

**AN EVALUATION OF THE IMPLEMENTATION OF NATIONAL
INSTRUCTION 3/2008 DURING THE INVESTIGATION OF RAPE:
A CASE STUDY AT GRAAFF-REINET, EASTERN CAPE**

by

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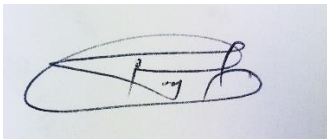
DECLARATION OF AUTHENTICITY

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I, Ricardo Kayster declare that An evaluation of the implementation of National Instruction 3/2008 during the investigation of rape: a case study at Graaff-Reinet, Eastern Cape is my own work, and that all the sources I have used or quoted have been indicated and acknowledged by means of complete references.

I further declare that I have submitted the dissertation to originality-checking software and that it falls within the accepted requirements for originality.

I further declare that I have not previously submitted this work or part of it for examination at Unisa for another qualification or at any other higher education institution.



.....
Signature

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ABSTRACT

The South African Police Service has issued protocol and guidelines in relation to the content of the sexual offence statement checklist. These guidelines are attached as Annexure E to National Instruction 3/2008: Sexual Offences. An evaluation of the implementation of National Instruction 3/2008: Sexual Offences during rape investigations highlights the reasons it is important to adhere to the guidelines of the Sexual Offence Statement Checklist, as per Annexure E. Geographically, the study is in the Graaff-Reinet area. The participants included members from the first responding officers from the respective stations (Graaff-Reinet, Willowmore, Aberdeen and other stations) in the surrounding area, as well as Family Violence, Child Protection and Sexual Offences (FCS) investigators from both Graaff-Reinet and Willowmore FCS units who attend and investigate rape cases.

The researcher collected data by conducting interviews with participants, and by doing an analysis of closed-off rape dockets (at the hand of a checklist). This was done to answer the following research question: To what extent are the prescriptions highlighted in sub-sections 9 and 18 of National Instruction 3/2008: Sexual Offences, being complied with by investigators taking the statement from the rape victim? The data was compared to the guidelines as contained in Annexure E: Sexual Offence Statement Checklist, to identify how the existing guidelines are adhered to, and where there is room for improvement. The study highlights gaps pertaining to the knowledge of the participants. Recommendations are provided by the researcher.

KEY TERMS

Criminal investigation, forensic investigation, statement, rape, elements of rape.

TSHOBOKANYO

Tirelo ya Sepodisi sa Aforikaborwa e rebotse porotokholo le dikaedi tse di amanang le diteng tsa lenaane-netefatso la seteitemente sa tlolomolao e e amanang le thobalano. Dikaedi tseno di mametleletswe jaaka Mametlelelo E mo Kaelong ya Bosetšhaba ya 3/2008: Ditlolomolao tse di amanang le Thobalano. Tshekatsheko ya go tsenngwa tirisong ga Kaelo ya Bosetšhaba ya 3/2008: Ditlolomolao tse di amanang le Thobalano ka nako ya dipatlisiso tsa petelelo e ne e gatelela mabaka a gore ke goreng go le botlhokwa go obamela dikaedi tsa Lenaane-netefatso la Seteitemente sa Tlolomolao e e amanang le Thobalano, go ya ka Mametlelelo E. Thutopatlisiso e dirilwe kwa kgaolong ya Graaff-Reinet. Batsayakarolo ba ne ba akaretsa batlhankedi ba maemotiro a a kwa godingwana ba diteišene tse di mo kgaolong e e gaufi (Graaff-Reinet, Willowmore, Aberdeen le diteišene tse dingwe), le babatlisisi go tswa kwa Diyuniting tse di samaganang le Tirisodikgoka ya mo lelapeng, le Tshireletso ya Bana le Ditlolomolao tse di amanang le Thobalano (FCS) tsa kwa Graaff-Reinet le Willowmore ba ba samaganang le go batlisisa dikgetsi tsa petelelo.

Motlhotlhomisi o kgobokantse deitha ka go dira dipotsolotso le batsayakarolo le go sekaseka didokete tse di tswaletsweng tsa dikgetsi tsa petelelo (go ya ka lenaane-netefatso). Dipotsolotso tseno di dirilwe go araba potso e e latelang ya tlhotlhomiso: Botlhokwa jwa melawanatheo ya semolao bo gateletswe go le kana kang mo dikarolwaneng 9 le 18 tsa Kaelo ya Bosetšhaba 3/2008: Ditlolomolao tse di amanang le Thobalano, e e obamelwang ke babatlisisi ba ba tsayang seteitemente mo motswasetlhabelong wa petelelo? Deitha e bapisitse le dikaedi tse di mo teng ga Mametlelelo E: Lenaane-netefatso la Seteitemente sa Tlolomolao e e Amanang le Thobalano go supa gore dikaedi tse di leng teng di obamelwa go le kana kang le go supa moo go nang le tšhono ya tokafalo. Thutopatlisiso e tlhagisitse botlhokakitso jwa batsayakarolo ka kakaretso gammogo le go sa obamele dikaedi tse di mo teng ga Mametlelelo E. Motlhotlhomisi o neetse dikatlanegiso tsa go rarabolola seno.

MAREO A BOTLHOKWA

Patlisiso ya bosenyi, patlisiso ya forensiki, seteitemente, petelelo, dikarolwana tsa petelelo

ISISHWANKATHELO

INkonzo yamaPolisa oMzantsi Afrika ikhuphe imithetho nezikhokelo ezinxulumene nokuqulathwe luluhlu loqinisekiso lwenkcazelo yolwaphulomthetho lwezesondo. Ezi zikhokelo ziqhotyoshelwe ngokwesiHlomelo E kuMyalelo weSizwe 3/2008: woLwaphulomthetho lwezeSondo (Ngesingesi kuthiwa yi-*National Instruction 3/2008: Sexual Offences*). Ukuphononongwa kokuphunyezwa koMyalelo weSizwe 3/2008: woLwaphulomthetho lwezeSondo ngexesha lophando lodlwengulo lubonisa izizathu zokuba kutheni kubalulekile ukulandela izikhokelo zoLuhlu loqinisekiso lweNkcazelo yoLwaphulomthetho lwezeSondo, ngokweSihlomelo E. Olu phando lwenziwe kwindawo yaseRhafu (e*Graaf-Reinet*). Abathathinxaxheba ibingamagosa afika kuqala kwiindawo zezehlo zolwaphulomthetho avela kwizikhululo zeendawo ezingqonge lo mmandla (i*Graaf-Reinet*, i*Willowmore*, i*Aberdeen* kunye nezinye izikhululo), kunye nabaphandi abajonga baze baphande amatyala odlwengulo abavela kumacandelo oBundlobongela phakathi koSapho, uKhuseleko lwaBantwana kunye noLwaphulomthetho lwezeSondo ase*Graaff-Reinet* nase*Willowmore*.

Umphandi idatha uyiqokelele ngokwenza udliwanondlebe nabathathinxaxheba nangokuhlalutya iidokethi ezivaliweyo zamatyala odlwengulo (ngokusekelwe kuluhlu loqinisekiso). Olu dliwanondlebe lwenziwe ukuphendula lo mbuzo wophando ulandelayo: Ithotyelwa kangakanani imigaqo egxininiswe kwicandelo lesi9 nele18 loMyalelo weSizwe 3/2008: uLwaphulomthetho lwezeSondo, ngabaphandi abathatha inkcazelo kwixhoba lodlwengulo? Idatha ithelekiswe nezikhokelo eziqulethwe kwisiHlomelo E: ULuhlu loqinisekiso lweNkcazelo yoLwaphulomthetho lwezeSondo ukuchonga indlela izikhokelo ezikhoyo ezithotyelwa ngayo nalapho kukho khona indawo efuna ukuphuculwa. Olu phando lubonise umsantsa ophathelele kulwazi lwabathathinxaxheba ngokubanzi kwakunye nokungathotyelwa kwezikhokelo eziqulethwe kwisiHlomelo E. Umphandi unikeze iingcebiso zokuqubulisana noku.

AMAGAMA ANGUNDOQO

uphando lolwaphulomthetho, uphando lwasenkundleni, inkcazelo, udlwengulo, imiba yodlwengulo

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LIST OF ACRONYMS AND ABBREVIATIONS

CAS	Crime Administration System
CIO	Crime Investigation Officer
CJS	Criminal Justice System
FCS	Family Violence, Protection and Sexual Offences
FRO	First Responding Officer
LCRC	Local Criminal Record Centre
NI	National Instruction
SAPS	South African Police Services
SORMAA	Sexual Offences and Related Matters Amendment Act
VISPOL	Visible Policing

CHAPTER 1: GENERAL ORIENTATION TO THE STUDY

1.1 INTRODUCTION AND PROBLEM STATEMENT

Several reports in the media have sparked outrage and a call for intervention to stop violence against women and children. South African national crime statistics show that 50 108 sexual offence cases were received during the financial cycle South African Police Service 2017/2018 (SAPS, 2018), of which 40 035 were rape cases. The consecutive year showed 52 420 sexual offence cases, were received in the financial year South African Police Service (SAPS, 2019) and 41 583 were rape cases. Regarding the abovementioned figures, it was estimated that 114 rape cases were received by the police per day.

The Sexual Offences and Related Matters Amendment Act (SORMAA), No. 32 of 2007 (Department of Justice ..., 2007) stipulates that the law seeks to set up a criminal justice system that is compliant with international protocol, that affords victims maximum and least traumatising services. To uproot all forms of sexual violence from society is its primary intent.

Vetten (2011:183) found that there are various reasons why rape cases are withdrawn or postponed. These include the issue that the case still needs further investigation, and an apparent lack of interest from the side of the detective, where dockets are being brought before a court of law, so that those cases can be postponed or struck from the roll. From experience, the researcher has noted that where cases are being postponed, insufficient evidence or a lack of complete victim statements are contributing to this situation. Based on these factors, it is probable that more can be done when compiling victim statements.

Eterno (2012:4) states that crime exists in every human society. In social society this phenomenon is known as a 'cultural universal'. This phenomenon is called as such by social scientists. In human existence, as we know it, crime is an inescapable truth. Whenever a crime is committed, someone will inevitably report it to the police and make a statement. When processing the crime scene investigation, the utmost, crucial factor is that investigation officers use all resources to investigate the crime and identify the suspect to find out what happened. The principal goal of criminal

investigation is to collect evidence that will prove that the suspect or perpetrators committed such a crime.

According to the South African Police Service (SAPS) course manual on sexual offences for investigators (SAPS, 2012a:15), the statement from a first report witness is very important, especially in sexual offences. In this statement, specific reference is to be made to the physical and mental state of the victim, to substantiate the circumstances under which evidence was obtained. Van der Watt (2011:85) further reiterated that the first report statement explains the emotional and physical appearance of the victim after the incident. This could highlight important pieces of evidence initially left out by the police, or not disclosed by the victim. Tilstone, Hastrup and Hald (2013:343) state that during the initial interview and observation, when reporting the incident, the first report statement in the police report is important. A statement is a form of written narrative, expressing facts and information through verbal communication (Lochner, 2014:60). First report statements that are inaccurate and incomplete lead to prosecutors withdrawing cases and finding perpetrators not guilty (Lochner, 2014:14).

The investigation cannot be conducted in a systematic manner if the problem is unknown, and a scientific research process therefore needs to be formulated of what should be investigated (Cooper, 2010:12). The reason for this research is explained in the next section (Maree, 2016:30).

The problem at the Graaff-Reinet Police Station is that the conviction rate of rape cases has dropped from 81% to 55% during the period 1 January to 31 December 2017 (SAPS, 2018). The researcher argues that the reasons for the decline in the conviction rate may partly be based on the failure of the investigation officer (or person taking the victim statement) to compile the statements as per National Instruction 3/2008: Sexual Offences, subsection 9. The officials who take the statements overlook the fact that the elements of the crime should be present in the statement, and, in some instances, that the chain of custody is not intact.

At the initial stage of drafting the proposal for this study in 2019, the researcher focussed primarily on sub-section 9 of NI 3/2008: Sexual Offences, because of its importance to the investigator. The initial study was premised on this specific portion

of the National Instruction. As the study unfolded, it became clear that sub-section 9 needs to be read in conjunction with subsection 18. The two are mutually exclusive for this study.

Investigators need to understand the guidelines contained in the “NI 3/2008” and take exceptional care not to deviate from them. The guidelines comprise the preparation for taking the statement, the presence of an interested person, the discussion of intimate details, and that the victim should be advised not to hide anything. The entire NI is attached to this study as **Annexure D**.

This research study proposed to evaluate to what extent the investigators are adhering to the guidelines set out in subsection 9, read in conjunction with subsection 18 of NI 3/2008: Sexual Offences, during the investigation of rape cases. The research focused on compliance with the activities contained in subsection 9 and 18 that deal with the handling of the rape victim, as well as taking the victims’ statements reflecting the unlawful rape. The researcher has experienced that cases are being postponed due to ‘insufficient evidence’ during court proceeding and when evidence is presented in court, when the researcher have to testify and hearing out other court cases.

1.2 AIM OF THE RESEARCH

Walker (2010:245) declared that an aim is what one wants to achieve through research. The research aims to seeks the direction of the study through the overall intent and scope (Stokes & Wall, 2017:21). To clarify the study goal’s in qualitative study are based on the research purpose and problem (Gray & Grove, 2021:131). Gray (2014:89) states that the aim defines the intent and direction of research.

This research aimed to evaluate to what extent the investigators adhere to the guidelines, as captured in NI 3/2008 subsections 9 and 18 for Sexual Offences, when rape victims’ statements are being taken for further investigation.

1.3 OBJECTIVES OF THE RESEARCH

Surbhi (2017) states that an objective is something a person or entity seeks to achieve by continuously chasing it. Denscombe (2014:85) explains research

objectives as a statement about what the research will do, and that the researcher will use existing knowledge, apply it to a particular context, and develop new knowledge that can have practical value.

The main objectives of the study were the following:

- To explore what a comprehensive victim statement should contain in a rape investigation to meet the requirements of Annexure E of NI 3/2008: Sexual Offences.
- To explore to what extent the guidelines issued in subsections 9 and 18 of NI 3/2008: Sexual Offences are being complied with when rape victims' statements are being recorded.

1.4 PURPOSE OF THE RESEARCH

Creswell (2013:134) states that the interrelationship between design and approach continues with the purpose statement which provides the objective and maps to the study. It needs to be constructed and written in clear and concise language. Maree (2016:31) explains that by carefully crafting the purpose of the research, the reader is informed of how the research will be done, what the focus will be, where it will be conducted and who will be involved. Furthermore, it is of the utmost importance to note that the purpose of the research is to make predictions about the future, and to equip all those involved in the research (Denscombe, 2010:11).

The purpose of this research was to evaluate to what extent the guidelines issued in NI 3/2008: Sexual Offences are adhered to by the responsible police officials affiliated with the Graaff-Reinet, Willowmore and Aberdeen police stations, when they take down the statements of rape victims for further investigation.

1.5 RESEARCH QUESTION

Jesson, Matheson and Lacey (2011:18) stated that the structure of research questions for a literature review is a crucial step in the research process. Furthermore, Flick (2011:90) maintained that the limitations to a research question guide the researcher in following a chronological sequence. Research questions

must be clear, logical, self-explanatory and linked to the research purpose (Maree, 2016:32).

