

CIVILIAN SECRETARIAT FOR POLICE SERVICE



POLICY ON REDUCING BARRIERS TO THE REPORTING OF SEXUAL OFFENCES AND DOMESTIC VIOLENCE

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ACRONYMS

Civilian Secretariat for Police	CSP
Client service centre	CSC
Community Policing Forum	CPF
Criminal Justice System	CJS
Criminal Law (Sexual Offences and Related Matters) Amendment Act	SORMA
Domestic Violence Act	DVA
Family Violence Child Protection and Sexual Offences Unit	FCS
Human Resource Development	HRD
Independent Police Investigative Directorate	IPID
Inter-sectoral Committee	ISC
Lesbian Gay Bisexual Transgender or Intersex	LGBTI
National Policy Framework for the Management of Sexual Offence Matters	NPF
Non-governmental organisation	NGO
Post-exposure prophylaxis	PEP
Post-traumatic stress disorder	PTSD
Thuthuzela Care Centre	TCC
Victim friendly room	VFR

2 Background

The National Development Plan envisages a South Africa where, by 2030, levels of serious and violent crime have been reduced and all South Africans feel safe, whether at home, school, work, or in their communities. Attaining these goals requires the design and implementation of a range of interventions that act to prevent and deter crime, as well as respond appropriately and compassionately to victims of violence. Developing such interventions is however, currently made difficult by the limited information at our disposal, some of which is the result of the significant gap between the incidence of sexual offences and domestic violence, and the rate at which these crimes are reported. It is the aim of this policy to reduce the gap between reported and unreported incidents of sexual offences and domestic violence in order both to strengthen role players' attempts to prevent such violence, and reduce barriers to reporting these crimes.

Reducing under-reporting is important for a range of reasons:

- A legal duty of care is owed to particular groups of people in South Africa – children, people who are mentally disabled and older persons. By law, sexual offences perpetrated against these groups must be reported to the South African Police Service (SAPS). In practice this is not happening as routinely as it should, so limiting these groups' rights to safety and security.
- Barriers to reporting deny victim's access to justice, as well as their Constitutional rights to equality and emergency health care (such as post-exposure prophylaxis (PEP) to prevent either HIV infection or pregnancy). Victims who experience barriers to reporting may also not be referred to further help in the form of victim empowerment programmes offered by government and non-governmental organisations (NGO).
- In addition, when barriers are in place to prevent victims from reporting this may actually contribute to an increase in crime. Serial rapists, for example, only stop committing their crimes once caught. When victims are too fearful to approach the SAPS, this delays the detection and arrest of serial rapists. When victims are unable to report domestic violence abusers may gain the impression that they are above the law and so commit the domestic violence on a repeated basis. In the case of physical violence, the severity of the attack may increase over time, to the extent that the life of the victim may be threatened.

Additionally, if victims are not well-treated at the time of reporting, they may not wish to continue co-operating with the SAPS and either withdraw their matters, or become

uncontactable. They may also tell members of their community about their treatment by SAPS which could deter other victims from approaching SAPS in future, thus weakening police and community relations.

The under-reporting of sexual offences and domestic violence is not unique to South Africa but a problem experienced in all parts of the world. While it is sometimes outside of the SAPS' power to alter certain of the factors which contribute to under-reporting – such as victims' economic dependence on the abuser(s) – in other instances some barriers to reporting can be addressed by the SAPS. These include victims' perceptions that they will be badly treated by SAPS members and other officials working in the criminal justice system, or the belief that nothing will come of reporting to the police. In other instances, victims may wish to report but are prevented from doing so. This is particularly true of victims with disabilities. People with communication disabilities, for example, experience difficulty in being heard and understood when stations have not taken steps to ensure their needs are integrated into the day-to-day services offered at stations.

As measures are introduced to address these barriers there may initially be an increase in the number of sexual offences cases and domestic violence matters reported to the SAPS. This is to be welcomed as an indication of the SAPS' effectiveness in implementing this policy. Their performance in this regard will thus be measured by the quality of care provided to survivors of rape and domestic violence and a range of performance measures to this effect are set out in the monitoring and evaluation section of the policy. At the same time the SAPS does remain responsible for preventing particular forms of sexual offences and domestic violence. These include, but are not limited to, preventing repeat victimisation in domestic violence or child sexual abuse matters, and apprehending serial rapists as quickly as possible in order to prevent their committing further crimes. Performance measures in this regard are detailed in the policy.

3 Current SAPS data on sexual offences and domestic violence in South Africa

Although sexual offences take a variety of forms, there is no data for many categories of sexual offences in South Africa. Rape is the most commonly studied of all sexual offences and is found to be considerably under-reported, with one national study estimating that only one in nine women who had been raped and also had physical force used against them having gone on to report the attack to the police.¹ Research undertaken in Gauteng found that almost one in 12 women in the province had been raped in 2009, but that only one in 13

¹ Jewkes R and Abrahams N. (2002). The epidemiology of rape and sexual coercion in South Africa: an overview. *Social Science and Medicine*, 55(7): 1231-1244.

women raped by a non-partner reported the matter, while a scant one in 25 of women raped by their partners went on to approach the SAPS.² However, between 2008/09 and 2012/13 SAPS data showed the rate of reported sexual offences in Gauteng to have declined by 43.3%.³ It is thus possible that at least some of the decline may be due to a decrease in reporting to the SAPS, rather than a decrease in the actual incidence of rape. Overall, the Gauteng study suggested that one in four (25.3%) women interviewed had experienced sexual violence in their lifetimes, while 37.4% of men admitted to having perpetrated such violence.⁴

