Even in the case of stranger rape, an underlying factor may be the sense of sexual entitlement, a culturally sanctioned norm that allows men to give primacy to their own urge to have sex. Attitudes of sexual entitlement which assert the right of men to dominate women, combined with a culture of violence, are therefore potentially in themselves a destructive combination, rendering rejection by a woman of male sexual overtures or refusal to have sex merely as a justification for rape.

The dual impact of the culture of violence and of beliefs in sexual entitlement is therefore likely to be the fact that many people have internalised an acceptance of sexual violence as normal. This is reflected in the fact that people respond to sexual or other gender violence with apparent indifference. In their work in Umtata and the nearby township of Ngangelizwe, Wood and Jewkes found that forced sex and

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76 Lievore, 2004:45.

77 See, for instance, Lievore 2004: 45, citing Hanson & Bussière 1998 and Loucks 2002.

78 Vogelman 1990: 96-134.

79 Caputo, Frick and Brodsky 1999, cited in Knight and Guay 2006: 512-532.

physical assault were regarded by both adults and young people as “normal” parts of young people’s love relationships: this was so to the extent that violence was known to be very common and women perceived that little could be done to stop or avoid violence in their relationships. A variety of different players in responsible positions (including police, parents and teachers) turned a blind eye to young men’s violence against their girlfriends, thus giving out the message that the violence was tolerable and contributing to the perception that certain forms of coercion and violence in relationships were acceptable.<sup>80</sup> The prevalence of these perceptions was reflected in a 2002 survey of school pupils, which found that “60% of all learners, boys and girls alike, said that it is *not* sexual violence to force sex with someone you know”.<sup>81</sup>

Effectively this means that sexual assaults are so normalised that they are often not seen as harmful or really criminal. Vogelman noted that in his study of rapists most rapists were “calm immediately after the rape. They made no attempt to flee the scene of their crime. Some even escorted their victims back to their homes or to the discotheque where they were previously... The fact that a rapist can walk his victim home, or take her back to the disco, without extreme fear of legal or social reprisals, may point to the perception that he has done nothing criminal or harmful.”<sup>82</sup> Similarly, in the “Tracking justice” study of rape in Gauteng in 2003, almost a quarter of rapists (25%) either fell asleep or remained in place, assisted the victim to get home or medical help, or apologised and made promises to the victim in the immediate aftermath of the rape, behaviour suggesting that at worst they saw the harm they had done as relatively minor. These responses were particularly prominent among rapists of adolescent girls, among whom they accounted for one-third (33%) of perpetrators’ action in the immediate aftermath of the rape.<sup>83</sup>

Though it is reasonable to assume that a figure such as that in the “Tracking justice” study of 18% of perpetrators with previous convictions seriously underrepresents the overall level of criminality among rapists, there is nevertheless a substantial question about the exact degree of this underrepresentation. In a context of pervasive attitudes of sexual entitlement, a culture of violence and widespread apparent indifference to sexual violence and coercion, it is not necessarily true that all, and possibly even most, rapists, have a strong underlying disposition to criminality. Among these who might not have a strong criminal disposition might be those who become involved in sexual violence as part of a group situation where peer pressure plays a significant role. They might also include a substantial proportion of peer perpetrators of sexual violence against adolescent girls and young women whose sexual violence might in some ways reflect their immaturity and lack of sophistication in engaging with questions about norms and values, rather than a deep underlying criminal disposition. The data in the “Tracking justice” study indicating that those responsible for rapes against 12–17-year-olds are less likely to have

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80 Wood and Jewkes 2001: 320, and 1998.

81 CIETafrica 2002.

82 Vogelman 1990: 96–134.

83 Vetten et al. 2008: 39 (Table 15).

previous convictions, might not only be a reflection of the criminal justice system in identifying and convicting criminals, but might in part reflect that, on aggregate, they are less criminal.