The researcher focussed on the following question to guide the research study and achieve the research goal:

- To what extent are the prescriptions highlighted in subsections 9 and 18 of the NI 3/2008: Sexual Offences being complied with by investigators taking the statement from the rape victim?

1.6 DELIMITATION OF THE STUDY

Marshall and Rossman (2011:77) informed that the research limitations remind the reader that the study is bound to a specific context. Hofstee (2011:87) further mentions how far the researcher can generalise their conclusion, according to how reliable and self-assured they are.

The study is demarcated as follows:

The focus of this study was on three different stations within the Graaff-Reinet and Willowmore clusters. These stations have the highest incidents of sexual assault cases, of which rape is the overwhelming incident, as presented in Table 1.1, below, as taken from the national crime statistics (SAPS, 2015, 2016, 2017, 2018 & 2019):

Table 1.1: Incidents of rape cases for the Graaff-Reinet-Willowmore cluster, 2015-2019

	2014/2015	2015/2016	2016/2017	2017/2018	2018/2019
Graaff- Reinet	38	36	31	41	37
Aberdeen	9	13	8	6	10
Willowmore	5	12	8	8	12
Jansenville	10	12	3	3	11
Klipplaat	5	3	8	6	8
Rietbron	2	1	0	0	0
Steytlerville	7	6	4	3	5
Pearston	5	10	7	9	9
Murraysburg	7	17	9	6	2

(SAPS, 2014; 2015; 2016; 2017; 2018 & 2019).

The research focused on closed-off rape cases for the period 1 June 2017 to 31 May 2018, where the suspect was known to the victim, and the victim was 18 years of age or older. Furthermore, the demarcation, in terms of the gender of the victim, encompassed either male or female, as per the Crime Administration System (CAS) specification. The researcher is, however, mindful that there are around 64 different terms that can be used for gender classification, but for the purposes of this research, only the two previously mentioned terms were used (Abrams, 2019).

1.7 DEFINITION OF KEY TERMS

According to Leedy and Ormrod (2016:61), the researcher can use the key terms in any context in the research problem or sub-problem. Readers and researchers from outside the scope of the study, who read the report, must understand what the researcher wants to explain. Furthermore, Leedy and Ormrod (2013:43) mention that the key terms should be defined in the manner in which they are going to be used in the research. Creswell (2014:73) adds that the terms need to be defined so that readers know its meaning. Terms need to be defined early in the proposal, so that the reader does not read ahead, understanding the concept in one way, only to find that the researcher defines the terms differently.

1.7.1 Victim statement

Geldenhuys (2015:15) states that a victim statement relates how a crime occurred from the victim's point of view in their own words.

1.7.2 Investigation

Carter, Ellis and Jalloh (2016:166) explain that an investigation includes collecting evidence, interviewing perpetrators and witnesses, or conducting forensic analysis.

1.7.3 Rape

Section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007(SORMAA) states that any person who unlawfully and intentionally commits and of sexual penetration with a complainant, without the consent of complainant, is guilty of the offence of rape (Department of Justice ..., 2007:20).

1.7.4 Statement

Lochner (2014:60) defines a statement as a form of a written narrative, expressing facts and information through verbal communication.

1.7.5 Gender

Gender is ... an identity that is learned, that changes over time, and that changes from one culture or society to another (Chapter 1: Gender 2019).

1.7.6 Sex

Sex is understood to be male, female or intersex based on those biological characteristics that are used to describe humans (Chapter 1: Gender 2019).

1.8 LITERATURE REVIEW

According to Denscombe (2010:33), the purpose is to inform the researcher about what is already known about the subject – the knowledge which is used as a background for an investigation, and which will progress and guide the study. Kaniki (2014:19-20) states that the literature review shows how the research project fits into the field through context. A literature review is conducted to identify gaps, develop research problems, identify variables and issues relating to the research topic, identify operational, conceptual methodologies and definitions, refine and develop key concepts, and execute a literature search strategy (Kaniki, 2014:20-22). Thomas (2013:58) mentions that the literature review serves to find out what has already been carried out in other research topics.

The researcher perused various databases and repositories to find more information regarding the same topic, but none could be found. The researcher split the topic into various key concepts and research questions, such as statements, victim statements, victim, suspect, crime scene, and rape. The researcher then visited the Graaff-Reinet and All Saints Police Academy libraries to search for sources covering the research topic.

Books that held information about the research topic, shed some light on it, so that the researcher could read through them and obtain relevant information. The researcher also visited various websites, and read articles and documents relevant

to the topic. The researcher was guided by the aim of the research, as well as the research question, to obtain relevant information. Dissertations relevant to victim statements and statements about rape cases, were consulted.

The researcher consulted various sources for information on the research topic on the Internet, as well as in newspapers, magazines and case studies. Research had been done in various fields by different researchers, such as Dintwe (2009). The researcher conducted research on the significance of biological exhibits in investigation of rape cases. In Humbulani (2016) the value of the first report statement in the investigation of rape was studied. In Van Der Merwe (2010) the researcher perused the value of the victim statement in the investigation of rape, and in Van der Watt (2011) the researcher investigated the value of docket analysis in stranger rape investigation: a case study in Port Elizabeth. Information on national crime statistics in South Africa from 2014/2015 to 2018/2019 South African Police Service (SAPS) was also consulted to find information around the research topic.

The area where they have encountered problems is the way in which statements are taken from rape victims. When the supervisor inspects dockets on a weekly and monthly basis, it is discovered that the victim's statement does not have all the elements of a crime, but it gives a clear sign and concise representation of what the victim felt and experienced. The statement of the victim should include the intention to commit a crime, as well as the unlawfulness in doing so. The researcher encountered areas with a detailed description of the suspect in victim statements, on what the suspect was wearing, his smell, specific markings and his speech. Furthermore, the victim statement should include everything that happens when the crime was committed.

Various sources cited on the research topic were searched, but no sources were found on the exact same topic. Literature related to the topic were found on both national and international websites. Newspapers, journals and Unisa websites were consulted on the topic, but no information on the exact same topic could be found – only information that is relevant to the topic. The researcher was not able to find any research that had been conducted on, or pertained specifically to, adherence to National Instruction 3/2008: Sexual Offences.

1.9 METHODOLOGICAL FRAMEWORK OF THE STUDY

Wahyuni (2012:72) describes methodology as a model to research within the context of a particular paradigm. The method follows beliefs about ontological and epistemological stances within a paradigm. Thomas (2013:183) explains that methodology is a discussion of methods that will be used, and, importantly, the reason these methods are being used. Thus, methodology speaks to the framework encapsulating the aspect/s being studied, the data that will be collected, how such data will be collected, and from whom, and how that data will be analysed.

1.9.1 Philosophical worldview offered of the study

According to Bell (2014), a worldview is the way an individual and a group of people interpret the world around them. Worldviews represent a framework that exist in how they shape one's beliefs, attitudes and actions. Researchers bring certain beliefs and assumptions into the world that they study (Creswell, 2013:12-13). While these assumptions and beliefs may not always be visible, they will inform how the researcher selects their studies and how to approach them. The world in this sense refers to people's experience in the social world. The researcher is aware that assumptions can change with time, and that multiple assumptions can be evident in the study.

As will be explicated in paragraph 1.12, below, this study followed the qualitative design. According to Hesse-Biber (2017:34-36), there are three major methodological approaches in qualitative research. These are post-positivism, interpretivism and critical theory. In this research, the researcher used an interpretivist worldview, which relates to the pragmatist framework. This approach is concerned with what works, thus finding solutions to problems (Creswell, 2013:27-28) – which, in the view of the researcher, fitted well into the frame of this study.

1.9.2 Research approach and research design

Literature abounds with descriptions of research designs and research approaches. At times, these descriptions are in conflict, sometimes even from the same source. In this research, the conceptual clarification, as presented by Kumar (2015:21), was

used. There are three primary modes of inquiry or approaches to research: qualitative, quantitative and mixed methods (Kumar, 2015:14). The approach best suited for this research was a qualitative approach, as the aim of the research was to explore and explain, rather than to quantify (Kumar, 2015:14).

The research approach informs the research design. The purpose of the research design is to supply a framework for the collection and analysis of the data (David & Sutton, 2011:204). It supplies the framework upon which the research is conducted, to enable the researcher to gather all related evidence that will address the research question. 'Case study' is best suited for the research design. Case study design is characteristically more flexible and utilises more open-ended techniques for gathering data (Kumar, 2015:155). This design was selected to enable the researcher to gain access to, and therefore a clearer understanding of, the realities from FCS investigators and first responders' experience when dealing with rape victims.

1.10 POPULATION AND TARGET POPULATION

1.10.1 Population

Suter (2012:329) defines a population as a group the researcher intends to use, and about whom to make a generalised statement. A population is a specific group from which the researcher generates a sample, using data from that sample to make inferences about the larger population (Suter, 2012:330). Bryan (2012:714) describes a population as a unit from the universe from which a sample is selected. The total of all possible participants who meet the criteria set for a research project, is the population (Leedy & Ormrod, 2013:97).

For this study, the population included all the members from the various specialised FCS units and uniformed branches in the entire SAPS, across all nine provinces. Due to time constraints and limited resources, using this entire population was an immense and close-to-impossible task. The study focus was shifted to a specific target group, where the area of concern was situated. The target group for the research comprised the FCS investigators and first responders at the respective stations, as mentioned in paragraph 1.6 supra. This target population of the study comprise of members from the district office.

1.10.2 Target population

Fink (2014:81) defines the target population/group as part of the study of institutions, problems, persons and systems to which/whom study findings are generalised. Jackson (2010:20) argued that a target population includes all people whom a study is meant to generalise. Jackson (2010:20) further states that the people on whom the study will be focusing, comprises the target population.

The target population for the research was the FCS investigators and first responders at their respective stations, mentioned in paragraph 1.6. Leedy and Ormrod (2013:97) state that, in qualitative research, the researcher selects participants who will shed light on the research phenomenon on hand. This selection method ensures that the selected participants include all people who have lived and experienced the phenomenon under investigation (Gray, 2014:208). In qualitative research, there are no hard and fast rules for selecting a suitable sample size. Still, of the in-depth interviews often used in this methodology, the sample sizes tend to be smaller than within the quantitative paradigm (Wagner, Kawulich & Garner, 2012:88).

1.10.3 Sampling

Kumar (2015:247) defines sampling as the process of making use of a bigger group and selecting a few samples to estimate the prevalence of an unknown piece. Leedy and Ormrod (2010:196) defined sampling as the process by which elements from the population are drawn. Sampling involves a sample from a population (Christensen, Johnson & Turner, 2011:150).

There are two primary sampling approaches: probability and non-probability sampling, in which there is a variety of different sampling techniques. In probability sampling, one will find simple random sampling and stratified random sampling. The systematic sampling – cluster sampling, is within the non-probability sampling approach, as well as accidental or incidental sampling, purposive sampling, quota sampling and snowball sampling (Wimmer & Dominick, 2011:92-102).

Probability sampling is also known as simple random sampling, which determines the probability that any element and member of the population can be included in

the sample (Wimmer & Dominick, 2011:95). Suter (2012:472) states that random sampling is used to make sure that each member of the population has an equal and fair chance of being selected for inclusion in the sample. There is no ground rule to determine the sample size that might be needed.

Wimmer and Dominick (2011:102) stated that the factors which need to be considered in choosing a sample is the size, need, population size and type of research, as well as design, methods of data collection and analysis, hypothesis, and financial resources. Two different groups were used in this research, and the researcher used a sampling technique for only one of them. The researcher used snowball sampling to select the participants. The research used this sampling technique because the population is hidden. Rich, Brains, Manheim and Willnat (2018:133) explain that snowball sampling is when a participant who is used in the research, is then asked to identify others whom they know will also meet the criteria to take part in the study.

The number of participants per category is represented in the table below as N for Population. The number of units selected from each of the categories was represented as n – sample. No sampling was used to select the FCS detectives, because there are so few of them.

Table 1.2: Sampling table

Station name	FRO – N	N	FCS – N
Graaff-Reinet	32	Data saturation (n-16)	6 – all interviewed
Willowmore	18	Data saturation (n-8)	1 – all interviewed
Aberdeen	12	Data saturation (n-4)	0
Total	62	28	7

- **Sample A: First Responding Officers (FRO)**

The researcher needed to interview those FROs who have experience in taking statements from rape victims. He used snowball sampling to select the participants, because in this sampling technique the population is hidden. Boncz (2015:29) states that snowball sampling refers to the gradual grow, where people contact and suggest other people. The researcher collected data from people who met the

criterion of having taken statements from rape victims, and they were then asked for the details of other people who also met that criterion. The researcher used this sampling technique to gather data from the participants, until no new information was forthcoming.

Starting with the Graaff-Reinet station, the researcher approached the shift commanders of the four shifts, and obtained one name each of a FRO that they knew had personally taken a statement from a rape victim. Each of these participants were then asked to give the researcher the name of a colleague on their shift, whom they knew had also taken a rape victim statement. This process was followed until data saturation was reached for that specific station. The same process was followed for the Willowmore and Aberdeen stations. Data saturation is when the data that is reoccurring is not new, but is the same. Burmeister and Aitken (2012) (as cited in Fusch & Ness, 2015:1409) argue that data saturation is less about numbers and more about the depth of the data.

- **Biographical data: FRO**

Twenty-eight (28) FROs were interviewed. The majority were male (17) and the remaining eleven (11) were female. The researcher finds this gender disparity rather troublesome. Of this group, 25 FROs were between 30-40 years of age, and two (2) were older than 40 years. This is a good age for an FRO, as this age group is considered more mature and experienced than their counterparts who were still in their twenties. Research conducted by Horn (2022) revealed that men reach emotional maturity, on average, by the age of 43 years, but females by the age of 32 years.

Very few of this group had post-school qualifications: two (2) held degrees, and one (1) a diploma. The rest held National Senior Certificates. From this group, four (4) had attended the Detective Learning Programme, and one of them had also attended the Sexual Offences training. Three (3) had attended training on Vulnerable Children, and one (1) of them had also attended the Sexual Assault training. Two (2) had attended the Domestic Violence training, and one (1) of them had also attended the Sexual Offences training. Another two (2) had attended training on how to deal with Sexual Offences. Thus, of the 28 FROs, only eleven

(11) had any form of additional training, apart from basic training. While this is not an ideal situation to have at police stations with large incidents of sexual offences, it is also noteworthy that eleven (11) of the participants had additional training.

There were 22 constables, four (4) sergeants and two (2) warrant officers in this group. Twenty (20) of these participants had more than 11 years' experience as SAPS members and the remaining eight (8) had between 1-10 years' experience in the SAPS.

- **Sample B: FCS Detectives**

Since there were eight (8) FCS members, in total, who service this policing area, all of them were interviewed, and therefore no sampling method was used. The researcher followed the interview protocols and adhered to the regulations as stipulated in paragraph 1.15 Ethical Considerations, with sub-heading COVID-19 Research Protocols.

- **Biographical data: FCS**

Of the eight (8) FCS detectives, the researcher was only able to interview seven (7). All the participants were older than 30 years, but the majority were younger than 40 years. This is perhaps not the best age for an FCS detective, when taking emotional maturity into consideration. Four (4) of the participants were male, and the rest were female. It is ironic that crimes which are traditionally being perpetrated against females and vulnerable children, are being investigated in this cluster, predominantly by men.