Domestic violence is also significantly under-reported. Between April 2008 and March 2009 a total of 12 093 women in Gauteng, or 0.3% of the adult female population, reported an assault by an intimate partner to the police in the province. By contrast, during the same time period 18.1% of women in the province reported an experience of violence at the hands of intimate male partners to researchers.⁵ A case study conducted in one locality in Mpumalanga provides another illustration of how police statistics can underestimate the incidence of intimate partner violence in any one area. Between 1 January 2006 to 31 July 2007, 942 reports of some form of intimate partner violence were made to one local police station and hospital, as well as the courts serving the area, with the greatest proportion of these reports (44.6%) identified from police records. However, no more than 6.7% of these 942 reports ever made their way into official statistics as only 63 women pressed charges.⁶

Survivors of sexual offences or domestic violence therefore disclose their experiences of abuse to a range of individuals and institutions. Disclosure to others, as well as reporting to the police may also be delayed, meaning that others may only come to know of the incident weeks, months or even years later. Further, in the case of pre-adolescent children in particular, no disclosure may take place at all, with a sexual offence being suspected either from changes in the child's behaviour or because symptoms are reported that correspond with sexual

² Machisa M, Jewkes R, Lowe Morna C and Rama K. (2010). *The War at Home – GBV Indicators Project*. Cyrildene: Gender Links.

³ South African Police Service. (2013). *An Analysis of the National Crime Statistics 2012/13*. Pretoria: SAPS Strategic Management.

⁴ Machisa M, Jewkes R, Lowe Morna C and Rama K. (2010). *The War at Home – GBV Indicators Project*. Cyrildene: Gender Links.

⁵ Machisa M, Jewkes R, Lowe Morna C and Rama K. (2010). *The War at Home – GBV Indicators Project*. Cyrildene: Gender Links.

⁶ Vetten L, van Jaarsveld F, Riba P and Makunga, L. (2009). *Implementing the Domestic Violence Act in Acornhoek, Mpumalanga*. Tshwaranang Research Brief No. 2.

victimisation. In a study of 2 068 rape cases reported to the police in Gauteng in 2003, one in three reports for girls aged 11 years and younger were made under such circumstances.⁷

For some categories of victims very little to no information is available documenting how often they report to SAPS. These groups include:

- People with disabilities – while one study of reported rape in Gauteng showed 1.9% of victims in the study to have some form of disability,⁸ these figures fell below the prevalence of disability in the female population of the province, suggesting that as with rape generally, the rape of women with disabilities is extensively under-reported. Research internationally has found the incidence of sexual victimisation experienced by women with disabilities to be either similar to, or greater than that reported by non-disabled women. Factors which may inhibit or prevent women with disabilities from reporting sexual offences or domestic violence include high levels of dependency on caregivers, who are often the perpetrators of the violence; social isolation and discrimination against women with disabilities; and a lack of information and inadequate support services.
- Lesbian Gay Bisexual Transgender or Intersex (LGBTI) people - government has recently taken a number of steps to address hate crimes but police data are not available on the extent of sexual violence targeting lesbians, or other members of the LGBTI community. A study attempting to explore this question and based on a convenience sample drawn from Botswana, Namibia, South Africa and Zimbabwe, found 31.1% of the female respondents to have had an experience of forced sex – 14.9% by men only, 6.6% by women only and 9.6% by both men and women.⁹ Some of the reasons why LGBTI people may not report their victimisation include fear of being abused by the police, and not wanting the police, their family, or their community to know about their sexual orientation.
- Boys and men – Limited information is available regarding sexual offences committed against boys and men. The SAPS' analysis of the national crime statistics for 2011/12 found that 11.4% of all sexual offences reported that year were perpetrated

⁷ Vetten L, Jewkes R, Fuller R, Christofides N, Loots L and Dunseith O. (2008). *Tracking Justice: The attrition of rape cases through the criminal justice system in Gauteng*. Johannesburg: Tshwaranang Legal Advocacy Centre, South African Medical Research Council and the Centre for the Study of Violence and Reconciliation.

⁸ Vetten L, Jewkes R, Fuller R, Christofides N, Loots L and Dunseith O. (2008). *Tracking Justice: The attrition of rape cases through the criminal justice system in Gauteng*. Johannesburg: Tshwaranang Legal Advocacy Centre, South African Medical Research Council and the Centre for the Study of Violence and Reconciliation

⁹ Sandfort TGM, Baumann LRM, Matebeni Z, Reddy V and Southey-Swartz I. (2013). 'Forced Sexual Experiences as Risk Factor for Self-Reported HIV Infection among Southern African Lesbian and Bisexual Women.' *PLoS ONE* 8(1): e53552. doi:10.1371/journal.pone.0053552

against adult men,¹⁰ while a survey conducted in KwaZulu-Natal and the Eastern Cape determined that about one in ten (9.6%) of the men interviewed had experienced sexual victimisation by other men in the course of their lifetimes.¹¹ Men may remain silent for fear that they will be blamed for having been unable to defend themselves from attack, or because they fear they will be seen as gay and treated in a prejudiced way.

- **Other victims** - Undocumented migrants (who potentially run the risk of deportation) and sex workers may also be reluctant to report sexual offences or domestic violence. Small, non-random surveys of sex workers suggest that considerable violence is perpetrated against this group.

4 A framework for understanding barriers to reporting sexual offences and domestic violence

Barriers to reporting take two forms. The first sort may be described as structural barriers and relate to how services are designed and implemented. It is well within SAPS and other service providers' reach to address this particular set of barriers.

- **Physical (Access to services):** at its most basic this refers to the location of services and their distance relative to major public transport routes. Times at which the service is offered also determine access to that service. This barrier is particularly relevant to victims living in rural areas and informal settlements. In relation to disability, access is determined by the existence of washrooms for people with physical disabilities, appropriately designed ramps, doorways and floor surfaces, and the existence of elevators.
- **Procedural:** This refers to how flexible service providers are willing to be in adapting routine or regular procedures to accommodate the diverse needs of victims. The adaptability of procedures is particularly relevant to younger children who do not fare well when fitted into criminal justice system procedures designed for adults. A similar point may be made about criminal justice system procedures in relation to people who are mentally disabled.
- **Communication/information:** this refers to the availability and accessibility of information in a variety of languages and mediums, as well as alternative formats such as Braille, audiotapes and other communication aids.