Some of those who rape partly because they see it as socially accepted behaviour, may develop a distaste for rape relatively spontaneously, possibly because of the distress or disapproval of the victim or other people. On the other hand, the dual impact of the culture of violence and beliefs in sexual entitlement may be that rape perpetrators, even those who are not strongly criminalised or completely lacking in empathy, fail to recognise how harmful their sexual assaults are. Because they believe their behaviour is socially acceptable, they could rationalise the event, potentially relying on ideas about entitlement and denial of the significance or importance of the victim's distress or other feelings. As Wood and Jewkes demonstrated in Ngangelizwe, issues to do with rationalisation were important in group rape behaviour, so that circumstances where young women could be labelled as having misbehaved and therefore as deserving of punishment, were latched on to justify rape.<sup>84</sup>

What is being suggested here, therefore, is that what would distinguish some rapists from others is that their tolerance of sex under coercive circumstances would be a normative tolerance, based more on the fact that the all-pervasive culture of violence and sexual entitlement in which they are immersed enables them to rationalise their coercive sexual behaviour, and is even perceived to impose an obligation on them to act coercively, despite at least a modicum of internal discomfort resulting from the distress their sexual conduct evokes. This would differentiate them in some way from some of the more overtly criminalised rapists whose rapes are characterised by their indifference to the pain, distress and fear of their victims.<sup>85</sup>

Some sex offenders, particularly some of those without a broader involvement in criminality, are distinctively less prone to recidivism. For instance, a study of 721 people (710 male and 11 female, with roughly 75% having committed contact sexual offences) who had been convicted of sexual offences and who had attended a treatment programme in Minnesota in the USA in the period between 1977 and 2007, found that 86% had not been convicted of a subsequent sexual offence. This group might have included a number of people who had in fact committed further sexual offences that were not reported to, or effectively investigated by, criminal justice agencies. Nevertheless, there were distinct differences between specific subgroups among those who had attended the treatment programme. The highest rates of re-offense (29%) were seen for people who were identified as being “in need of sex offender specific treatment” but who were “terminated from treatment by the program” because they were “not cooperative with treatment”. On the other hand, low rates for re-offence were found for those who completed treatment (11%) as well as those who did not receive any treatment because they were “judged by

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84 See the discussion of group rape in section 3.1.6 above.

85 It should be noted that exposure to violence is not exclusively associated with normative tolerance of violence, and could itself also contribute to callousness or indifference to the pain of others. Thus Knight and Guay (2006: 514) indicate that their own studies support Blair's (1995) “hypothesis that the affective-interpersonal component of psychopathy is associated with experiencing early physical abuse”.

program staff not to need sex offender treatment; who were sent to other treatment programs, including residential programs; who were incarcerated; and those who decided not to pursue treatment for various reasons” (10%).<sup>86</sup> This suggests that some sexual offenders desist from further offending as a result of treatment. Others will also autonomously terminate their involvement in sexual offending, in some cases related to a period of imprisonment, but without any treatment. It also raises the possibility that some may autonomously desist from further offending without treatment or incarceration.

Once a person has raped they have committed a criminal offence. Because the motivations for sentences of imprisonment or other correctional measures include concerns with justice and deterrence and other factors, and are not purely concerned with rehabilitation, the observation that some rapists are not likely to become recidivists is not an argument against imprisoning them. Nevertheless, it is not true that all rapists are likely, given the chance, to keep on perpetrating sexual violence in perpetuity.

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86 Swinburne et al. 2008. Note the caution in the presentation that the subgroup who were “terminated from treatment by the program” was a “small group, so caution is necessary when drawing conclusions based upon it”. In terms of the type of treatment offered by the programme, the poster says the “program has consistently used cognitive behavioral techniques, social skills learning, social modeling and role playing along with verbal guidance for the man and behavioral assignments of various kinds. Behavioral therapy has been a part of the treatment program, but has never been used exclusively.”