Of this group, only two (2) had post-school qualifications. What was very unnerving, was that only three (3) of the FCS detectives had attended training for detectives. None of them had attended the FCS training. There were two (2) warrant officers, two (2) sergeants and three (3) constables in this group. Most of the participants in this group had more than ten (10) years' service in the SAPS, and only one (1) with less than ten (10) years' service in the SAPS. Six (6) of the FCS members had less than ten (10) years' experience at the FCS and one (1) had more than ten (10) years' experience.

1.11 DATA COLLECTION

De Vos, Strydom, Flick (2011:119, 122), Fouché and Delport (2011:328, 341, 376) and Leedy and Ormrod (2010:146) stated that data collection includes documentation, observation, interviews, literature and case studies. Babbie (2013:391) emphasises that the value of research depends on how the data is collected. The way the data is collected will depend on the type of research and the purpose of the research.

Leedy and Ormrod (2013:78) inform that original data is primary data collected by the researcher for the study on hand, whereas secondary data is derived from the primary data. The researcher used primary data in this study. The data collection techniques comprised interviews, literature and case docket analysis.

The researcher used interviews to obtain data from the participants per protocol, for interviews, and explained the process in paragraph 1.15 for Ethical Considerations within sub-heading COVID-19 Research Protocols. In the process to obtain data, the researcher used audio recordings during the interviews, to ensure that no vital information was lost during the interviews.

Different data-gathering methods or techniques, called triangulation, are also used, and it is especially useful in qualitative work. According to Creswell (2014:201), the researcher must use more than one data collection technique, as it allows him to use the triangulation strategy by using different data sources of information, by examining evidence from sources, and using it to build a coherent justification for themes.

1.11.1 Literature

According to Denscombe (2010:33), the purpose of the literature review is to inform the researcher of what is known on the topic, and to use that knowledge as a background for investigation, which will guide the study. Kaniki (2014:19-20) states that the literature review shows how the research project fits into context.

Furthermore, Kaniki (2014:20-22) also states that the literature review is conducted to identify gaps, develop research problems, identify variables and issues related to

the research topic, identify conceptual, operational and methodological definitions, to refine key concepts and execute a literature search strategy. Thomas (2013:58) mentions that the literature review serves to find out what other people have already researched on the topic.

The researcher made use of one official document issued by the South African Police Service (SAPS) to their members, when dealing with victims of sexual assault: NI 3/2008: Sexual Offences. According to Nieuwenhuys (2016:88), such official documents are considered as a primary source.

1.11.2 Interviews

To obtain the participants' views and opinions, the researcher made use of semi-structured interviews (Leedy & Ormrod, 2010:188). The researcher formulated two interview schedules: one for the FROs and a separate one for the FCS participants. Nieuwenhuys (2016:93) explains that when a researcher has a specific line of inquiry, then a semi-structured interview is the best option for data collection. Since South Africa was under COVID-19 restrictions at the time of conducting the research, the researcher needed to comply with very specific, strict COVID-19 interview protocols.

To this end, the researcher adhered to the following rules: He made sure that there was a suitable location for conducting interviews. The researcher made sure that he adhered to Unisa's COVID-19 regulations, as well as to the Disaster Management Act 57 of 2002 (regulations to COVID-19 open by-laws). The interviews were conducted at Graaff-Reinet, Willowmore and Aberdeen police stations. Proper care was taken to make sure that he was not interrupted during the interviews. All interviews strictly adhered to the COVID-19 regulations, and the venue was sanitised before and after each interview was conducted. There was no sharing of water, food or writing instruments. Both parties wore face masks that covered their mouths and noses properly, and social distancing was observed.

The researcher personally conducted the interviews to gather the data from the participants. The researcher ensured that he adhered to the protocol for interviews, as explained in paragraph 1.15 below, titled COVID-19 Research Protocols. The researcher made audio recordings of the interviews, with the permission of the

participants. The researcher did this to ensure that no information was left out when he transcribed the data. All the interviews were done anonymously. The researcher was able to go back and listen to the recordings, to familiarise himself with the information.

Prior to the interviews, the researcher conducted a pilot test of the data-gathering instruments among two FROs at the selected sites. According to Fink (2014:178-179), the aim of a pilot test is to maximise reliability. The first test is the eligibility criteria, to test if all reviewers agree whether to include or exclude articles and accept or reject studies for the same reason. The second step in pilot testing is to try out the actual reviewing process. The persons who took part in the pilot testing were excluded from the final sample. The same process was followed with the data-gathering instrument for the FCS detectives; however, an interview was conducted with two (2) of the unit commanders, because there were so few FCS participants available for this study. While the majority of the interviews were conducted in 2021, there were a few that could only be completed in 2022.

Once these instruments were tested, the researcher, together with his supervisor, studied the results, amended the interview schedules, and finalised them for the data-gathering phase of the research. The interview schedule used for the FROs is attached as **Annexure B**, and for the FCS detectives as **Annexure C**.

1.11.3 Case docket analysis

The researcher is aware that the SAPS does not readily approve docket analysis as part of its data-gathering methodologies; however, the researcher motivated his need to access closed-off rape dockets by presenting a checklist. The checklist was designed at the hand of the activities, expected from the police officials, contained in Annexure E of NI 3/2008: Sexual Offences. This checklist is attached as **Annexure A** and while it is based on Annexure E, it is not exactly the same in terms of format. This checklist (designed by the researcher) was used to verify that the actions/activities expected from the police officials in relation to Annexure E of NI 3/2008: Sexual Offences have been carried out, as evidenced by the content of the closed-off and finalised dockets. To avoid confusion, the original checklist, known as Annexure E to the NI is attached to this research as **Annexure E**.

The researcher made every effort not to view the details of the victims, suspects or witnesses. The researcher focused exclusively on the verification of the requirements of Annexure E of NI 3/2008: Sexual Offences, and that they had been complied with. For this process, the researcher selected the closed-off/finalised case dockets registered in Graaff-Reinet, Willowmore and Aberdeen police stations for the period 1 December 2017 to 1 November 2018. The reason for the choice of this time period was that it was the period directly before the researcher commenced his interviews. Only closed-off/finalised dockets were used. There were 44 dockets: 29 that had a not-guilty verdict, 15 had a guilty verdict and 2 were withdrawn. The researcher excluded the latter 2 from the sample.

Using the checklist, the data showed whether the guidelines contained in subsections 9 and 18 of the NI had been complied with in the investigation and the victim statements. Furthermore, the researcher looked at the Investigation Diary of the dockets, to establish if notes had been made regarding the guidelines and content of the victims' statements.

1.12 BRACKETING

Due to the phenomena of the study, the researcher's own personal experience in the recording of statements came into play. The investigation of rape cases led the researcher to select the topic. The researcher's background, gender, culture and experience formed the basis of the research. Creswell (2013:78-79) is of the opinion that the researcher can use his own life experience in qualitative research, as a data collection technique. The past knowledge of the researcher must be engaged and used. However, in this lies the danger of researcher bias. Therefore, the researcher undertook to 'bracket' himself during the data collection process, so that his own experience, bias and background did not influence the data in any way. Herewith follows an autobiographical sketch to contextualise the researcher and the various aspects that had the potential to create bias in the research process.

1.12.1 Background and childhood

The researcher is a Coloured male, 42 years of age in 2020. The researcher grew up in a lower-class South African family, where my father was the only breadwinner. My father was a bricklayer, and my mother was medically unfit to work, due to her

illness. While growing up, I was one of those boys who was afraid of the sound of a police vehicle, even though it was not nearby. I was curious to find out more. My interest was in movies, and I can still recall the movie 'Sending Vietnam' in the 1980s, and would despise the fact that soldiers would rape and kill innocent people. The greatest lesson that I learnt from that, was that nothing came easy in life, and one cannot always expect things to go one's own way. My father remains my superhero, even in his afterlife.

1.12.2 Life, military and SAPS career

After finishing secondary school in 1995, I had dreams of becoming a lawyer, a soldier or an engineer. The fact that my father was the only breadwinner caused my dreams to fall to pieces and shatter. I applied for military training, and began my service in 1997, of which I served four years. During my training, I learnt a lot about respect, and how the world sees members of the military. My inner ability was always to protect innocent people from harm. My career in the SAPS started in 2002, as a police official. The privilege of receiving an income, and determination, led me to receive a bursary from the SAPS, to continue with my studies. With the economic factor, and difficulties from my family, the purpose to work as a police officer in a crime-ridden country was a great challenge. My wife, Batseba, is my trusted companion, and she is an inspiration on the value of work that both of us are doing in the police service.

1.12.3 Investigation of rape cases

My concern and interest in crime that is committed against women and children began even before I joined the SAPS. I joined the Criminal Record Centre (CRC) in 2005, with great excitement to learn the smaller and more detailed aspects of crime scene investigation.

I investigated rape cases not only in the Eastern Cape, but also in the Northern Cape, when I worked in Colesburg at the Local Criminal Record Centre (LCRC). During that time, when I investigated rape cases, I could sense a pattern and consistency in the rape cases. I never allowed my inability to prevent and control what had already happened, to take the upper hand. My reaction was never biased, even though I sometimes thought that the justice system only punishes those who

cannot afford good lawyers. When I am investigating cases, I never let my personal feelings overwhelm my work. My approach when conducting investigation, is work related. I never allow my judgment to be clouded by feelings or interest, of any party thereof.

1.12.4 Faith in God

I must give thanks to the Almighty for protecting and guiding me through the Word of God. In the Bible it is stated that you must love your neighbour as you love yourself. Even in the Ten Commandments we learn to never kill, envy someone else his wife or belongings, and most of all we must love our Father God of Heaven and Earth. I respect the worldview on Christianity, in that some are non-believers and those who even dispute the fact that the earth was created in six days and that we must rest on the seventh day. I consider the interpretivist approach as suitable for addressing the research problem.

1.12.5 The problem and purpose of the research

The complexity and nature of how and why most rape cases are never resolved, or perpetrators caught, is the problem of the research. In Chapter 2, more detailed information will be given, and more in-depth knowledge gained on why certain factors have an impact on the conviction rate of rape victims. My experience and background in the investigation of rape cases, and the manner in how to draft victim statements, gave me a deeper sense of questioning the need for further exploration. The experience and understanding that I have divulged in this autobiographical problem statement underpinned and impelled this research.

1.13 DATA ANALYSIS

According to Silverman (2013:9), data analysis is to explore and explain what is underlying in data. De Vos et al. (2011:397), stated that data analysis brings meaning, structure and order to the mass of collected data. Data analysis consists of systematically searching and arranging interview scripts, field notes and other materials which the researcher has accumulated to increase his understanding, to enable the presentation of that which the researcher has discovered, to others (Boeije, 2010:76).

Marshal and Rossman (2011:59) stated that qualitative research is founded on the experience of the researcher. This researcher has sixteen years' experience in rape investigation and has dealt with this crime on a continual basis.

The data collected by the researcher was broken down into trends and patterns as they emerged. This was then compared with the national and international literature containing information on the topic. The researcher used the spiral method in the data analysis process, as described by Leedy and Ormrod (2010:153). The researcher did the following:

- a) The researcher transcribed the data and organised it into themes (as it emerged) using a computer database.
- b) The entire data set was perused by the researcher several times to get a sense of what it held.
- c) The researcher then identified the general themes and categories, sub-categories and subthemes.
- d) The outcome of the data analysis that was integrated and summarised will enable the researcher to make findings and recommendations about the research question.

Furthermore, the researcher found a better understanding by discussing the findings of the interviews and the literature, with colleagues. This helped the researcher to gain a focus and offer practical recommendations in the final chapter.

1.14 TRUSTWORTHINESS

According to Suter (2012:499), data trustworthiness, either collected from direct observations, interviews or focus groups, is evidenced by the following aspects: transferability, dependability, confirmability and credibility. The researcher will test the trustworthiness of the research by making use of the triangulation method to gather data. Creswell (2013:208) indicates that triangulation refers to different data sources used to build a coherent justification.

Saldana (2011:136) stated that trustworthiness is when the researcher or author informs the reader about the research process. The author further stated that the

researcher must be honest and open, to the reader, about any difficulties they might have encountered during the research.

1.14.1 Credibility

Credibility refers to the ability to believe findings that have been achieved through different sources, confirmation from evaluation of research participants, multiple source convergence and the control of influence. Qualitative researchers make use of multiple sources of data and collection strategies, known as triangulation, to enhance the credibility of their studies (Suter, 2012:500). Denscombe (2014:297) states that credibility in research is where the researcher demonstrates that their data is appropriate and accurate. The credibility of data is checked in accordance with good practice and not guaranteed. According to Tracy (2013:235), credibility refers to the dependability, trustworthiness and expression of a reality that is true or plausible. Credibility in this research was ensured through the application of, and adherence to, rigorous research methods as described above, under the supervision of the researcher's supervisor. The researcher provided a transcript of their interview to each participant, for accuracy verification (Nieuwenhuys, 2016:123). The researcher also did regular check-ins with his supervisor, and once the data analysis progressed, he sound-boarded the preliminary data with colleagues for their insight.

1.14.2 Transferability

Transferability refers to the overall findings of supporting evidence and the generalisation of findings across the different participants, situations and groups. Transferability can also be achieved by evidence of theory transfer (the same ideas applied widely) and shows to be applicable to other fields (Suter, 2012:500). Denscombe (2014:299) states that the research tends to focus on a specific case and intensively studies it. However, transferability cannot be guaranteed, because it is believed that the researcher has described the research context and the process. The reader will make the determination, in relation to the degree, that the findings will be transferable to another policing context.

The researcher is of the view that since there are several other station areas which are challenged with similar crime and policing problems, as in this context, the

findings may be of value to the police officials at those stations. This will be determined by the police officials at those stations (Nieuwenhuys, 2016:123-124).

1.14.3 Dependability

In the research process, the researcher makes sure that data collection follows a chronological process and is clearly documented. Dependability is akin to reliability in qualitative paradigms. Suter (2012:500) explains that this pattern shows that the researcher would get similar findings to support the claim, and even if the research was repeated, the same findings would be achieved. Denscombe (2010:298; 2014:299) refers to it as where the researcher forms an integral part of the research instrument.

To enhance the dependability of the research, the researcher personally conducted the interviews with the FRO and FCS investigators, based on the interview schedules designed for each sample. The researcher put different questions to the different role-players, although there were some questions that did overlap. The FCS investigators received their own set of questions, as set out in the interview schedule. The first responders received a different questionnaire. This approach was followed so that the researcher could evaluate both sets of data, and make sure that a clear and objective view of the problem being studied, was obtained.

The researcher conducted a pilot study to test the data-gathering instruments before they were refined (with assistance from the supervisor) for use in the field. The interviews were held in secure locations and the protocol for the interviews, as explained in paragraph 1.15 below, was followed. The researcher made use of audio recordings (with permission from the participants) and he also took notes during the interviewing process. Relevant literature was used in this study and properly cited. The researcher conducted docket analysis (using the checklist as approved by the SAPS) to determine to what extent the participants were adhering to subsections 9 and 18 of the guidelines, as stipulated in National Instruction 3/2008: Sexual Offences.

1.14.4 Confirmability

Confirmability refers to objectivity and control of bias in research. In qualitative research bias is ever-present, but this may be mitigated once the researcher reflects on his own interpretations and feelings. Confirmability is enhanced by the consistency in qualitative research that reaches similar findings (Suter, 2012:500). Denscombe (2014:300) refers to the extent to which researchers can produce findings that are untainted by the researcher who conducted the research. It should be recognised that no research is free from the influence of those who conduct it. As such, the researcher presented his worldview under the section titled 'Bracketing' in paragraph 1.12, supra.