¹⁰ South African Police Service. (2012). *An Analysis of the National Crime Statistics 2012/13*. Pretoria: SAPS Strategic Management.

¹¹ Dunkle, KL, Jewkes, R, Nduna, M, Jama, N, Levin, J, Sikweyiya, Y and Koss, MP. (2007). 'Transactional sex with casual and main partners among young South African men in the rural Eastern Cape: Prevalence, predictors, and associations with gender-based violence', *Social Science & Medicine* 65: 1235-1248

- **Attitudinal:** blaming and disbelieving attitudes towards survivors of sexual offences or domestic violence are a significant barrier to reporting. LGBTI victims, sex workers, refugees, asylum seekers and undocumented migrants may experience still further barriers if they encounter service providers who also hold prejudiced beliefs towards these groups.
- **Financial:** this barrier is measured on the basis of the cost of services, and the general accessibility of these services to people using public transport. When matters are repeatedly postponed in court, or when the relevant officials are not available, this can result in survivors having to return to the service more than once. The cost either of transport or time off work, for these repeat visits can become unaffordable.

The second set of barriers that prevent survivors from reporting sexual offences or domestic violence have to do with survivors' own feelings about what has happened to them, as well as how other people and institutions respond to them. Some of these barriers, such as love for an abusive partner, are not easily within the SAPS' power to change.

- **Personal:** fear of not being believed or being accused of lying, shame, guilt, humiliation and embarrassment
- **Relational (inter-personal and communal):** feelings of pity and love towards the person abusing, fear of upsetting the stability of the family; fear of the power and authority of the abuser; fear of loss of economic support by the abuser; fear of ostracism or ridicule by peers; wanting to avoid the stigma attached to being raped, or abused.
- **Judicial:** fear of retaliation or intimidation, especially when combined with a lack of confidence that the legal process will result in a conviction; fear of legal processes, including experiencing rudeness and poor treatment by the police; and fear of having to relive the trauma in court and during the investigation.
- **Socio-cultural:** preference for cultural means of resolving disputes (such as the payment of damages by the abuser); and religious beliefs.

5 Regulatory framework

Government has put in place an extensive legal and policy framework to address sexual offences and domestic violence. This includes, but is not limited to, the following laws, regulations, directives, national instructions, policies and guidelines:

- *Civilian Secretariat for Police Service Act, 2 of 2011*
- *Independent Police Investigative Directorate Act, 1 of 2011*
- *The Domestic Violence Act, 116 of 1998*

- *National Instruction 7/1999: Domestic Violence*
- *National Standards of Policing for Municipal Police Services Regarding Domestic Violence, 2006*
- *The Criminal Law (Sexual Offences and Related Matters) Amendment Act, 32 of 2007*
- *National Policy Framework for the Management of Sexual Offence Matters, 2012*
- *National Directives and Instructions on Conducting a Forensic Examination on Survivors of Sexual Offence Cases in Terms of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007*
- *National Instruction 3/2008: Sexual offences*
- *Regulations on services for victims of sexual offences and compulsory HIV testing of alleged sex offenders*
- *National Instruction 2/2012: Victim Empowerment*
- *The Children's Act, 38 of 2005*
- *National Instruction 3/2010: The Care and Protection of Children in terms of the Children's Act*
- *Older Person's Act, 13 of 2006*
- *National Instruction 1/2014: Protection of Older Persons*
- *Guidelines for the Prevention and Management of Sexual Violence and Harassment in Public Schools*
- *The Victims' Charter*
- *The Protection from Harassment Act, 17 of 2011*
- *Prevention and Combating of Torture of Persons, Act 13/2013*
- *Prevention and Combating of trafficking in Persons, Act 7/2013*

This policy seeks to expand upon the existing regulatory framework with the aims of:

- Strengthening efforts to prevent and deter sexual offences and domestic violence by broadening and deepening the collection of information about such crimes;
- Increasing victims' access to justice by reducing barriers to the reporting of sexual offences and domestic violence; and
- Detailing performance measures that enable SAPS managers and Civilian Secretariat for Police Service (CSPS) staff to assess adherence to the policy in order to build on good practice and take steps to correct any deficiencies.

The policy also contributes to fulfilling section 66 of the Sexual Offences and Related Matters Amendment Act (SORMA) which instructs the SAPS and other government

departments to provide for and promote the use of uniform norms, standards and procedures that will ensure members are able to deal with sexual offences appropriately and sensitively.

This policy aims to support governmental efforts to address matters relating to sexual offences and domestic violence and to enhance the delivery of services to victims within available resources.

In support of the National Policy Framework, contemplated by section 62 of SORMA, the following principles underlie the policy:

- Adoption of a victim-centred approach to sexual offences and domestic violence
- Adoption of a multi-disciplinary and inter-sectoral response to sexual offences and domestic violence
- Provision of specialised services to victims of sexual offences and domestic violence
- Equal and equitable access to quality services for victims of sexual offences and domestic violence.

6 Objectives of the policy

The NPF sets three specific objectives derived from section 62(1) of SORMA. These are:

- Establishment of uniform norms, standards and mechanisms for the co-ordination and implementation of the SORMA
- Development and strengthening of co-ordinated services
- Providing resources for the effective implementation of SORMA and the NPF

Each of the specific objectives of the NPF identifies a set of strategic priorities for departments. Meeting these priorities forms the substance of this policy. These priorities have also been extended to include domestic violence.

6.1 Establishment of uniform norms, standards and mechanisms for the co-ordination and implementation of the SORMA

To meet this objective, the NPF has set four strategic priorities, two of which this policy addresses:

- Establish systems tracking and analysing trends in budget allocations and expenditure patterns, sexual offences trends and interventions in the management of sexual offences

- Establish integrated information management for the integrated collection, collation and analysis of statistics.