## 5. CONCLUSIONS AND RECOMMENDATIONS

In the words of Jewkes and Abrahams:

Although a reliable numerical reflection of the complete spectrum of sexual coercion is not possible from available data, the fragments of evidence suggest that the experience of non-consensual or coerced sexual intercourse at some stage in a South African woman's life is certainly the norm and may be little short of universal. The evidence points to a conclusion that women's right to give or withhold consent to sexual intercourse is one of the most commonly violated of all human rights in South Africa.<sup>1</sup>

All South African men are not rapists, but those who are contribute not only to an epidemic of sexual victimisation but to omnipresent fear and anxiety about sexual violence among women and men in South African society. Despite living in a democratic country, the pervasive threat of sexual violence, particularly to adolescent girls and young women, creates a situation that amounts to a type of sexual tyranny where women may arbitrarily be sexually victimised, and are compelled to exercise perpetual caution against this risk.

Many explanations of the causes of sexual violence give prominence to the role played by ideas about male sexual entitlement. It should be emphasised, however, that people adopt ideas and values that suit their purposes. The fact that individual men are heavily invested in ideas about entitlement may partly be a reflection of their cultural heritage and location in society, and may be reinforced by their need to achieve recognition or maintain status among other men by demonstrating that they have sexual access to women. But it may also be a reflection of the fact that these ideas in some ways express or are aligned with their experience of their own sexuality and their capacity for emotional awareness of and responsiveness to other people.

Men who feel threatened by social change and the empowerment of women, perhaps partly because this threatens their privileged sexual access to women, may also not only be specifically likely to invest in ideas about sexual entitlement, but in ideas that justify and legitimate violence against women. For them sexual violence, along with other violence, may partly serve the purpose of shoring up their (threatened) authority and subjugating women.

The culture of violence not only contributes to widespread tolerance of violence but feeds into a culture of rampant sexual violence, translating ideas of entitlement into rape, and reinforcing the disposition to violence of hostile or threatened men. This in turn reinforces a culture of lack of inhibition or restraint in relation to matters of sexuality, feeding into the sexual victimisation of young children.

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<sup>1</sup> Jewkes and Abrahams 2002: 1 240.

The culture of violence in turn also gives a more virulent edge to the culture of criminality. Because rape is itself a form of criminality, but also because it is related to criminality more broadly, part of the challenge of addressing sexual violence in South African society is therefore the challenge of addressing the complex roots of the problem of pervasive criminality. In part this strengthens the need for “social” crime prevention initiatives, such as strengthening developmental initiatives targeted at children (including better parenting) and young men. But it inevitably involves the need for continued reliance on the criminal justice system, partly because of the protective functions that are fulfilled by imprisoning those who are prone to rape habitually, or whose rape is part of a broader ingrained tendency to antisocial conduct.

In so far as the criminal justice system is effective in serving a deterrent function it also may act to delegitimise the culture of sexual violence, and the cultures of violence and criminality that underpin them.

However, the fact that there are cultural and socio-psychological dimensions to the problem implies that there are also potentially other avenues to engage with the problem outside of the criminal justice system. This is partly about directly engaging with widespread normative endorsement of sexual violence. In the words of one interviewee, “the challenge now is to let them know that this is wrong”,<sup>2</sup> a message that potentially should be conveyed to men as a means of discouraging them from engaging in coercive sexual behaviour, but also as a way of empowering women not to tolerate or accommodate it.

But engagement merely with the normative dimensions of the culture that foments sexual violence may be inadequate. Partly this is because the culture of sexual violence is given added vigour by the broader culture of violence, so that the normative contestation of violence needs to extend beyond a contestation of sexual violence. In addition, in so far as factors to do with insecurity reinforce men’s investment in ideas about entitlement and in other ideas that are hostile or detrimental to women, it is necessary to consider how to engage with these insecurities as part of addressing the normative issues. Finally, however, it seems evident that sexual violence in part reflects a broader set of issues related to the intimate domain of how men experience their sexuality and live out their sexuality in their interactions with other people, a set of issues that are manifested not only in an epidemic of rape but also in that of HIV/AIDS.