The researcher kept a detailed record of the literature he consulted, to show that the findings were truthful and not something imagined by the researcher. The researcher enhanced the confirmability of the research by making use of in vivo quotes in the text, which provide a holistic overview of the participants' feedback. Where outliers appeared, the researcher highlighted these as quotes in the text, and discussed the possible implications of these findings (Nieuwenhuys, 2016:125).

1.15 ETHICAL CONSIDERATION

According to Thomas (2013:83), the purpose of doing research is to promote knowledge, alleviate suffering, or help mankind in some way or another. Miles, Huberman and Saldana (2014:66) state that one cannot focus only on the quality of knowledge one is producing, as if the truth is all that counts.

Research must be guided by the principle of human conduct of first do not harm. Denscombe (2010:330-338; 2014:309-314) refers to the code of ethics in research that it must stick to the core principle. Social researchers should conduct their research in such a way.

Participants need to be protected: This will allow all participants to be free from harm and decide that they are willing to participate in the research project. The participants were not worse off after the research was conducted than before the time. The researcher made sure beforehand that there was no external influence, interference or conflict of interest, all to safeguard the participants. The researcher

ensured that no information was leaked in relation to the scheduled interviews, so as to safeguard the identity of the participants. The research was conducted in an ethical manner to avoid any psychological harm to the participants. The researcher made sure that no harm came to the participants who took part in the research process. These steps ensured compliance with the principles of beneficence and non-maleficence.

Participation should be voluntary and based on informed consent: The participants who took part in the research were not forced, and partook voluntarily. The participants were informed of the whole research project and a consent form was completed prior to the interviews being conducted. In the instances where no written consent could be taken from the participant, because interviews are conducted via a virtual method (MS Team of Google Meet), the researcher made use of verbal consent, because the name and information of the participant would not be revealed.

The researcher should operate in an open and honest manner with respect to the investigation: The researcher made sure that he did not deceive or mislead the participants. The researcher was honest about the research, and made sure that he undertook the research project with integrity and commitment to the core.

Research should comply with the law: The research was done within the boundaries of the law, as well as the ethical committee of the University of South Africa (Unisa). The research was conducted in such a manner that it did not contradict, or intrude on the privacy of, anyone.

The researcher adhered to the research ethics in National Instruction 1 of 2006 of research and the Policy on Research Ethics in Unisa (2016). The researcher applied for, and was granted, ethical clearance from the College of Law Ethics Committee. Ethical clearance certificate for this research is attached as per Annexure G. Based on this, the researcher applied for permission from the SAPS to conduct the research. Permission letters from the SAPS are attached as per Annexure F.

The researcher further undertook to abide by the following general ethical principles:

- **Respect for protection of the rights and interests of participants and institutions:** The researcher respected and protected the rights, dignity and privacy of the entire group of participants who took part in the research. He also made sure that their personal information was protected and dealt with according to the Protection of Personal Information Act (POPIA) 4 of 2013. Participants were therefore referred to by a coded number in the text, and not by their names.
- **Respect for cultural differences:** The researcher respected and treated all the participants as equal human beings. He showed respect for the diverse traditions and cultures of the participants. Respect for both cultural and ethnic beliefs is of the utmost importance.
- **Integrity, transparency and accountability:** The researcher made sure that he was honest and fair, and that his conduct aligned with the spirit of Ubuntu. The researcher remained aware of his own limitations and beliefs throughout the research. The final dissertation was submitted to Tii and the confirmation is attached as per **Annexure J**. The dissertation was language edited prior to submission for examination. The editors report is attached as per **Annexure I**.
- **COVID-19 Research Protocols:** As per the guidelines issued by Unisa, the researcher adhered to Unisa's COVID (2020) regulations, as well as to the National Disaster Management Act 57 of 2002 (Regulations to COVID-19 open by-laws). The relevant COVID guidelines issued by Unisa are attached as per **Annexure H**.

For face-to-face interviews, the researcher followed the protocol as set out by Unisa. The protocol that was relevant for Level 1 of lockdown was as follows:

- A register was kept, consisting of the screening data of the participants who were screened prior to the data collection activities.
- The researcher was screened before the time; evidence of the screening data is available and was signed by a witness.
- The researcher and participants wore appropriate cloth masks, that covered both the nose and mouth area. They refrained from touching their faces during the interviews. The researcher and participants maintained a physical

distance of 2 metres between each other, as per the social distancing protocols.

- The researcher ensured that the participants had masks and sanitiser. Space masks were available if a mask malfunctioned. Hands were sanitised with 70% alcohol-based sanitiser.
- A telephonic pre-screening was done to confirm the interview with participants. The researcher did not continue with data collection if the participant or even the researcher felt unwell. Pre-screening was done by measuring the participants' temperature and asking them questions not posed during the telephonic screening. The information was recorded in the screening register.
- All surfaces were sanitised before and after the interviews, with 70% alcohol-based sanitiser.
- Disposable gloves were used when the researcher and participants handled the hard copies of documents and when the participants signed the informed consent forms. Such completed documents were placed in paper envelopes and stored for a minimum of three days before the researcher removed them. After documents were handled, the gloves were removed, and the participant and researcher again sanitised their hands.
- Stationery was sanitised and provided to participants (only where necessary).
- No food or drink was provided. The participants were encouraged to bring their own water bottle for personal use during the interviewing phase.

The participants were given the opportunity to decline or withdraw from the research project at any time. There was no need for the researcher to make use of personal protective clothing.

1.16 RESEARCH STRUCTURE

The research is set out as a research dissertation, comprising four chapters:

Chapter 1: General orientation to the study

This chapter addressed the research rationale and the relevant methodological foundation of the research.

Chapter 2: An overview of criminal investigation

In this chapter, the researcher discusses crime investigation, its objectives and the process, as well as rape and its elements. The literature in the chapter is infused with in vivo quotes from the participants.

Chapter 3: The statement of the rape victim

In Chapter 3, the researcher discusses the value of the rape victim's statement and the content, as it relates to SORMAA (32 of 2007) and National Instruction 3/2008: Sexual Offences. In addition, the researcher briefly discusses the role that the FRO and FCS investigators play in recording the rape victim's statement. The culmination of the docket analysis is presented in this chapter.

Chapter 4: Findings, recommendations and conclusion

In this last chapter, the researcher presents the results and findings of the previous chapters. He also offers recommendations, before reaching a conclusion.

CHAPTER 2: AN OVERVIEW OF CRIMINAL INVESTIGATION

2.1 INTRODUCTION

Eterno (2012:4) states that crime exists in every human society. In social society, this phenomenon is called a cultural universal, by social scientists. In human existence, as we know it, crime is an inescapable truth. Whenever a crime is committed, someone will inevitably report it to the police and make a statement. When processing the crime scene investigation, the utmost crucial factor is that investigation officers will use all their resources to investigate the crime, to identify the suspect and find out what happened.

The principal goal of criminal investigation is to collect evidence that will prove that the suspect or perpetrators committed such a crime. There are diverse types of crime, such as crimes against people, crimes against property and crimes against the state. A sexual offence is a crime against people. It consists of crimes such as indecent assault, sodomy and rape, which affects mostly females, but rape victims can be of any age, gender or sexual orientation. In addition, literature teaches that not all rape cases are sexually motivated.

Sexual crimes are under-reported for a variety of reasons, the most common being ambiguity about illicit sexual behaviour, fear of reprisal from the offender and a sense of embarrassment (Swanson, Chamelin, Territo & Taylor, 2012:276). The rape itself, is typically a horrible, violent experience that the victim will go through.

In South Africa, the Sexual Offences and Related Matters Amendment Act 32 of 2007 (SORMAA), is designed as a legal instrument to address sexual offences. Section 3 of the SORMAA stipulates that the criminal justice system is responsible for affording victims of crime the maximum amount of protection and minor trauma services (Department of Justice ..., 2007).

Studies show that women are reluctant to report rape cases (Swanson et al., 2012:270-276). Various reasons are cited, such as the lack of belief that the police will be able to arrest the suspect, the inability of the police to apprehend the suspect, how police treat the victim, the discomfiting procedures, and the emotional belief that they will be found at fault for the rape, however limited. They have a fear of

being embarrassed and the reprisal of fear by the suspect. Victims complain that officers question the case's value before hearing them out. The posed question makes the victims feel uncomfortable. The unsympathetic treatment from the police and lack of belief, make the victims feel concerned and worried about their appearance and the victim might feel they are partly responsible for the crime.

In the training manual on sexual offences for investigators (SAPS, 2012a:15), the statement from a first report witness is important, specifically in sexual offences cases, because it refers to the mental and physical state of mind of the victim when the information is obtained from them. Similarly, Van der Watt (2011:85) states that the first report statement further explains the victim's mental and physical appearance after the incident. This can highlight and disclose crucial information on evidence, by the victim, that is overlooked and not mentioned by the police in the initial statement.

It may be challenging to investigate sexual offences, however, because the victim is often distressed. More exposure will also aid first responders and investigation officers in dealing with distressed victims. The investigation officer may therefore be uncomfortable, because of lack of training, in interviewing victims of sexual offences.

In this chapter, the researcher will discuss and provide feedback on the following aspects: criminal investigation, forensic investigation, the difference between forensic and criminal investigation, objectives and purpose of investigation, rape as a crime and the elements of rape. The researcher consulted various resources and sources to determine what other authors have stated about the research aim and question. Even though rape is a crime of national concern, most authors do not focus on finding out whether the contents of the victim's statements adhere to the guidelines in NI 3/2008: Sexual Offences. The researcher found it challenging to collect the most relevant information, because most researchers focus on the victims' statements and not on the adherence of the victim statement to the NI 3/2008: Sexual Offences. Discussion in this chapter will use the terms 'male' and 'female' to distinguish between these sexes.

In addition, the empirical data gathered during the interviews will be incorporated into the narrative. The researcher will then compare the data with literature on these topics and the content of Annexure E: Sexual Offences Checklist for Statement Taking. That will determine to what extent the participants are familiar with the concept being explored, and to what extent this level of understanding or familiarity can inform compliance with Annexure E.

The feedback from the two samples (the FRO as sample A and the FCS detectives as sample B) will be reported separately. It will be done to answer the research question and to achieve the purpose of this research, as presented in Chapter 1. The researcher will provide in vivo quotes from the participants, in the text, to underline the discussions and the findings in the text. For example, the in vivo quotes will distinguish between the two samples as follows:

- Sample A: P2 will imply that this is Participant 2 from sample A (FRO).
- Sample B: P6 will mean that this is Participant 6 from sample B (FCS detectives).

2.2 INVESTIGATION OF CRIME

How it unfolds could affect the outcome of the case and the victim's well-being. Crime scene investigations involve various aspects, because not all crime scenes are identical. All scenes require trained personnel to assist in the processing thereof (Baxter 2015:7-10). Cordner (2014:73) argues that the investigation of a crime refers to the action the police take to identify and apprehend suspects of crimes, which includes activities such as interviewing, crime scene investigation and interrogation. Palmiotto (2013:4) emphasises that criminal investigation should be considered the responsibility of the whole department.

According to Osterburg and Ward (2010:5), crime investigation involves collecting evidence and information to identify, apprehend and convict suspected offenders. Similarly, Carter et al (2016:166) explain that an investigation includes documenting the crime scene, collecting forensic evidence and interviewing victims, witnesses and suspects. The sole purpose of investigating the crime scene is to determine what happened and how it can be solved.

The researcher notes that Brandl (2019:40) refers to the process of collecting information, Palmiotto (2013:4) states that it is a thinking process, and Hess and Orthmann (2010:6) refer to the skills and training needed in the investigation process. Thus, various views from various seminal authors.

Samples A and B were asked: How would you define what a criminal investigation is?

The response from sample A, the FROs, was as follows:

- Most participants said that criminal investigation involves investigating criminal cases and bringing the perpetrator before a court of law. They mentioned that a complete investigation involves searching, interviews, interrogation and evidence collection.
- A minority of the participants mentioned that it is when an unlawful act is investigated to find the truth when an offence has occurred and when someone does research in this regard.

The responses from sample B, the FCS investigation officers, are as follows:

- Most participants said that criminal investigation involves investigating a criminal act and solving the crime.
- Individual participants mentioned collecting and studying the facts by searching, interviewing, collecting evidence and interrogating. They also mentioned the safekeeping of the victim, arresting the suspect, and bringing the suspect before a court of law. In addition, the application of science to a study, and then the use thereof in a criminal trial, was also mentioned.

Understanding criminal investigation is the investigation of criminal conduct to collect all relevant information to bring the perpetrator before a court of law (Sample A: P6:2021).

Understanding criminal investigation involves investigating a criminal act and collecting evidence (Sample B: P2:2021).

Having considered what is captured in the literature and what the participants mentioned, the researcher believes that the participants from both samples are not well conversant about the dynamics involved in a criminal investigation. However, they have a vague understanding of it. While not necessarily problematic, it may pose a challenge when conducting an investigation. They may only attend to some aspects while neglecting others, with all good intentions.

The researcher's concern is that if one does not fully understand the requirements of doing an investigation, then compliance with the guidelines of Annexure E of the NI 3/2008 may not occur or will occur to a minor degree. It will undoubtedly impact the investigation and may cause additional trauma to the victim.

2.3 FORENSIC INVESTIGATIONS

Zinn and Dintwe (2015:443) state that forensic investigation is ... the practice of lawfully establishing evidence and facts that are presented in a court of law or at another form of hearing or tribunal. Forensic investigation involves applying a scientific process to solve a legal problem within the legal context (Hess & Orthmann, 2010:6). Becker and Dutelle (2012:7) state that forensic investigation uses science and technology to test a theory, before a court of law, on what transpired.

The question might arise as to what the researcher wants to study and express the determination of what information and literature will be relevant. Forensic investigation is a process that starts with the first responder and continues with evidence that has been brought before a court of law. Forensic investigation is also defined as the scientific examination of evidence (Houck & Siegel, 2010:21). In addition, forensic science is the use of knowledge of natural and physical sciences and techniques to answer important questions to administrative, civil and criminal law (Swanson, Chamelin, Territo & Taylor, 2019:10).

The participants were asked how they would define 'forensic investigation', and whether they thought it differed from 'criminal investigation'. The researcher first presented the results that addressed their understanding of the forensic investigation and, after that, their responses that deal with how they think it differs from criminal investigation.

The response from sample A, the FRO, is as follows:

- Most participants said that forensic investigation involves using scientific methods to investigate and solve a crime, as well as the gathering of all crime-related physical evidence to come to a conclusion about a suspect.
- A minority of participants said that forensic investigation is to collect evidence found by individuals from the laboratory, on the crime scene. They also mention that forensic investigation must have a mathematical background.

The responses from sample B, the FCS investigation officers, were as follows:

- Most participants said that forensic investigation involves applying science to investigate and collect evidence at crime scenes.
- A small minority of the participants said that forensic investigation is to lawfully collect evidence and facts that can be used in a court of law; or, when specialised, trained personnel collect and preserve evidence.
- There was also a comment that forensic investigation is the application of applied science to be used in the investigation, and then used in criminal trials.

When understanding forensic investigation that is the use of scientific methods to collect and investigate crime scenes (Sample A: P9:2021).

When the understanding forensic investigation is the process of applying science in the investigation of criminal cases, as well as, the collection of evidence (Sample B: P3:2021).