SORMA and the remnants of the Sexual Offences Act of 1957 have created a range of sexual offences. Separate statistics for each offence are presently not available, which is a drawback to understanding the use of SORMA, as well as patterns and trends specific to each of the different sexual offences. It is thus unknown, for example, how many crimes are reported where the victim is a mentally disabled person as provided for in Chapter 4 of SORMA. Where these numbers are unknown it is not possible to adequately plan for and provide appropriate services to people who are mentally disabled. Knowing such numbers would also assist in the design and implementation of information and awareness programmes for people who are mentally disabled and their caregivers. The proposal is thus that reporting of data be disaggregated according to the various crime codes as captured on Crime Administration System (CAS).

To enable SAPS to generate the sort of data required to plan for the establishment of services and the implementation of information and awareness campaigns, as well as other preventative interventions, stations and Crime Statistics and Research, Crime Data Integrity and Information Management are required to undertake the following:

- Present crime statistics on an annual basis which provide not only the total number of sexual offences reported overall, but also disaggregate the figures for each sexual offence.
- Introduce a variable into the CAS that captures the gender of all victims of sexual offences and report on this data in the annual crime statistics.
- Introduce a variable into the CAS that captures the ages of all victims of sexual offences and report on this data in the annual crime statistics.
- Introduce a variable into the CAS that captures the number of sexual offences and murders where the courts have established that the crime was motivated by the perpetrator's hostility to their sexual orientation.

To promote the co-ordination of child protection services between SAPS and the Department of Social Development, as well as assess the general public's compliance with their obligations towards children and people who are mentally disabled, stations and Crime Statistics and Research are required to undertake the following:

- Collect and present statistics on the number of reports made in terms of sections 54(1) and (2) of SORMA and sections 110(1) and (8) of the Children's Act.

- Collect and present statistics on the number of referrals made by SAPS to the provincial Department of Social Development in terms of sections 110(4) of the Children's Act.

The SAPS, in consultation with its Forensic Database Management Section of Forensic Science Services and the Investigative Psychology Section of Forensic Science Services must also utilise and incorporate data around serial rape and murder cases in the National Forensic DNA Database. This will increase the understanding of patterns and trends in the commission of serial offences, as well establish a baseline against which improvements in the detection and arrest of serial offenders can be assessed.

Current SAPS statistics are also not available for domestic violence because there is no crime termed 'domestic violence.' Instead its multiple forms are captured across a range of different categories of criminal offences such as assault (either common or with intent to cause grievous bodily harm), pointing a firearm, intimidation, rape or attempted murder (among other charges). Again, as with rape, it is currently difficult to track patterns and trends in the perpetration of domestic violence. It is also currently not possible to know how many murders occur within the context of a domestic relationship, again limiting the nature and quality of prevention programmes that can be developed.

To address this, stations and Crime Statistics and Research are required to undertake the following:

- Introduce a variable into the CAS that captures whether or not the alleged offender is in a domestic relationship with the victim. This variable should be answered in relation to all categories of crime.
- Present statistics on all crimes where the victim is in a domestic relationship with the alleged offender.

SAPS must engage with both the National Prosecuting Authority and the Department of Justice and Constitutional Development, in addition to sect 65 of the SORMA and Specific Objective 1 of the NPF, to develop an approach to reporting on sexual offences and domestic violence that integrates the number of cases reported, with the number of offenders prosecuted, as well as the number of prosecutions that result in convictions or acquittals. This must also include data on protection orders that have been issued and served by SAPS, as well as any other data that may be relevant to understanding the reporting and management of sexual offences and domestic violence.

To ensure co-ordination of interventions this data must be available to relevant stakeholders and government departments. This is because SAPS crime statistics are not only relevant to SAPS operational planning but also necessary to a range of institutions attempting to develop prevention and other intervention programmes intended to address sexual offences and domestic violence. As a consequence the ability to design targeted and effective information and awareness campaigns is limited, as is the ability to develop prevention programmes.

6.2 Develop and strengthen co-ordinated services

Government obliges stakeholders to both support victims of sexual offences, as well as prevent sexual violence. In responding to victims,

- SAPS must take steps to prevent both secondary and repeat victimisation, as well as ensure the equitable provision of services, including at the reporting stage.
- Strategic priorities (ii), (iii) and (iv) in the NPF are relevant to this policy and, amongst other things, require SAPS to develop and implement measures to improve timeous reporting; ensure the SAPS is equipped to respond in an empathic and supportive manner to victims of sexual offences; and implement, together with other stakeholders, public education programmes informing communities of SORMA's provisions.

6.2.1 Existing framework guiding the reporting of sexual offences and domestic violence

A sexual offence or an experience of domestic violence may be disclosed to a variety of individuals and institutions including family, friends, teachers, neighbours, social service professionals, health workers and traditional leaders (to name but a few). Existing law dictates that in some instances these disclosures must be reported to the SAPS and, where cases involve children, there is also a duty on the SAPS to refer such matters to the Department of Social Development.

6.2.2 Criminal Law (Sexual Offences and Related Matters) Amendment Act 2007

Section 54(1) of the SORMA states that any person who has knowledge that a sexual offence has been committed against a child, must report such knowledge to a police official. Failure to do so constitutes an offence, and a person convicted of such an offence may be sentenced to five years' imprisonment. Section 54(2) also makes it obligatory to report to the police knowledge, or a reasonable belief, or suspicion, that a sexual offence has been committed against a mentally disabled person. Failure to do so will result in the same

sanctions as the failure to report a sexual offence against a child. Members must refer to *Receiving a report of a sexual offence at a police station* set out in paragraph 4(5) of National Instruction 3/2008: Sexual Offences for guidance in this regard.