## Recommendations

These recommendations should be read in relation to the broader set of recommendations made in the concept paper on the violent nature of crime, the first deliverable in terms of this project. A final set of recommendations informed by this and other reports that have formed part of the overall project,

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<sup>2</sup> Interview, 3 September 2007.

will be included in the final report. Principal issues raised by this report that are relevant to the overall recommendations of the project can be understood on two levels:

- On the first of these levels, sexual violence is a manifestation of a belief in male sexual entitlement and the culture of violence in South Africa. In so far as this issue raises normative issues, there is value in contesting them on a normative level. However, this is not merely about promoting positive values but also about understanding the socio-psychological or other reasons for investment by men in these ideas and practices. This implies the need for a deeper engagement with issues to do with men's experience of their sexuality, the sources of their insecurity, and the factors that support the normalisation of the use of violence in their lives. This raises the need to engage with questions about positive lifestyles among men in sectors of society that are at high risk of rape perpetration.
- On the second level, which is not entirely distinct from the first, sexual violence is a manifestation of the problem of criminality and driven by the factors that support criminality. This implies that responses to sexual violence need to be located within efforts to deal with the problem of criminality more broadly, whether this is through the criminal justice system or through other social crime prevention measures.

## APPENDIX: LIST OF INTERVIEWS

All interviews were conducted between 21 August 2007 and 31 January 2008.

NAME	POSITION / ORGANISATION
Irma Labuschagne	Forensic criminologist
Joan van Niekerk	Childline SA, National Coordinator
Arina Smit	NICRO, National Coordinator
Moefeeda Salie-Kagee	RAPCAN
Lizelle Africa	Prosecutor, National Prosecuting Authority
Thapelo Rahloho	ADAPT Men's Forum
Yashmitta Naidoo	Child Abuse Treatment and Training Services (CATTS)
Dr Spies	University of Pretoria
Dr Christiaan Bezuidenhout	University of Pretoria
Dr Gerard Labuschagne	SAPS, Head of profiling
Dr Annie Louw	UNISA Criminology Department
Shaheeda Omar	Teddy Bear Clinic
Shamim Mienaar	Social worker, Pollsmoor Prison, Department of Correctional Services
Patricia Leshabane	Department of Correctional Services, Johannesburg
Rachel Jewkes	Gender Programme Manager, Medical Research Council
Yandisa Sikweyiya	Medical Research Council
Amelia September	Rape Crisis
Dr Marcel Londt	University of the Western Cape and CATTS
Nonhlanhla Nsibande	People Opposing Women Abuse
Taufiq Dammonds	Probation Officer, Department of Social Development
Linda Naidoo	KwaZulu-Natal Childline
Dawid Kuyler	Chaplain, Mangaung Correctional Centre
Connie Nakane	Social worker, Mangaung Correctional Centre
Manie Engelbrecht	Psychologist, Mangaung Correctional Centre
Ronnie Lusundzi	Probation officer, Thohoyandou Community Corrections, Department of Correctional Services

Kennedy Sivhanga	Thohoyandou Victim Empowerment Programme, Project Manager
Patrick Raphalane	Chaplain, South African Custodial Management, Private Prison
Nkateko Manabe	Psychologist, South African Custodial Management
Mulalo Lusundzi	Social worker, South African Custodial Management
Mpho Mukwevho	Social worker, Makhado Community Corrections, Department of Correctional Services
Maureen Ramapela	Social worker, Makhado Department of Correctional Services
Reckson Manganyi	Social worker, Polokwane Department of Correctional Services
Francinah Mokwaledi	Bosasa Place of Safety
Andre Neethling	South African Police Service, Family Violence, Child Abuse and Sexual Offences Unit
Dr Lorrinda Bergh	Department of Correctional Services, Pretoria Head office
Mariekie Fuchs	Social Worker, Department of Correctional Services, Durban Volunteer on Childline Perpetrator Programme
Professor Stephen Collings	Lecturer at the University of Natal
C.H. Malan	Saystop

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