Considering what is captured in the literature and what the participants mentioned, the researcher believes that the participants (from both samples) have a vague idea of what forensic investigation entails. Vital information might be lost, based on a vague understanding of forensic investigation. It may impact the quality of the information in the victim statement. As a result, it will not tie in with what the contents of Annexure E entail, where questions are asked, such as whether the suspect ejaculated inside the victim, and whether protection was used. Did the suspect ask the victim to wash him- or herself after the alleged incident?

2.3.1 Criminal and forensic investigation

Benson, Horne and Jones (2015:19) state that –

Forensic investigation can be defined as an in-depth, meticulous investigation, searching for the truth, through the use of specialised skills and expert knowledge and the application of scientific investigation methods and techniques, in order to lawfully discover, collect, prepare, identify and present evidence, which can be presented to a court of law, disciplinary council, instructing client or company.

Cordner (2014:73) argues that the investigation of a crime refers to the action the police take to identify and apprehend suspects of crimes, which includes activities such as interviewing, crime scene investigation and interrogation. The forensic side of an investigation plays an essential role in the investigation of the crime scene. The similarity between criminal and forensic investigation is unique because one cannot function without the other. Both investigation techniques are well incorporated into each other. Their common goal not necessarily the same.

Whereas in a criminal investigation, the goal is always to find the truth so that the right offender is arrested and brought before a court of law, with the necessary evidence. However, a forensic investigation does not always end before a formal tribunal. In some instances, as highlighted by Benson et al (2015:19) above, the result may only be for a client or company to utilise in future actions.

In some instance however, the purpose of such a forensic investigation is to bring the perpetrator before a formal legal tribunal (whether this is a court of law or a civil court or labour court is irrelevant).

As part of question B2, the participants were asked whether they thought there was a difference between a forensic investigation and a criminal investigation.

The response from sample A, the FROs, is as follows:

- Most participants said that criminal and forensic investigation is similar up to a point but did not explain the similarities in detail.
- While the minority of the participants did not answer the question specifically, they referred to the forensic science laboratory and analysis of DNA samples, while others stated that it could only be done by specialised trained personnel.

The response from sample B, the FCS investigation officers, was as follows:

- Most participants said that there is a difference between criminal and forensic investigation, because it involves the application of science to investigate crime scenes.
- About half of the participants expanded to state that forensic investigations have only been done by other experts from the Local Criminal Record Centre (LCRC).
- The remaining few merely said that it consists of the physical collection of evidence.

When understanding the difference between criminal and forensic investigation, they are remarkably similar, because they both involve the investigation of the crime scene. The collection and processing of physical evidence (Sample A: P8:2021).

The difference between criminal and forensic investigation is the process of applied science and collecting evidence to investigate criminal cases (Sample B: P5:2022).

The researcher compared what was captured in the literature with the data from the samples. As for sample A, the FROs, the researcher believes that the data shows an uninformed view of how criminal and forensic investigations differ, while the data from sample B shows something different. This sample appeared to be more informed (albeit not incredibly knowledgeable) than their FRO counterparts about the intricacies of forensic investigation, and as a result, how these two may differ. It is expected of this group, since they are supposed to be more specialised and more knowledgeable in matters relating to investigation.

The researcher noticed from both samples that the participant's point of view was mostly about the forensic part of the investigation. Because of the narrow understanding of forensic investigation, the researcher is concerned about both samples' responses. In this section, the words scientific, physical evidence and the collection of evidence are used.

To understand the latter, the participants should, at least, have a more precise understanding of what criminal and forensic investigation entails. It will also impact the content of the investigation and the victim's statement. Based on the information about Annexure E of NI 3/2008: Sexual Offences, it is of great concern that it will be contrary to what is needed in the victim's statement, and important information might be left out during the drafting of the victim's statement. It may affect the overall investigation of the incident.

2.4 OBJECTIVES OF INVESTIGATION

From the literature, the researcher observed that some authors refer to 'objectives', while others use the term 'goals'. In addition, some authors use the term in the singular, while others use the plural form. The researcher believes that an investigation should have a variety of objectives, as objectives may be viewed as the 'stepping stones' to reaching an outcome or an aim.

The objectives of an investigation are to detect crime by scrutinising all the facts on hand. It includes the collection of all relevant evidence of the crime that is committed.

Benson et al. (2015:13), inform that the objective is to establish that a crime had actually been committed identify and apprehend the suspect(s), to recover stolen property and to assist in the prosecution of the person(s) charged with the crime.

Ferraro (2012:77) therefore indicates that the investigation's objectives provide the structure that the project manager uses to build their case, including finding facts and benchmarking their progress. Osterburg and Ward (2010:96) stated that the objective of an investigation is to develop associate evidence: evidence that could link a suspect to a crime, a crime scene, or a victim.

Becker and Dutelle (2012:17) state that in a police investigation there are seven objectives:

- The detection of crime.
- The detection, identification and location of the suspect. (Removing the perpetrators from the crime scene before they can be processed can pose a danger to all role players.
- All constitutional considerations should be observed when recording, processing and locating evidence.
- Observe all constitutional considerations when arresting the suspects, to recover the property.
- The completion of accurate documents for the trial.
- To legally obtain evidence and statements by testifying to convict the defendant.

The participants were not asked about the objectives of an investigation; hence this section contains no empirical data. From the discussion, it is evident that there are numerous steps to be followed when a crime is investigated. This approach to an investigation is sound, as it provides the investigation officer with a checklist from which to work and takes much of the guesswork (and making mistakes) out of the equation. The investigation objectives serve much the same function as that of a NI

3/2008: Sexual Offences – that is, to guide the investigation officers when undertaking certain activities.

2.5 PURPOSE OF INVESTIGATION

Benson et al. (2015:12), state that ... the purpose of investigation is thus to investigate evidence in a scientific manner and to determine how this evidence can be utilised to ultimately bring the perpetrator(s) to book. Similarly, Swanson et al. (2019:2), maintain that to discover the truth is the fundamental purpose of an investigation. Gardner and Krouskup (2019:63) state that the purpose of crime scene investigation is to collect as much information possible that will serve as evidence on how the crime was committed, who was involved and why the crime occurred.

Osterburg and Ward (2010:96;164) further stated that the purpose of an investigation encompasses who, what, when, where, why and how it happens:

- *Who*: This involves the name, sex, age and occupation of the interviewee. Sometimes the interviewees can be the victims, witnesses or other nominees that friends of the victim have suggested.
- *What*: This constitutes what was observed by the witness: anything that is touched, smelled and tasted through the senses. The relationship exists between the different parties, including victim and perpetrator, complainant and witness, as well as other witnesses of, and participants in, the crime.
- *When*: The time the interviewee needs the required information and when the crime was committed.
- *Where*: This refers to where the crime and the interview take place.
- *Why*: Why was the victim targeted? Why did the perpetrator specifically pick out the victim?
- *How*: How was the statement taken from the victim? How did the suspect know when the victim would be at that specific place?

Since the participants were not asked about the purpose of the investigation, this discussion contains no empirical data. To better understand the close interpersonal relationship between the objective and the purpose, the researcher describes the purpose of investigation as the concept of which the aim forms a part.

2.6 RAPE AS A CRIME

As mentioned above, rape affects females primarily, but victims can be from any age group, gender type, population, ethnic group, gender or sexual orientation. Palmiotto (2013:141) states that rape involves sexual acts against one's will. The crime, rape itself, is a horrifying, often violent experience to which the victim is subjected. Hess and Orthmann (2010:321) state that rape is to have sexual intercourse with another person without their consent. Brandl (2019:534) refers to rape as ... the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. This description is gender neutral, thus implying both male and female could perpetrate the crime.

Rape is considered by society as one of the most severe crimes, bypassed perhaps only by after murder: rape carries heavy penalties in most countries. Section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (SORMAA) states: 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 (Department of Justice ..., 2007:20).

Subsection (2) of the same Act further states that sexual penetration includes any act which causes penetration to any extent whatsoever by the genital organs of one person into or beyond the genital organs, anus, or mouth of another person; in subsection (3), penetration is defined as any 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 the genital organs of an animal, into or beyond the mouth of another person. The act states that either man or woman can commit rape. It can be that the victim or the suspect is either a male or a female. The act further states that rape can also occur between persons of the same sex. Furthermore, the crime rate is predominantly reported by females and males in the minority.

Lushbaugh and Weston (2019:178) state that rape is the carnal (fleshly or bodily) knowledge of a woman without her consent, that consent induced by fear does not constitute consent, and that it is against the woman's will and with the use of physical force. While these authors speak specifically to the female as the victim,

the researcher must emphasise that according to South African legislation, the victim of rape may be perpetrated by either male or female (the term 'person' is used). Similarly, the perpetrator of rape may also be both male or female. In addition, the authors underscore that fear-induced consent does not imply consent – which is supported by the South African legal position.

Hess, Orthmann and Cho (2017:351) maintain that sexual penetration includes sexual intercourse that is explained by the use of terminologies in the investigation or rape cases, such as cunnilingus, digital penetration, fellatio, intimate parts, oral copulation, or any other penetration by inserting an object into the genitals or anus of another person, no matter how slight; this includes sexual intercourse. No matter how slight, the victim's genitals are taken orally by the suspect's body or object; therefore, any act of sexual penetration by the suspect without the affirmative, freely permitting the victim to a specific act, constitutes the crime of a sexual offence.

Swanson et al. (2012:269; 2019:290), state that rape is a crime when a person has sexual relations with another person under the following circumstances:

- Against [or without] the consent of that person;
- When the person is unconscious;
- When the person is under the influence of drugs and intoxicated;
- When the person is insane or feeble-minded; and
- When the person is a child under the age as fixed by statute.

The participants were asked what their understanding was of rape. The response from sample A, the FRO, was as follows:

- Most participants said that rape consists of unlawful and intentional sexual intercourse with a female person without her consent.
- The remaining few participants stated that rape is an unlawful sexual act by a male person on a female person without her consent, and that it is when a male person forcefully has sex with a female without her consent. From this same section, some participants mentioned that it might also be when a female has non-consensual sex with a male person.

The response from sample B, the FCS investigation officers was as follows:

- All the participants said that rape consists of the unlawful and intentional penetration of one's body part into another's person vagina or anus without their consent. That includes using any object to be inserted into any body part of another person without their consent.

Rape is the unlawful sexual act by a male person on a female person without his or her consent. It can also be a female person to a male person (Sample A: P4:2021).

When understanding that rape is the unlawful penetration of another person's vagina, anus, or mouth with any object without the other person's consent (Sample B: P2:2021).

Considering what is captured in the legislation, the literature (except Lushbaugh & Weston, 2019:178) and what the participants mentioned, the researcher believes that the participants from both sample A and sample B may not fully comprehend that rape can be perpetrated by either a male or female and likewise that the victim may even be the same sex as the perpetrator. This is very concerning and will have an impact when these participants must take the statement of a rape victim: their protracted views will affect the way in which they view and then assist a victim. If they do not view the victim as a genuine victim, they may not be inclined to offer assistance as prescribed by the National Instruction.

The feedback from sample A specifically highlights that most of this sample is of the view that only females can be raped. A small minority indicated that males against females perpetrate rape. The whole group did emphasise that consent by the female must be absent. Furthermore, sample B participants do not mention the gender of the perpetrator or the victim. They mention the concepts of vaginal or anus. The researcher would like to believe that this implies their awareness that either sex could be raped. They also mention that objects may also be used to perpetrate rape.

From the analysis of the closed-off rape dockets, the researcher can confirm that these did contain male victims. It highlights that men can also be victims of rape, and while there is a societal stigma to reporting rape by men, for this group of victims the crime outweighed the stigma.

To take a well-structured victim statement, it is essential for the FRO and FCS members to clearly understand what constitutes rape and who can be raped. It will contribute to a more constructive and well-drafted victim statement, which will address all the elements of rape. The specific elements of rape will be addressed in paragraph 2.6.1, below. When a complete victim statement is taken by either the FRO or the FCS member, it should meet the requirements of the guidelines as per Annexure E of NI 3/2008: Sexual Offences.

2.6.1 The elements of rape

Rape is historically viewed as a heinous crime (Goldner, 1973:402; Raj Nayak & Padhi, 2018). Before 2007, rape was defined as the non-consensual sexual intercourse with a female. This crime typology needed to be revised for various reasons, and Act 32 of 2007 was promulgated (Lötter, 2014b:93). Section 3 of the SORMAA states that any person who unlawfully and intentionally commits an act of sexual penetration with a complainant without the consent of the complainant, is guilty of the offence of rape (Department of Justice ..., 2007:20).

Subsection (2) of the same Act further states that sexual penetration includes any act which causes penetration to any extent whatsoever by, the genital organs of one person into or beyond the genital organs, anus, or mouth of another person.

In subsection (3), penetration is defined as

any 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 the genital organs of an animal, into or beyond the mouth of another person.

The Act states that either a male or a female can commit rape, and the victim may also be either male or female. The Act further states that rape can also occur between persons of the same sex.

To prove an allegation of rape, the victim must address the unlawful nature of the Act, the intentional penetration of the sexual genitals of the victim (with something), and the absence of consent of the victim. In this instance, forced consent does not equate to voluntary consent.

In South Africa, before a person may be charged with a crime, that specific crime must be formally recorded as a crime, and therefore the specific conduct/failure to act is considered unlawful and punishable. It is the principle of legality (Lötter, 2014a:7). Unlawfulness is a fundamental requirement for every crime in South Africa. Unlawfulness implies that a person contravened the law without any justification for the contravention.

In rape, the issue of consent (or lack thereof) is fundamental to the offence. The victim must state whether consent to sexual intercourse (or other sexual act) was given or not, and whether this consent was based on their being threatened by the suspect or if they were drugged and unable to consent. Consent in general means that the victim or other person permits an unlawful criminal act done to them. When a victim is forced or threatened, and consent is subsequently given, it cannot be regarded as consent. Consent is invalid when a victim does not agree or is under threat. To merely submit cannot be regarded as consent; just as a verbal challenge will usually not amount to consent.

'Intention' refers to the legally blameworthy state of mind when a criminally responsible person directs their will toward performing an unlawful act. While they are aware of the unlawfulness of their conduct, it also needs to be clear in the victim's statement that the suspect intended to rape the victim.

'Penetration' refers to inserting the genitals or other objects into another person's genitals, mouth or anus. The victim's statement must mention that penetration (of any of the mentioned body parts) by the perpetrator (using either their own body or another object) did occur. The content of the rape victim statement is possibly the

most important statement in the rape docket because it can help to identify and give a clear picture of what happened and who the perpetrator may be.

When an investigator builds a criminal case against a suspect, they must be familiar with the elements of the specific crime they are investigating. When investigating rape cases, the investigation officer must ensure that the victim's statement meets the evidential standard for the charge of rape. They must have a clear understanding of the overall elements of a crime to understand what it entails.

Samples A and B were asked, When you take the statement of a rape victim, what are the specific elements that you focus on in the statement?

The response from sample A, the FROs, is as follows:

- Most participants describe that the elements they focus on in the statement address the aspect of unlawfulness, the intentional penetration of another person's private parts without that person's consent.
- The minority participants also mentioned asking in-depth questions about what, how, where, when, and what happened.

The responses from sample B, the FCS Investigation officers, are as follows:

- Most participants mentioned that the elements they focus on in the statement include unlawfulness, penetration, and without consent of the victim.
- A minority of participants only mentioned that there was no consent given.