6.2.3 The Children's Act 2005

According to section 110 (1) of the Children's Act (as amended by the 2007 Act) any teacher, medical practitioner, psychologist, dentist, registered nurse, physiotherapist, speech therapist, occupational therapist, traditional health practitioner, legal practitioner, social worker, social service professional, minister of religion, religious leader, member of staff at a partial care facility, shelter, drop-in centre or child and youth care centre, labour inspector or police official who on personal observation concludes that a child has been sexually abused, deliberately neglected or abused in a manner causing physical injury must report that conclusion to the provincial department of social development, a designated child protection organisation, police official or clerk of the children's court."

When a member receives such a report they must follow paragraph 6, *Reports that a child is abused, neglected and is in need of care and protection*, set out in National Instruction 3/2010: Care and Protection of Children.

6.2.4 The Older Person's Act 2006

In terms of section 25 of the Older Person's Act any person who is involved with an older person in a professional capacity, and who on personal observation concludes that the older person is in need of care and protection, must report such a conclusion to the Director-General of the Department of Social Development. Any other person who is of the opinion that an older person is in need of care and protection may report such an opinion to a social worker. The Act further notes that, an older person living in circumstances conducive to seduction, abduction or sexual exploitation, qualifies as someone in need of care and protection. In addition, any person who suspects that an older person has been abused or suffers from an abuse-related injury must immediately notify the Director-General of the Department of Social Development, or a police official of his or her suspicion.

Guidance to SAPS members on receiving such reports is set out in paragraph 6, *Reporting of Allegations that an older person is in need of care and protection*, contained in National Instruction 1/2014: Protection of Older Persons.

6.2.5 Directives issued by the Department of Health

The Directives recognise that reporting a rape at a designated public health establishment is not identical with laying a charge. The full range of health services must still be offered to all those who do not wish to report the incident to the police, including the medico-legal examination (in the event that some victims decide later to lay a charge with the police). The primary purpose is to ensure that the full basket of medical services are offered to victims, and that the necessary evidence is collected and stored in the event that a complainant may wish to lay a charge at a later stage.

6.2.6 Guidelines for the Prevention and Management of Sexual Violence and Harassment in Public Schools

These guidelines were issued by the Department of Education in 2008 and are applicable to all public schools, including educators, learners, school management teams, school governing bodies, support staff and any other individuals or entities who engage with public schools in one way or another. The Inter-Sectoral Committee must approach the Department of Basic Education to ensure that the definitions of sexual violence utilised by the Guidelines are harmonised with SORMA. Because the Department's definition of sexual violence and harassment differ to those of SORMA there is a lack of clarity in the document regarding which offences must be reported when to the SAPS.

6.2.7 The Independent Police Investigative Directorate Act

Section 29 of the Act stipulates that the Station Commander, or any member of the SAPS or Municipal Police Service must immediately notify the Directorate of any rape by a police officer, whether on or off duty, or of any rape perpetrated on someone in police custody. A written report of the incident must then be submitted to the Independent Police Investigative Directorate (IPID) within 24 hours.

It is the IPID's responsibility to make certain that all South Africans are aware of these mandatory reporting obligations. Information and education activities must target communities and religious and traditional leaders to make them aware that they may not mediate, adjudicate or otherwise settle sexual offences against children, people with disabilities or older persons. SAPS, also has a responsibility to make certain that SAPS members are aware of these obligations. Collation of the statistics identified in section 3 of this policy will enable SAPS to measure the extent of such mandatory reporting and whether it is increasing over time.

6.2.8 Measures to reduce barriers to reporting and improve the experience of reporting

Certain barriers to reporting can only be addressed indirectly by SAPS. These include victims' fears of losing economic support should the abuser be angered or imprisoned as a result of reporting, or the fear of upsetting the stability of the family. These issues must be attended to by the Departments of Social Development and other important role-players and to ensure that they develop a comprehensive inter-sectoral national strategy, or policy framework, around domestic violence which also supports the implementation of the Domestic Violence Act (DVA). The Inter-Sectoral Committee, in conjunction with SAPS and the relevant departments must amongst other things, develop a framework that should provide guidance around the withdrawal of charges, as well as the interventions required by the Departments of Social Development and other important role-players.

Each station must assess its design and service environment to determine if any of the barriers identified in this policy are in existence and take the necessary steps to address these. In addition:

- SAPS members must work with both the Thuthuzela Care Centres (TCC) and designated clinical-forensic centres established by the Department of Health to ensure that these services are offered on a 24/7 basis. Where there is no TCC, no victim may be told to go home and return later to the station due to the unavailability of a medical examiner. To ensure that inter-departmental services are available on a 24/7 basis, SAPS provincial management must liaise with the head of the relevant provincial department of health to determine the steps to be taken to contact a medical practitioner after hours and steps to be taken if the medical practitioner fails to comply with these steps. All members in the relevant province should be informed accordingly. The inter-sectoral committee must ensure that this process is formalised.
- TCCs track the waiting times of victims to ensure these remain within two hours as specified in the TCC protocols. These issues are addressed at monthly TCC stakeholder meetings where statistics, including waiting times are shared and discussed. SAPS must ensure that their local FCS representatives attend these meetings. The Client Service Centre must have a practice in place where they take the victim to a TCC where possible. This will allow for TCC services to proceed and give the victim swift assistance.

- Each station must obtain the contact details of organisations or individuals willing to provide sign language services as well as a list of interpreters indicating the languages they speak. The details must be used to develop a database which indicates organisations willing to assist, whether they will assist for free or at a fee and the times at which they are willing to assist. Stations must ensure that the database is updated on a regular basis. This list, including the contact details of sign language interpreters must be readily available to all members in the Client Service Centre (CSC), as well as people providing services from the victim friendly rooms (VFR). Where sign language and interpreter services are charged for, stations must set aside a portion of their budget for victim empowerment towards these costs.

Whilst the legislative framework is provided for, it is important that members familiarise themselves with the relevant national instructions and or any other relevant documents which set out in detail how victims are to be dealt with.

- National Instruction 7/1999: Domestic Violence
- National Instruction 3/2008: Sexual offences
- Regulations on services for victims of sexual offences and compulsory HIV testing of alleged sex offenders
- National Instruction 2/2012: Victim Empowerment
- Regulation 33076: Consolidated Regulations Pertaining to the Children's Act, 2005
- National Instruction 3/2010: The Care and Protection of Children in Terms of the Children's Act
- National Instruction 1/2014: Protection of Older Persons

Paragraphs 9, 10 and 11 of National Instruction 2/2012: Victim Empowerment deal with the establishment and functioning of VFRs, while sections 14 and 15 deal with NGOs and volunteers assisting victims. The next sets of points expand upon these sections specifically in relation to victims of sexual offences and domestic violence.

The mental health consequences of rape and domestic violence can be severe. According to the South African Stress and Health study domestic violence causes the greatest number of cases of Post-Traumatic Stress Disorder (PTSD) among women, while rape has the strongest association with PTSD.¹² Other psychiatric disorders associated with rape include

¹² Kaminer D, Grimsrud A, Myer L, Stein DJ and Williams DR. (2008). 'Risk for post-traumatic stress disorder

depression and anxiety disorders; alcohol and substance abuse and dependence; eating disorders; and psychosis.

In the immediate aftermath of either a rape or an assault victims are particularly vulnerable to the reactions of others and blaming, unhelpful responses by police officers, counsellors or health workers can significantly add to victims' trauma. As some of the first responders to victims of sexual offences and domestic violence, police members and NGO personnel/volunteers should be aware of the potential for secondary victimisation and behave in ways that do not facilitate this.

- All victims of sexual offences and domestic violence must be interviewed in private. Where no VFR exists, then a vacant room may be used in its place.
- Volunteers or NGO staff working in the VFR may not mediate cases of domestic violence. SAPS members may not refer victims of domestic violence to the VFR or Community Policing Forum (CPF) for mediation either.
- Each station must create a resource list with contact details for organisations providing services to people with disabilities and older persons. To assist migrants and refugees, the list should also include details both for agencies providing interpreters for a range of languages. Where such services are not available in particular localities the provincial commissioner must be informed and steps taken to make such services available.
- When assisting deaf survivors members can use written communication if the deaf person is literate and no interpreter is available.
- Members should ensure their faces are visible to facilitate lip reading and stand within a distance of between 1 – 3 meters of the person. They should face a light source with the deaf person in front of them to improve the visibility of their faces.
- Members should raise their voices without shouting and speak clearly and slowly, without exaggeration.
- Only one person should speak at a time and an effort should be made to reduce background noises when dealing with deaf survivors, older persons, or survivors who are mentally disabled.
- Touch or a visual sign may be used to gain the attention of deaf persons.
- When possible, members should enable persons with disabilities to be self-sufficient.
- Members should offer blind/visually-impaired persons their arm to help him/her move about in unfamiliar environments.

associated with different forms of interpersonal violence in South Africa.' *Social Science and Medicine* 67: 1589 – 1595.

- Members should not touch a blind person or make sudden noises without first introducing themselves or informing the blind person of their presence.
- Members should address the person with disabilities directly, rather than through their care-taker/assistant. They should also address older children directly.
- When unsure of how to help, members should ask the person with disabilities directly what they can do to assist them.

6.3 Provide resources for the effective implementation of SORMA and the NPF

This objective requires SAPS to determine and make available both the physical and human resources required to implement SORMA, as well as develop and implement relevant learning programmes for their members.

- All members in the CSC must receive training around SORMA and the DVA. A further pool of members working in the CSC must receive additional, specialised training around assisting victims of sexual offences and domestic violence. Those selected for training must show willingness to work on these matters. This pool of members must be large enough to ensure that at least two members per shift possess these specialised skills. Stations must prevent the situation where only one or two members are expected to deal with all cases of domestic violence and sexual offences. They must also ensure that such staff is not expected to come in and manage such cases when off-duty. Such members must work closely with FCS detectives and have access to debriefing.
- Victim friendly facilities must be located at every police station. SAPS must ensure that the public are aware of the location of all FCS units.
- Due to the significant potential for secondary victimisation, stations must not allow untrained and unsupervised people to assist victims of sexual offences and domestic violence. Stations found to be doing so must be sanctioned for doing so. No volunteer or NGO employee may work with, or assist, a victim of sexual offences or domestic violence unless they have been trained to do so.
- Wherever possible stations should utilise the services of an accredited NGO rather than individual volunteers. This is more likely to result in the effective training, management and supervision of people in the Victim Friendly Rooms.
- The CSP and SAPS must conduct a national audit of all stations and FCS offices to determine the number of VFRs in place and the extent to which they meet the criteria set out in sections 9 to 11 of National Instruction 2/2012: Victim Empowerment. This audit must also assess the number of VFRs staffed by NGOs or volunteers, the times

at which such services are available, and the training and supervision received by NGOs or volunteers. This audit must obtain the input of the NGOs and volunteers concerned.

Specific objective 1 of the NPF requires members of the CJS to develop systems tracking and analysing budget allocations and expenditure patterns in relation to sexual offences and domestic violence. To fulfil this SAPS must:

- Outline in their annual Budget Vote the funds set aside for sexual offences and domestic violence training and other activities. The Annual Performance Plan must also detail these training plans and the Annual Report the actual numbers reached, as well as the ultimate expenditure on training. These sums must also reflect moneys received from donors, as well as Treasury. The outlining of these funds will allow the CSP to better monitor budget expenditure against the set priority.
- Outline in their Budget Vote the number of FCS detectives in each province and the budget allocated to the work of FCS detectives, by province. Actual expenditure must be reflected in the Annual Report.
- Specify in their Budget Vote the funds set aside for victim empowerment activities and report on actual expenditure in the Annual Report. This should also detail the nature of victim empowerment activities.