When understanding what the elements of rape are, it is the unlawful penetration of the vagina or anus of another person without their consent (Sample A: P11:2021).

When understanding the element of rape, it must be unlawful, intentional, and penetration without the consent of another person (Sample B: P4:2022).

Considering how the law defines rape and the elements contained therein, and what participants mentioned, the researcher believes that participants from samples A and B are familiar with the elements of rape. Some referred to the aspects of ‘who, what, why, when, where and how’. With not elements of rape per se, addressing these aspects in the statement of the victim will enhance the overall comprehensiveness of the statement.

The researcher believes that a sound understanding of what elements to address in the statement of the victim will address various aspects in Annexure E of NI 3/2008: Sexual Offences. The researcher did a docket analysis on closed-off case dockets in the Graaff-Reinet area.

The researcher perused the contents of these dockets to determine to what extent the elements of rape are comprehensively explicated in each case.

Table 2.1: Analysis of the elements of rape from closed-off case dockets (N-44)

Element	Guilty dockets (n-15 – 34%)	Not guilty dockets (n-29 – 66%)
Unlawfulness	In most cases, the unlawful nature of the act is well explained.	The act of unlawfulness is explained in detail only in a minority of the cases.
Intentionality	In most cases, the act of intention to commit the crime is explained, even though it is not explained in detail.	In most cases, the intention of the accused is fairly well explained. In a minority of the cases, the victims did give consent, but it was done through force.
Penetration	In half the cases, the act of penetration did occur. However, some of these victims cannot recall how it occurred.	In half the cases, the act of penetration did occur. Similarly, some of the victims could not accurately recall whether penetration occurred or not, while some merely assumed that it did occur.
Consent	In all dockets, it is mentioned that the victims did not give consent to the act. In a minority of the cases, the victim did give consent – but was coerced.	In most cases, the victim did not consent to the act. In half the cases, the victims could not recall if the sexual act occurred due to intoxication.

(Source: Own).

The researcher notes that of the 'guilty' case dockets (n-15), the elements of unlawfulness, intention, penetration and consent are well captured in most cases. Conversely, these elements were not well explained or visible when the not-guilty case dockets (n-29) were analysed. The researcher speculates that this may have contributed to the reason some of these cases were not prosecutable. If one of the elements of the crime cannot be shown or proved, then the crime cannot have been committed.

The researcher could establish from the closed-off case dockets that most cases did contain the information explaining what constitutes rape, even though the elements of rape were not mentioned in all cases. The researcher is concerned with the information retrieved from the docket analysis. The elements of the crime of rape must be present, so that it can conform to the crime itself before a prosecutor can convict a suspect.

It is alarming that cases of this nature do not conform to the rules stipulated in subsections 9, 18, and Annexure E of NI 3/2008: Sexual Offences. The guidelines give a specific pathway on what the rape victim statement should look like, in order to hold all the necessary information. The success and, ultimately, the conviction, depend on the contents of the rape victim's statement. It is therefore of the utmost importance that the members drafting the rape victim statements need to familiarise themselves with, and adhere to, the requirements of the NI relating to victims' statements.

Rape is a challenging crime to investigate, based on the compliance of the victim, witnesses and other role players. The investigation officer faces various challenges when investigating rape cases. In some instances, the victims' addresses are not fully captured, and the investigator cannot locate the victims. In some instances, even the victims become a challenge when they do not give their full cooperation in investigating the case. The intense workload that comes with investigating rape cases is also very demanding.

Sample B was asked: Have you ever taken a statement from a rape victim, and if so, how many?

- All the participants reported that they had taken countless statements from the victims of rape. They could not recall the total number, but they all mentioned that they had taken many statements.
- The researcher did not press them for more information, because this may have brought on memories of violent rapes that could cause secondary trauma to them. Since most of these participants had more than ten (10) years' experience in the SAPS, the researcher accepted their unverifiable responses.
- This information will, however, be the cross-reference in Chapter 3 when doing the outlay of Annexure E on docket analysis.

2.7 SUMMARY

Rape investigation is one of the cases that are exceedingly difficult, time consuming and strenuous to investigate. This investigation requires that investigation officers and first responders be open-minded and passionate about the task at hand. This chapter covered the concepts of criminal and forensic investigation, what they entail, the objectives and purpose of investigation, and the crime of rape and its elements.

To discuss criminal investigation, it is clear from the literature that the participants from both samples have a narrow understanding of what criminal investigation entails. The data showed that the participants lacked a comprehensive understanding of these concepts, from the perspective of similar literature and the NI 3/2008: Sexual Offences. It concerns the researcher, as it may harm their ability to do their work, despite being passionate or open-minded. Criminal investigation is a search for the truth using objective and subjective leads.

The purpose and objective of an investigation were identified and explained. The researcher described the objective as accomplishing the purpose of an investigation by conducting the investigation. Furthermore, the crime of rape and the elements contained in the legal definition are discussed and compared with the empirical data from the participants. The data has shown that the participants from sample A may lack a comprehensive understanding of rape, as described by NI 3/2008: Sexual Offences as an act of sexual offence, while the participants from sample B seemed

to have a more comprehensive grasp. It is of concern to the researcher that it will affect the quality of the victim statements and will have an impact on their ability to draft a well-structured statement.

When a rape victim statement is taken, it should be accurate about what happened before and after the whole ordeal with the victim. The data also showed that participants are well-conversant with what to capture in the rape victims' statements, relating to the elements of rape. Compared with the docket analysis, it seemed to indicate that all the elements of rape were either not addressed or insufficiently addressed in the statement of the victim. Thus, while the participants alleged that they understand the elements of rape, the skill to capture them into a statement seemed to be lacking. Chapter 3 will discuss the value of the rape victim statement and the content of the statement as it relates to NI 3/2008: Sexual Offences. In addition, the researcher will briefly discuss the role that the FRO and FCS investigators play in recording the rape victim's statement.

CHAPTER 3: THE STATEMENT OF THE RAPE VICTIM

3.1 INTRODUCTION

Crime has a devastating effect on the victims, who suffer emotionally and often physically. Victims who receive trauma counselling tend to function more effectively in the criminal justice system process and resume their lives as healthy members of society.

The SAPS are constitutionally bound to address crime (South Africa, 1996), and therefore they must investigate all criminal cases reported to them. To assist the SAPS in executing those duties, they need to obtain all the relevant information and evidence to submit before a court of law. Information is kept in the form of a statement, and such activities are reduced to writing, and safely kept until required. Van Niekerk, Lochner, Naidoo and Zinn (2015:225) maintain that a good statement is free of contradiction and will uplift the credibility of the victim.

Experience, time and skills are vital in constructing a good statement. When taking down a victim statement, it cannot be emphasised enough that time and effort must play an important factor in taking down the victim statement. The qualities of an investigator and first responder play a crucial role when the victim's statements are taken. It is also important that the rape victim statement should consist of dual accuracy that includes the essential facts, the elements of the crime, what has happened and said, as well as the availability of the deponent to testify before a court of law.

In this chapter, the researcher will discuss and provide feedback on the following aspects: National Instruction 3/2008: Sexual Offences, the statement, requirements of a good statement, the first responding officer (FRO) duties of the FRO, the role of the FRO when recording the rape victim statement, the FCS investigator and their duties, and the qualities of a good investigation officer for statement taking and docket analysis. The researcher consulted various sources and literature to determine what other authors have stated about the research aim and question. Rape remains a crime of national concern, and there is a large amount of literature that addresses this type of crime. There is no literature, however, that speaks

specifically to the rape victim statement as aligned with the guidelines in NI 3/2008: Sexual Offences.

The empirical data gathered during the interviews is incorporated into the narrative in this chapter. The researcher also compared the empirical data with the literature on these topics and the content of Annexure E: Sexual Offences Checklist for Statement Taking. This comparison helped the researcher determine to what extent the participants were familiar with the concept being explored, and to what extent this level of understanding or familiarity can inform compliance with sections 9 and 18 of the NI 3/2008: Sexual Offences.

Feedback from the two samples (the FRO as sample A and the FCS detectives as sample B) will be reported separately. It will be done to answer the research question and to achieve the purpose of this research, as presented in Chapter 1. Unlike chapter 2, where the participants were asked identical questions, the contents of the interview schedules on which this chapter is based, were not identical. This implies that in some instances the one sample was asked a question which the other sample was not asked, and vice versa. The researcher will clarify this differentiation in the text. The flow of reporting in the chapter will not necessarily conform to the flow from the interview schedules but follows the flow of the text in the chapter.

As done in chapter 2, the researcher will provide *in vivo* quotes from the participants, in the text, to underscore the discussions and the findings.

3.2 NATIONAL INSTRUCTION 3/2008: SEXUAL OFFENCES

In the SAPS, National Instructions (NI), and Standard Operating Procedures (SOP's) serve as the benchmark for the performance of a variety of duties. Failure to comply with these instructions may result in disciplinary steps being instituted against a non-compliant member (SAPS, 2015b). One such National Instruction is NI 3/2008: Sexual Offences. It is attached as per Annexure D.

This National Instruction is underpinned, and it creates a framework which will ensure the provision of effective and professional treatment and protection for victims of sexual offences that are underlined in the SORMMA (Act 32 of 2007).

Sub-section 9 emphasises the role the investigating officer plays in the investigation of a sexual offence, and sub-section 18 focuses on the importance of an in-depth victim statement after the initial statement has been taken from the victim. Furthermore, in Annexure E of the NI 3/2008: Sexual Offences specific guidelines are given for when a victim statement is recorded.

To conform to the required standard, it is of the utmost importance for the investigating officers to familiarise themselves with the entire NI 3/2008: Sexual Offences. Furthermore, it is important for the members to keep themselves updated with the NI, in order to provide a service of high quality. The importance thereof can be highlighted, and the value thereof can be seen in the quality of the victim statement.

As will be illustrated in this chapter, when members of the police are not sufficiently familiar with the content of NI 3/2008: Sexual Offences, important information may be left out of the victim statement. This might lead to fewer cases being brought before a court of law, or fewer cases achieving a guilty result at court, as the case dockets may lack the requisite elements of the crime. This is illustrated in Table 2.1 above.

Sample B (FCS detectives) were asked whether they were aware of any guidelines that the SAPS had issued in relation to how and where an interview with a rape victim should be conducted.

- Most of the participants stated that there are guidelines, and then proceeded to explain that the victim must be interviewed in a victim-friendly room, namely a victim support centre. During the taking of the rape victim's statement, the victim must be treated with dignity and respect.
- A minority of the participants made mention that they were aware of the rules but it is in the NI 3/2008: Sexual Offences, and also to reflect on the goals and the role the victim is playing.

Based on the information concerning the guidelines on how and where to interview the victim, the participants only have a vague idea. It is a concern that members are not well conversant with the guidelines on how to interview the victim of a sexual

offence and where such an interview is to take place. The researcher will comment on this topic further, below.

Both samples were asked about their familiarity with NI 3/2008: Sexual Offences.

Sample A (FRO) were asked how familiar they were with the duties of the FRO as contained in this NI.

- About half of the participants stated that they were familiar with the duties of the FRO.
- The remaining half of the participants can be divided into two groups: a few indicated that they were very familiar with the duties of the FRO and the rest of this group said that they were not familiar with this NI, but they had heard about it.

Sample B were asked how familiar they were with the duties of the investigating officer as contained in this NI 3/2008: Sexual Offences. They had to respond using a 4-point Likert scale.

- Most of the participants indicated that they had heard about the NI, but that they were not sure what it entailed.
- A minority of the participants stated that they were very familiar with the content of NI, as it pertained to the duties of the investigating officer.

Based on the information from both samples, it was evident that the majority of the participants (from both samples) are not sufficiently familiar with the NI and the specific aspects that address what they are supposed to do. Since this is the primary NI that frames conduct in relation to sexual offences, their response is of concern. Only a minority of the participants said that they are very familiar with its requirements – which is alarming.

From experience, the way in which the investigator takes the statement of the rape victim is influenced by the knowledge and experience of that investigator. Members need to equip themselves with the necessary information, or else the quality of the resultant duties will reflect their incomplete familiarity with the required National Instruction.

The FROs are of the utmost importance in the investigation process. They are the front-runners in the investigation process, so it will be of the utmost importance for members to equip themselves and gain the necessary knowledge to conduct their duties. It is alarming that the FCS investigation officers are not well informed and up to date with the information contained in NI 3/2008: Sexual Offences. The researcher is concerned that many members are not well acquainted with the NI, but it can be that most members did not attend the relevant training course in the field.

Sample B were asked to what extent they were familiar with the contents of the 77 elements contained in Annexure E to NI 3/2008: Sexual Offences.

- Most of the participants indicated that they were not familiar with these aspects at all.
- A minority stated that while they were familiar with them, they did not always remember all of them.

Since Annexure E forms the framework for the taking of the victim's statement in sexual offences, this level of ignorance is nothing short of unacceptable. Operational knowledge of this NI is vital to the execution of their duties. For an investigation to be fruitful, it is important that the role players are well informed on their roles. This data will be further compared with data presented in the paragraph that follows.

The NI gives clear guidelines and instructions on what role players' duties and responsibilities entail. With the information received, it is a concern for the whole investigation process that participants are not fully conversant with all the instructions relating to their work. It will most certainly have an impact on the quality of the statements they are able to take from the victim, and will impact on the outcomes of the sexual offence cases with which they are involved.

3.3 THE STATEMENT

The SAPS training manuals for the Basic Detective Learning Programme (SAPS, 2010:2; SAPS, 2012a:2) define a statement as a written communication of facts as observed by the deponent in the form of a statement that can be supplied to a court

of law. The facts can be expressed verbally or in writing. Van Niekerk et al. (2015:224), give a semantic explanation of the word 'statement', because of the meaning attached and attributed to the word. A statement is a verbal account of events or evidence relating to the crime committed and is constructed as a statement. A statement is a driving tool that investigators use to transfer all evidence-related matters in the form of evidence, quasi-judicial tribunals on or before the court hearing. It can be safely argued that a statement in a criminal investigation is to uncover the truth and record evidence. A statement can be pinpointed to a specific phase in the investigation process.

3.3.1 Requirements of a good statement

The requirements for a good statement are an important factor that plays a role in the statement's structure. Van Niekerk et al. (2015:226-227), mention that an investigator must consider various aspects prior to taking a statement: the place where the statement is to be obtained, the language that is going to be used as an effective communication tool, and the formulation and structure of the statement. To have a good structure, and a good statement that includes all the elements and facts of the crime, investigators must make sure that all witnesses are interviewed, so as to determine what happened.

A detailed and well-conversant statement will greatly impact the investigation of a crime. A good statement should adhere to seven principles (SAPS, 2010:3-8; SAPS, 2012a:3-6; Van Niekerk et al., 2015:228). These principles are the following: accurate, objective, complete, concise, clear, comprehensive and truthful:

- **Accurate**

The information provided in a statement must be as accurate as possible, enabling the reader, or other person, to establish the facts. The accuracy of the person's observation will depend on the senses that are used, as some senses are more reliable than others. Therefore, to be accurate, it needs to be specific. Accuracy manifests in several ways such as in the proper spelling of names and titles.

- **Objective**

The deponent and member who takes the statement must not allow his/her emotions to affect the contents of the statement. The deponent should place himself/herself on an imaginary platform and re-enact the actions on which he/she must testify. He/she must only make a statement concerning the things he/she can perceive from the platform. If the content of a statement could reveal the innocence of a suspect, it should also be mentioned in the statement.