6.3.1 Training programmes required for members of SAPS

On-going and comprehensive training, targeted at those detectives and CSC members likely to come into contact with victims of domestic violence or sexual offences, is essential. Such training courses must include a component testing members' competence to apply the skills and knowledge taught. Members who do not demonstrate the necessary competence may not be permitted to investigate sexual offences or domestic violence matters, or engage with the victims of such offences. IPID investigators responsible for investigating rape by members of the SAPS, or rape perpetrated against a person in police custody, must also undergo similar training and be assessed similarly competent to deal with victims of these particular sexual offences.

Training programmes must be developed to teach a comprehensive range of skills and a wide base of knowledge.

- All members working in the CSC and their commanding officers must be familiar with all charges of sexual offences contained in the SORMA. They must also be familiar

with the provisions in SORMA dealing with PEP and compulsory testing of alleged offenders for HIV.

- All members in the CSC and their commanding officers must be trained around their duties in terms of the DVA.
- The Divisional Commissioner: HRD in conjunction the station commissioner must ensure that members are trained in accordance with the position that they hold and the functions that they perform.
- In keeping with the Constitutional commitment to non-sexism, detectives, all members in the CSC and their commanding officers must receive training around challenging the sexist norms and gender stereotypes which lie at the heart of sexual offences and domestic violence. While women and girls are overwhelmingly the victims of these crimes, training must also address the gender stereotyping that makes it difficult for boys and men to report these crimes.
- Training around non-sexism and gender stereotyping must also equip detectives, all members in the CSC and their commanding officers to deal with LGBTI victims in a non-discriminatory and supportive manner. Station commanders must also take steps to prevent the rape and assault of transgender individuals by ensuring they are not placed in cells with persons who may victimise them.
- Detectives, all members in the CSC and their commanding officers must receive training sensitising them to the needs of people with different disabilities. They should also receive basic training in sign language enabling them, at a minimum, to greet deaf persons and enquire how they can be helped.
- SAPS members must be trained to enter onto the CAS the information required by section 3 of this policy.

6.3.2 Assessment of SAPS performance

A current measure of SAPS managers' performance is calculated by the extent to which they reduce reports of contact crimes. In terms of this policy's goals, managers' performance will no longer be measured in this way specifically in relation to sexual offences and domestic violence. Their performance will be assessed instead on the increase in reporting on sexual offences and domestic violence in order to encourage victims to report such crimes, and in relation to the quality of services provided to victims of sexual offences and domestic violence and the extent to which they reduce barriers to reporting these crimes. Because this policy is designed to reduce barriers to reporting these two sets of crimes, both station commanders and Provincial Commissioners' performance will be assessed with reference to this goal. This includes assessing:

- Individual stations' compliance, as well as provincial compliance overall, with the National Instructions (NI 7/1999 (domestic violence), NI 2/2012 (victim empowerment) and NI 3/2008 (sexual offences), amongst others.
- Individual stations' compliance, as well as provincial compliance overall, with this policy addressing barriers to reporting on sexual offences and domestic violence
- Steps taken by individual stations, as well as the provincial office of the SAPS, to rectify shortcomings identified by CSP monitoring.
- The statistics to be gathered in terms of specific objective 1 act as indicators of access to the criminal justice system. Increases in these categories will be treated as an indication that barriers to reporting are being reduced.
- This will require SAPS to effectively implement the policy on the investigation and management of serial rape and serial murder.
- Over the medium-term SAPS managers' performance will also be assessed in relation to the number of murders committed where the victim and perpetrator were in a domestic relation and sexual offences committed in a respondent where the victim was in possession of a protection order. A reduction in this number will be treated as successful prevention.

It follows that where compliance is low, and/or where stations do little to address shortcomings identified by CSP station audits, the performance of both the station and province will be negatively affected.

A comprehensive education and information campaign must accompany the release of the policy to ensure communities are aware of its contents.

7 Monitoring and oversight of the policy's implementation

Oversight is an opportunity for institutional learning because it observes and attends to shortcomings in implementation, and identifies innovation and good practice which can be shared with other stations and SAPS structures. Both the DVA and the NPF recognise the importance of oversight in ensuring that the DVA and SORMA, and their associated polices are effectively implemented.

Monitoring the SAPS is a key function of the CSP and their duties in relation to overseeing the SAPS' implementation of the DVA are set out in sections 6(c) and (d) of the Civilian Secretariat for Police Service Act, 2 of 2011.

To enable the CSP to exercise its oversight functions:

- The CSP must approach the Department of Justice and Constitutional Development and request their inclusion within the Inter-sectoral Committee (ISC) mandated by SORMA.
- The NPF must be amended to reflect the roles and responsibilities of the CSP.
- In addition, SAPS, as a matter of priority, must amend National Instruction 7/1999: Domestic Violence to reflect the shift of oversight from the Independent Complaints Directorate to the CSP.
- Section 18 of National Instruction 2/2012: Victim Empowerment must be amended to ensure that all reports on SAPS' victim friendly services are also forwarded to the CSP and its provincial structures

7.1 The roles and responsibilities of the CSP and its provincial structures

The CSP and its provincial structures are already monitoring the SAPS' implementation of the DVA and National Instruction 7/1999: Domestic Violence. This role is to be expanded by monitoring the SAPS' implementation of the following:

- The Criminal Law (Sexual Offences and Related Matters) Amendment Act, 32 of 2007 in relation to this policy
- National Instruction 3/2008: Sexual offences
- Regulations on services for victims of sexual offences and compulsory HIV testing of alleged sex offenders
- National Instruction 2/2012: Victim Empowerment
- National Instruction 3/2010: The Care and Protection of Children in Terms of the Children's Act
- National Instruction 1/2014: Protection of Older Persons

The CSP reports on stations that have been subjected to monitoring may include the following information, as well as any other data the CSP may consider relevant:

- Compliance with the prescripts of the DVA, SORMA and National Instructions identified in the previous paragraph
- the extent of training undertaken by each station, as well as the number of detectives and CSC personnel who have attended training around the DVA and SORMA, as well as the various National Instructions
- collaboration with local organisations addressing domestic violence and sexual offences, as well as organisations assisting children, people with disabilities, the LGBTI community, older persons, refugees and migrants

- the human and physical resources available to support stations' implementation of the laws and National Instructions
- the number of domestic violence incidents perpetrated by SAPS members, as well as the steps taken by stations to deal with such complaints. Stations must also record the number of murders committed where either the victim or perpetrator was in possession of a protection order at the time.