- **Complete**

Every statement should reflect the basic details of all events, and the important details must be included in the statement. An effective statement contains at least six basic questions: 'who, what, when, where, why and how'. Also, important facts should not be withheld.

- **Concise**

To meet the requirements of conciseness, a statement must be brief, complete and understandable. Even though all the facts need to be included, it must be noted that a statement should carry substantial information in proving the matter under investigation. To be short and to the point means that one is concise with one's investigation.

- **Clear**

A statement should have only one interpretation, meaning that two people can read the same statement and come up with the same understanding.

- **Comprehensiveness/Intelligibility**

All the relevant information should be covered in the statement. The admissibility should be left to the court and other role players tasked with making those decisions.

- **Truthfulness/Honesty**

To alter the facts and meaning of words in a statement should never be done because a statement reflects the truth. This requirement interacts with the objectivity of the statement. To obtain a statement does not mean that it will prove the guilt of the suspected person. Therefore, nothing should be altered to change or to strengthen the case under investigation.

Sample A were asked what important information should be contained in a statement. Their responses were captured, analysed, coded and thereafter linked with one or more of the respective principles for a good statement. The principles are numbered from 1 to 7 in table 3.1 below.

Most of the participants mentioned that the important information that should be included in a statement is as follows:

- Time, date, witnesses, and description of the suspect, [Principle 1]
- What happened during the rape and the crime occurred [Principle 3]
- The elements of rape [Principles 3/5]
- Evidence concerning the person that is arrested or linked to the crime scene [Principle 1]
- If penetration took place and was it unconsented sex [Principle 7]
- If protection was used during the act or omission of the crime [Principle 3]
- To mention the underwear of the victim [Principle 3]
- To provide details of a possible witness, if available [Principle 1]

The minority mentioned where it happened, how many were involved, the how, why, what, where, and when it also happened, and if penetration took place [Principles 1/3].

Sample B were asked what the requirements are of a good statement. Their responses were similarly captured, analysed, coded and thereafter linked with one or more of the respective principles for a good statement.

The responses from sample B (FCS) were as follows:

- Most members mentioned the preamble and ending, description of the suspect and individual, and no consent given. [Principles 1/5/7]
- The minority mentioned that penetration must be mentioned, no matter how slight and without consent, and a full description of the incident must be clearly explained. [Principles 3/5/7]

The researcher designed a table (3.1 below) that reflects the principles of a good statement as unpacked above, to assist in the comparison of the coded empirical data from the two samples.

Table 3.1: Principles of a good statement

	Principle	Sample A	Sample B	Comment
1	Accuracy – date, time, place, names, description of property, vehicles, suspect	Most	Most	Most of the participants from each sample mentioned this element.
2	Objective - unemotional and unbiased reporting	-	-	None of the participants mentioned this element.
3	Complete – contains all relevant details	Most	Most	Most of the participants from each sample mentioned this element.
4	Concise – brief	-	-	None of the participants mentioned this element
5	Clear – unambiguous and having one meaning	Most	Most	Most of the participants from each sample mentioned this element.
6	Comprehensiveness/ intelligible – all relevant information is recorded	-	-	None of the participants mentioned this element.
7	Truthful and honest – content is based on facts, not opinion	Most	Most	Most of the participants from each sample mentioned this element.

(Source: Own).

Having considered what is captured in the literature and what the participants mentioned, the researcher believes that the participants from both samples are not well conversant with the important information (vis a vis the principles) that should be contained in the victim statement, although they did have a slight understanding of some of these issues. A detailed and well-conversant statement will greatly impact the investigation of a crime scene.

It may pose a challenge, when they have to record victim statements, that they will not mention all the relevant information (address all the elements mentioned in Table 3.1), and they may not ask the pertinent questions, resulting in vital information being lost.

An understanding of the requirements of a statement is that the time, place, date, witnesses, and description of the suspect must be mentioned, elements of the crime and possible witnesses (Sample A: P12:2021).

An understanding of the requirements of a statement is that it is mentioned to have a pre-amble, content and ending, description of the suspect, consent, penetration, and a full description of the incident (Sample B: P6:2022).

Sample B were asked why it is important for an investigation officer to obtain an in-depth statement from the victim.

- Most of the participants mentioned that it is important to obtain all the facts of the case and follow up any information regarding the case; also, to find out what happened before and after the incident, and to obtain a better statement from the victim.
- A minority were unable to answer this question.

Based on the information, it is a concern for the researcher that not all the participants are familiar with the importance of obtaining an in-depth statement from

the victim. According to subsection 18 of NI 3/2008: Sexual Offences (SAPS, 2013:20-21):

the initial statement of the victim must be followed up by an in-depth statement. The investigating officer must take or ensure that the victim's in-depth statement is taken, once the victim has recuperated sufficiently (depending on circumstances, ideally between 24 to 36 hours) after the incident. The investigating officer must be sensitive to the cultural, language and religious background and gender of the victim.

Other elements are also very important when preparing to take the statement from the victim of a sexual offence. These elements are as follows:

- **Preparation for taking the statement**

The investigation officer must allow sufficient time to take a statement of this nature. It's important that the victim is not rushed. The statement must be comprehensive and contain detail. The investigation officer must take steps to set the victim at ease and the statement must be taken in a relaxed, private atmosphere where there are few distractions.

- **Presence of an interested person**

The investigation officer must inquire from the victim whether he or she wishes to have an interested person present in support of the victim. If the interested person identified by the victim to support him or her during the taking of the statement is a potential witness to the reported crime, the investigation officer must inform the victim that such a person is a potential witness and may not be present during the taking of his or her statement.

- **Discussion of intimate details**

The investigation officer must inform the victim that during the taking of the statement intimate details of the event will be shared among them. If the presence of the interested person may affect the disclosure of the intimate details, the investigation officer may request from the victim that the interested person be excused.

- **Victim must be told not to hide anything**

The investigation officer must inform the victim with great sensitivity that if he or she has done something that might put him or her in a bad light when he or she is cross-examined, it is essential that he or she does not try to hide this fact, but state it clearly.

It is noted that not all participants are well informed on why an in-depth statement from the victim needs to be taken. This ignorance may have a negative impact on the degree of urgency these participants give when it comes to the actual taking of such an in-depth statement.

3.4 THE FIRST RESPONDING OFFICER

According to National Instruction 1/2015: Crime Scene Management, a first responder refers to the member, irrespective of his or her unit, who arrives at the crime scene first (SAPS, 2015b:2). The First Responding Officer (FRO) is usually a member of the Visible Policing unit (VISPOL) but may be any other SAPS member who arrives at the crime scene first.

Palmiotto (2013:4) states that the patrol officer is the person that arrives first on a crime scene. How the FRO handles the crime scene will influence the criminal investigation thereof. Stelfox (2013:47-48) states that uniform patrol officers will usually be the initial responders to virtually all types of crime, but each police force has its policy on what type of crime should be investigated and allocated to investigation. Gardner (2012:61) further emphasises that the initial FRO is the initial member who will ensure that the crime scene is not contaminated and can be

processed successfully to avoid a chaotic situation. Furthermore, for the first responding officer, crime scenes are not abnormal.

3.4.1 Responsibilities of the FRO

The duties and responsibilities of FRO's are dealt with in various SAPS policies and National Instructions. For the purposes of this discussion, the researcher will make specific reference to the SAPS Detective Learning Programme: Module First Responder to Sexual Offences (SAPS 2012a) and sub-section 7(1)-(5) of NI 3/2008: Sexual Offences, as well as seminal literature.

Padget (2012:247) states that during the investigation of rape cases, the victims might be the only witnesses, so they will depend on the first responder for their understanding, empathy, care and safety. Furthermore, the way in which the FRO treats victims will determine the outcome of the cases. It will build a crucial relationship between parties. To bring their case to a successful conclusion depends on their professionalism, their demeanour, and the treatment they give victims. That is crucial towards building trust and cooperation.

Furthermore, Van der Watt (2011:165) maintained that when the crime scene is handed over by the FRO's to the investigation officer, they must also have an operational understanding of what will happen. They should have a good understanding of what the investigation process entails. Acting in an organised and systematic manner is vital for the first responding officers.

For the FRO's to execute their duties effectively, they must be well-conversant with the investigation process. National Instruction 3/2008: Sexual Offences (SAPS 2013:7) states their responsibilities as follows:

The first member arriving at a scene where a sexual offence has allegedly been committed, must deal with the victim professionally and must safeguard the crime scene until an investigation officer is available to take charge of the investigation. The member on the scene must enquire from the victim whether the suspect could possibly still be in the vicinity and, if so, obtain a description of the suspect. A member who comes into contact with a victim of a sexual offence must, as far as possible, avoid touching

the victim unnecessarily. The member must avoid unnecessary or uncomfortable questions about the intimate details of the alleged sexual offence at this stage. It is of utmost importance that the member on the scene safeguard the crime scene.

According to the SAPS Detective Learning Module First Responder to Sexual Offences Learning Programme (SAPS 2012a:3), a member arriving first at the crime scene must perform duties that will aid in the investigation's success. It also states that the duties of the first responder are to determine whether a crime has been committed, enquire if anyone is injured, look for, and find, any witnesses, determine whether the responsible person is nearby, and inform if any higher authority is needed. These duties and responsibilities are further expanded upon in subsection 7(1)-(5) of NI 3/2008: Sexual Offences (SAPS 2013:7-8). Since these sections do not form part of the scope of this study, they will not be addressed in detail. The content of these sections will be used only as comparison with the empirical data obtained from the FROs.

In terms of the NI, the first responder to a sexual offence complaint has specific responsibilities. Only sample A was asked, according to their understanding, what the role is of the FRO when arriving at the crime scene. For ease of comparison with the empirical data, the researcher has tabulated these responsibilities (as per subsection 7(1)-(5)) in Table 3.2, below. It is noted that the terms 'role', 'responsibility' and 'duties' are used interchangeably in literature: thus, one may also imply the other. For the purposes of this research, the same approach will be followed in relation to an understanding of these terms.

Table 3.2: Responsibilities of the FRO

No.	Responsibility	Responses (n-28)	Comment
1	The member arriving first on a scene where a sexual offence has allegedly occurred must deal with the victim professionally and safeguard the scene until it can be handed over to an investigation officer.	19 (70%)	Most members mention that they will safeguard the scene until it is handed over.
2	The member must also determine if the suspect is in the vicinity by enquiring from the victim. The description of the suspect must be conveyed to all relevant role players.	11 (40%)	Make mention of the suspect and to make sure of the safety of victim.
3	<p>The members who encounter a victim of a sexual offence must avoid touching the victim.</p> <ul style="list-style-type: none"> • The victim must be reassured that he or she is safe and protected. • Obtain a brief explanation of what happened, from the victim. • Listen to the victim without interrupting them and to put them at ease. • Write everything down that the victim is saying as it might be used as evidence in the police investigation. • Make a comprehensive statement concerning the interview and investigation. 	8 (30%)	<p>The safety of the victim.</p> <p>Explain what is going to happen.</p> <p>Not to interrupt the victim.</p> <p>Document everything and safeguard the crime scene.</p>
4	The member must avoid asking unnecessary or uncomfortable questions about the intimate details of the alleged offence at that stage. As the victim is often worried that everyone will know about the intimate details, the members must explain that all information regarding the incident will only be shared with the necessary role players.	8 (30%)	Make mention that they will take the victim to a safe place, away from the crime scene.
5	It is of the utmost importance that the first member on the scene safeguards the scene. Members must note that in most cases of sexual offences, there are three (3) crime scenes, namely the bodies of the victim and the suspect and the place, including, where applicable, where the incident occurred and where the victim and suspect moved afterwards. This implies that vital evidence about the crime will still be on the victim and at the crime scene.	16 (60%)	<p>Make mention that they will safeguard the scene and preserve all evidence.</p> <p>Keep the victim safe and inform him or her of the process that will follow.</p>

(Source: Own).

Most of the participants mentioned the following duties of the FRO:

- Deal with the victim in a professional manner;
- Treat the victim with respect;
- Safeguard the crime scene until it has been handed over to the investigation officer;
- Determine if the suspect is still on the crime scene and get a description of them;
- Assure the victim of their safety; and
- Make notes.

The minority of the participants mentioned that the information that the victims share with them will only be shared with other role players in the case, to assist and arrange for medical care, to cordon off the crime scene and inform other role players, interview the victim, collect evidence, and open a case docket.

When understanding what the duties of a FRO consist of, it mentioned that the victim should be treated with respect and be professional, to safeguard the scene, determine if the suspect is still on the crime scene, to assure the victim of their safety, take notes and cordoning off the scene (Sample A: P2:2021).

Having considered what is captured in the literature and what the participants mentioned, the researcher believes that the participants from sample A are not well conversant with dynamics regarding their responsibilities as first responding officers at the scene of a sexual offence. Although they appear to have a collective understanding of their responsibilities, it is a concern that not all the members are familiar with their responsibilities when responding to the scene of a sexual offence.

The first responder is supposed to be well informed on their responsibilities, because they are at the forefront of addressing crime. The FRO's responsibilities are, in fact, most important, because they are the members that are first at the crime scene. This means that what they do, and what they do not attend to, has the

potential to impact the smooth progression of the investigation. Not all members are fully aware of what their responsibilities entail.

The way in which the FRO executes their duties is important. It is vital for them to acquaint themselves with the relevant information concerning their responsibilities. Another very important role player at the scene of a sexual assault is that of the investigation officer.

In paragraph 3.5.1, below, the researcher will discuss the FCS detective as lead investigator in sexual assault cases.

3.4.2 The role of the FRO when recording the victim statement

The role the FRO plays when recording the rape victims' statement is important, because it will influence the quality of the rape victim statement. The FRO must let the victim know that they are safe and will be kept away from any further harm. The FRO must find out from the victim if the suspect is still in the vicinity, so that the victim can feel at ease when giving the statement. Furthermore, the member needs to record everything the victim says, in their own words.

Sample A were asked what the role of the FRO is when recording a victim statement.

- None of the participants referred specifically to the role that the FRO plays when taking the statement, but rather explained what they will do – thus by implication operationalising the activities contained in the role of the FRO.
- Most of the members responded that they would take down the statement of the rape victim when arriving at the crime scene. They mentioned the way in which the interview will be conducted – in the form of straight questions on what happened, but, when the victim feels uncomfortable, to hand it over to the relevant role players. Intimate questions that will reveal too much information will not be asked, only those who can assist in the investigation process. Determine if the victim and the suspect have a relationship or not. Is the suspect known to the victim? Give a description of the clothing and appearance of the suspect.

- The minority of the members felt that it is not the responsibility of the FRO to obtain a statement from the victim, because there are the FCS unit members who can obtain a statement from the victim. The reason for this is that they feel that those members are better equipped to take the statement, and they have received training in the field.

Using the biographical profile of this group (their training, years of experience and age) the researcher considered the depth of the answers provided. Of the 28 FROs, only 11 had any form of additional training apart from basic training. This may not be the most ideal situation to have at police stations with large incidents of sexual offences.

There were 22 constables, four (4) sergeants and two (2) warrant officers in this group. Twenty of these participants had more than 11 years' experience as SAPS members, and the remaining eight (8) had between 1-10 years' experience in the SAPS. It's a concern for the researcher that members are not more fully conversant with what their role entails.