When auditing any individual station the CSP must independently interview local organisations and members of the CPF to obtain their views on the station's attention to domestic violence and sexual offences.

Once the audit has been completed, this information must be forwarded to the station commander. Findings pertinent to the implementation of SORMA and associated National Instructions must be forwarded to the ISC.

- The CSP should ensure that every station monitored be audited again within 90 days of the station having received the findings of the monitoring. Where no attempt has been made to address the shortcomings identified by the audit, this must be reported to both the Provincial Commissioner and the Management Intervention. Both the findings of the initial and follow-up audits must be included in CSP reports to Parliament.
- The extent to which particular stations correct deficiencies identified by an audit should be treated as an indicator for the effectiveness of oversight.

The CSP and its provincial structures must plan the training required to undertake this expanded role, as well as consider the need for an expanded staff complement to conduct these audits. The budget and expenditure on station audits must also be reported on in the CSP's Budget Vote, as well as its Annual Report. In addition, the CSP should consider what role Management Intervention, or other structures, could play in monitoring the performance of stations.

7.1.1 Establishment of compliance forum

The CSP must establish a compliance forum, whose purpose is to discuss improving the police's implementation of the DVA and SORMA. This compliance forum must meet on a quarterly basis both at national and provincial level. The Forum should include the compliance directorate of the CSP, IPID and the following divisions of the SAPS:

- visible policing – reporting on the status of the DVA's implementation

- personnel services – reporting on the status of disciplinary proceedings
- human resources division – reporting on SAPS training around the DVA and SORMA
- Management Intervention – responsible for providing information regarding the investigation of cases of non-compliance
- Technology Management Services – responsible for providing statistics on the reporting of cases involving domestic violence and sexual offences to the SAPS; and
- Legal Services.

A key goal of the DVA is the prevention of domestic violence and especially repeated instances of domestic violence. It is therefore essential to identify and understand when and why it fails to do so. For this reason any homicide relating to domestic violence and sexual offences in which the victim or perpetrator was in possession of a DVA protection order at the time of their death (or had applied for one) should automatically trigger review by the compliance forum. This should also be the case for killings perpetrated by police officers in a domestic relationship. The purpose of such reviews is not only to determine whether or not police members failed to act on prior reports of domestic violence, but also to learn more about the prevention of murder relating to domestic violence and sexual offences.

The following procedures could be adopted by the compliance forum:

- All murder relating to domestic violence and sexual offences perpetrated by police officials must be immediately reported to the national office of the CSP and IPID. Any other murder relating to domestic violence and sexual offences which occurs must be checked against the SAPS 508(a), 508(b) and file of protection orders maintained by the police station in the jurisdiction where the killing occurred. Should the victim or perpetrator have been in possession of a protection order, then this case must automatically be forwarded to the CSP. In addition, when a child is killed by a parent, both their details must also be checked against a protection order where there may be one, to ascertain whether or not one of the parents was in possession of a protection order, or in the process of applying for one. Where this is found, such cases must be reported by IPID to the compliance forum.
- The compliance forum must submit to the Minister of Police a report on the forum's activities on an annual basis.

7.2 The roles and responsibilities of NGOs and other civil society bodies

The legislation governing the CSP allows for the creation of civil society reference groups. In addition, the NPF allocates a number of roles and responsibilities to civil society organisations including, amongst others:

- advocating for the protection of victims' rights,
- reporting the violation of these rights,
- providing information about, and assistance with, monitoring the implementation of SORMA and the NPF
- Monitoring and evaluation.

On this basis the CSP's existing DVA reference group must include a focus on domestic violence and sexual offences and must meet on a quarterly basis to discuss SAPS' implementation of the DVA, SORMA, this policy, the investigation and management of serial rape and serial murder policy and other associated instructions and regulations. SAPS may on an ad hoc basis be invited to make presentations on the implementation of the abovementioned policies and legislation.

7.2.3 The roles and responsibilities of Parliament and the provincial legislatures

Section 18 of the DVA requires both the CSP and SAPS to submit six-monthly reports to parliament documenting the SAPS implementation of the DVA, with most of the monitoring of the DVA being undertaken by the provincial structures of the CSP.

7.3 Complaints against the SAPS

Paragraph 8 of National Instruction 2/2012: Victim Empowerment sets out the procedure for victims to follow should they have any complaints about the service received from SAPS.

- Paragraph 8(3) of the National Instruction must be amended by removing reference to IPID whose mandate no longer includes investigation of this category of complaints against the SAPS.
- CSP must continue acting as an independent body of complaint where members of the public can lodge complaints. Such complaints will be forwarded to the Management Intervention which is currently the dedicated mechanism for receiving complaints.
- Management Intervention must be equipped with resources to conduct independent investigations of SAPS members.
- The findings of these investigations and the resultant recommendations should be submitted to the CSP who will monitor and evaluate the effectiveness of this

complaints mechanism, given that their mandate in relation to the DVA includes making recommendations to SAPS on disciplinary procedures and measures with regards to non-compliance.

Approved on this _____ day of _____ 2016

MR. NPT NHLEKO, MP

MINISTER OF POLICE

DATE