3.5 THE FAMILY VIOLENCE, CHILD PROTECTION AND SEXUAL OFFENCES INVESTIGATOR

Sexual assaults are supposed to be investigated by the Family Violence, Child Protection and Sexual Offences Investigation unit (FCS). According to National Instruction 2/2019: Family Violence, Child Protection and Sexual Offences (FCS) Investigation, the role of the FCS unit is to ensure the effective prevention and investigation of FCS-related crimes and to ensure excellence in service delivery to victims of family violence, crimes against children and sexual offences (SAPS, 2019).

National Instruction 3/2008: Sexual Offences (SAPS, 2013) states that:

an investigation officer means a service member designated to investigate the complaint of a sexual offence. If no member has been designated as such, the member or detective is on standby. If the offence victim is a child, only a member trained by the FCS unit may be designated as an investigation officer.

For the purposes of this research, the FCS detectives are those investigating officers who have been stationed at the FCS offices within the geographic location of the research demarcation area, as explained in paragraph 1.6 supra. Moreover, the researcher purposefully demarcated the scope of this research to exclude the sexual assault of children; thus it is not addressed.

3.5.1 Duties of a Family Violence, Child Protection and Sexual Offences investigator

Hess et al. (2017:12), state that the duties of an investigation officer are to secure the crime scene, provide the necessary assistance to victims and witnesses, keep notes and reports, search for physical evidence, obtain information from witnesses, arrange for an identification parade, and testify before a court of law. Jordaan and Dintwe (2015:251) elaborate that the role of investigators during the investigation of an incident is to identify and obtain all the evidence they can realistically obtain to prove or disprove the incident they are investigating, and further state that an investigating officer's role during the investigation process is to obtain all relevant information and evidence to prove or disprove the investigated incident.

Paragraph 2(e) of NI 3/2008: Sexual Offences defines an investigating officer as ... a member of the service designated to investigate the complaint of a *sexual offence*. If no member has yet been designated as such, the member or detective is on standby. If the *victim* of the offence is a *child*, only a member trained by the FCS unit may be designated as *investigating officer* (SAPS, 2013:1).

Primarily it is the FCS investigators who are designated to investigate sexual offences. However, if one is not immediately available, the standby detective of the police station in whose jurisdiction the incident occurred, should be contacted to commence with the investigation. When an FCS detective becomes available, the case is usually transferred to that person.

An investigation officer is a member of the service that investigates all crimes designated to them. During the investigation of a sexual offence case, the FRO will be the first member to be in contact with the victim. The case is then transferred to the FCS unit who will take over the investigation of the case. In practice, all sexual

offence cases are being designated to the FCS units since the establishing of these units in 2010.

In terms of subsection 9(1)–(2)(a)–(f) of NI 3/2008: Sexual Offences, the role of the investigation officer is to conduct a thorough investigation in every case. Subsection 9 contains six specific activities to which the investigating officer must attend. These activities will be presented in a table format to facilitate the comparison with the empirical data received from the participants of sample B.

Only sample B was asked: According to your understanding, what is the role of the investigation officers at the scene of a rape?

The numerical responses have been populated into Table 3.3, to facilitate a comparative discussion and to illustrate the paucity of insight on the part of the participants.

Most of the participants that fulfil the duties of investigation officers, included the following activities:

- Take charge of the investigation.
- If the victim is a child, make sure the child is safe.
- Obtain information from the victim on what, who, where, when and how it happens.
- Preserve the crime scene and collect evidence, devise an investigation.
- Identify and arrest the suspect.
- Activate the necessary resources and aid to their disposal.
- The minority mentioned that the victim needs to be informed of the whereabouts of the case, and to collect the necessary evidence to supply support to the victim in the investigation process.

When understanding what the duties of an investigation officer consist of, it mentions collecting evidence, taking charge of the investigation, when children are involved in keeping them safe, taking notes to arrest the

suspect if he is on the crime scene, obtaining all the relevant information, activation of other resources and aids (Sample B: P16:2022).

Table 3.3: The role of the investigating officer

No.	The investigation officer must act as soon as possible after being informed about the crime of a sexual offence and do the following:	Role of the investigator in the investigation	Role of the investigator at the scene	Comment
1	Take charge of the investigation. Instruction must be given telephonically if the investigation officer cannot attend to the investigation immediately; he or she must instruct the members who attend to the victim and scene to inform the victim of the procedures that they will have to undergo, and also to explain to the victim the role the investigation officer plays and how they will be assisted.	3	1	To take charge of the crime scene, and secure the crime scene
2	If the victim is a child, ensure the child's safety. To determine if the child needs protection and care; if so, to take the necessary steps to ensure the safety of the child	3	3	To make sure of the safety of the child.
3	Obtain information from the victim. The investigation officer should only take a statement from the victim who set out what happened. The investigation officer may take the statement in private or in the presence of a third party as by choice of the victim.	3	3	To obtain information from the victim on what happen. Nobody mentioned that the statement must be taken in private/ presence of a person chosen by the victim.
4	To obtain an in-depth victim statement as soon as possible from the victim to ensure that vital information may not be lost. A better statement can be obtained from the victim once the trauma he or she has experienced is less intense, and a better rapport could be obtained for the investigation.	1	0	Obtaining information from the victim on what happen. Nobody mentioned the capturing of an in-depth statement.
5	To keep the victim informed about the progress of the investigation (arrest of the suspect, release of the suspect on bail, court dates). The details of the investigation officer must be recorded in the investigation diary, mentioning the date, time and place of contact, and whether this	2	2	To keep the victim informed about the case. No specific mention was made about the arrest of a suspect, bail and

No.	The investigation officer must act as soon as possible after being informed about the crime of a sexual offence and do the following:	Role of the investigator in the investigation	Role of the investigator at the scene	Comment
	was in person or in writing. The victim must also be informed about the investigation officer's contact details and invited to contact the investigation officer for any queries.			future court appearances. The sharing of the investigators contact details was not mentioned.
6	To submit a statement regarding the crime scene, irrespective of how long ago the incident occurred.	0	0	Nobody mentioned this aspect.

(Source: Own).

Having considered what has been discussed from the literature and the data in Table 3.3, the researcher believes that the participants from sample B are not well conversant with all the activities connected to the role of the investigation officer as it pertains to what they need to do in general and when they attend to the scene. These activities are explained in subsection 9(1)-(2)(f) of the NI 3/2008: Sexual Offences.

None of the participants made specific mention of interviewing the victim in a private space or having someone with them as support. Neither did they mention the in-depth statement that must be taken as a follow-up to the initial statement. The investigator's statement about the crime scene was also not mentioned. These gaps are problematic because it implies that there are numerous activities that they will not be attending to, due to ignorance. If vital activities are not attended to, it may result in crucial evidence being missed and not captured in the victim's statement.

Sample B were asked, Why you think it's important for an investigation officer to keep the victim updated on the progress of the case?

- Most of the members stated that it is important to keep the victim updated on the case, so that a relationship of trust can be built, and also to ensure that the victim is aware of the progress of the case. In addition, they said it is to know the whereabouts of the victim and be able to inform them of new developments, and also to show that an effort is being made in the investigation process.
- The minority only state that they will inform the victim just to keep them updated with the case.

The empirical data shows that most of the participants believe that by maintaining contact with the victim will build trust. It is of the utmost importance for the investigation officer to build a relationship of trust with the victim. This will result in the victim being more readily likely to come forward when they recall additional information that may help the investigator. The relationship is therefore important for the investigation, because it can make or break the investigation.

3.6 QUALITIES OF A GOOD INVESTIGATION OFFICER FOR STATEMENT TAKING

Benson et al. (2015:6) highlight that investigators must never rely on chance or accidental success when they investigate. The investigation of a crime scene requires an individual to search for the truth in an orderly manner. The investigation officer must have the skills to communicate effectively and have human relationships to obtain information from people. Training may be used to develop and refine these skills among investigators. Furthermore, Benson et al. (2015:29), maintain that a professional investigator is a person who possesses certain characteristics, has acquired knowledge, and can apply specialised skills to the investigation process.

Benson et al. (2015), also mention that an investigation officer must have a sound, ethical character, be emotionally and intellectually intelligent, work independently and as part of a team, and interact effectively with others. They should be a critical thinker with an organised and systematic approach, be well versed in new technology, and perseverant. Brandl (2019:59) states that an investigation officer should have good judgement, stability, stamina, persistence, intelligence, initiative, ability to work in a team, involvement, dedication and creativity. Investigators should think through the problem to its solution and have common sense.

Hess et al. (2017:13), state that an investigation officer must be able to obtain information, apply knowledge, and be open-minded, objective and logical, in order to be an effective investigator. They are well-organised and can prioritise and manage cases effectively. They understand the diversity of all racial groups, and can interact across all genders, ethnic groups and social group lines. Brandl (2019:55) informs that logic refers to the process of reasoning, and of drawing conclusions from statements of facts. Decision-making is continual and must be used based on facts, to be effective. Investigators can make valid inferences, with sufficient facts to draw a logical and definite conclusion. Effective investigators must guard against the tendency to become 'sold' on a suspect or theory early in the investigation, because such a mind-set creates investigation myopia and short-sightedness.

Sample B were asked, What good qualities should a good investigation officer have when recording a rape victim statement?

- Most of the participants mentioned that they should act professionally, be sensitive towards the victim, be patient and not interrupt the victim, never be judgemental, have good listening skills, and take notes.
- The minority made mention of the language barrier: that the interview should take place in a language the victim understands, and to ask a question to clear uncertainties.

When referring to the good qualities an investigation officer should have, it is mentioned that the officer must be patient, act professional, have good listening skills, be patient and not interrupt the victim (Sample B: P5:2022)

Since the question posed is within the setting of statement taking, the researcher viewed the data from this perspective. The literature discussed encompasses more than just the taking of a statement; and within the discussion it does emphasise effective communication. When comparing what the participants said with the comprehensive skills and qualities mentioned in the literature, the data shows that the qualities mentioned (professionalism, patience, not interrupting, listening) will add value when these participants undertake their duties. Only a few mentioned the language barrier – which will impact the accuracy of communication and the resultant statement. This is perhaps something that is lacking within this sample and should be addressed. To further emphasise the qualities of an investigation officer is vital in the investigation and throughout the whole process in the execution of their duties.

3.7 DOCKET ANALYSIS

The South African Law Commission (2001:92) states that police docket files contain all recorded criminal cases, geographical information, statements from victims, witnesses, suspects and other role players, details of the progress as well as details of activities undertaken by the police officers dealing with those cases. Docket analysis carefully examines a case docket to retrieve information from that

specific docket. The SAPS then use the information retrieved from these dockets for planning and other crime prevention activities. This action is being done at station level by the Crime Information Analysis Centre (CIAC). Docket analysis is usually done to try and link numerous crime incidents, using a variety of analytical tools. That was not the purpose for the analysis done in this research.

As explained in paragraph 1.11.3, the researcher designed a checklist, based on the 77 checklist items contained in Annexure E to National Instruction 3/2008: Sexual Offences. This was done to verify the data gathered from the participants during the interviews and to assess to what extent the participants were complying with subsections 9 and 18 of NI 3/2008: Sexual Offences. The analysis from the checklist activity is presented as per Table 3.4, below.

Items that have been complied with in the entire sample of analysed dockets are marked with a √. Similarly, items that have not been complied with (at all) in the entire sample of the dockets are marked with a X. In those instances, where there has been only a certain percentage of compliance – this is reported on in both numerical and percentage terms.

Table 3.4: Checklist for docket analysis

No	Content	Guilty dockets (n 15)	Not guilty dockets (n 29)
1.	Paragraph statements.	√	√
2	Do not prime the victim - it must be his or her own statement. (Never ask leading questions).	√	√
3	Full names (Maiden name, if applicable) <ul style="list-style-type: none"> • Age and date of birth • Identity number • Occupation • Residential & postal address • Telephone number and code • Place of employment, if applicable • Cell phone number • Facsimile number 	√	√
4	Detail of events leading up to the incident. (This will vary according to circumstances and there will be more information in some cases than in others).	√	√
5	Describe the scene of crime prior to the attack.	√	√
6	Fully describe the victim's clothing and the victim (this may assist forensic identification).	7 (46.6%) partially compliant	6 (20.6%) partially compliant
7	Describe the other victims (if more than one victim was involved).	9 (60%) fully compliant	24 (82.7%) fully compliant
8	Day and date. Specify the day of the week.	9 (60%) partially compliant	24 (82.7%) partially compliant
9	Clarify time - how did the victim know what the time was?	6 (40 %) fully compliant	9 (31%) fully compliant
10	Describe, if possible, any route taken by the victim prior to attack.	X	X
11	Witness - any known to victim, describe other witnesses and give their names (if possible), witnesses may link the victim to the suspect.	10 (66.6%) fully compliant	8 (27.5%) fully compliant
12	How the suspect approached victim.	√	15 (51.7%) fully compliant
13	How the suspect maintained control of the victim.	10 (66.6%) fully compliant	24 (82.7%) fully compliant

No	Content	Guilty dockets (n 15)	Not guilty dockets (n 29)
14	If restraints were used, did the suspect bring them with him or her or did they belong to the victim?	X	X
15	Weapons, etc. used, displayed, mentioned.	6 (40%) fully compliant	X
16	Exact words spoken by the suspect. Use direct speech.	10 (66.6%) fully compliant	8 (27.5%) partially compliant
17	Exact words spoken by the victim to suspect. Use direct speech.	10 (66.6%) fully compliant	6 (20.6%) partially compliant
18	If there is more than one suspect, briefly identify each one by some distinguishing feature – such as a moustache, facial mark, colour of shirt.	X	√
19	Details of anything left at the scene by the suspect.	10 (66.6%) fully compliant	24 (82.7%) fully compliant
20	Describe anything touched by the suspect.	3 (20%) fully compliant	5 (17.2%) fully compliant
21	Did the suspect have an escape route prepared prior to the attack?	X	X
22	Describe the victim's state of mind throughout the entire incident. What was the victim feeling or thinking in relation to each event as it occurred?	10 (66.6%) partially compliant	23 (79.3%) partially compliant
23	Threats made by suspect - exact language	7 (46.6%) fully compliant	6 (20.6%) fully compliant
24	Was there any resistance by the victim? Include reasons for resisting or not resisting.	9 (60%) fully compliant	18 (62%) fully compliant
25	If the victim resisted, explain the suspect's reaction (speech, facial expression, physical reaction).	11 (73.3%) partially compliant	29 (100%) partially compliant
26	Did the suspect force the victim into any particular physical position?	10 (66.6%) fully compliant	15 (51.7%) fully compliant
27	Did the suspect photograph the victim?	X	X
28	Describe if and how clothing was removed and by whom, and in what order -where the clothing was placed or left.	15 (100%) partially compliant	29 (100%) partially compliant
29	Was the victim made to dress in any specific items of clothing.	X	X
30	Were these items brought to the scene by the suspect?	√	√
31	Were any items of clothing stolen by the suspect?	√	√
32	Did the suspect force the victim to use any specific words or sentences during the attack?	X	X

No	Content	Guilty dockets (n 15)	Not guilty dockets (n 29)
33	Fully describe the sexual assault. Describe the acts. Was the victim given any options?	6 (40%) partially compliant	29 (100%) partially compliant
34	If sexual intercourse took place, exact description of how the victim felt (force, fear, fraud).	√	√
35	How penis entered vagina (or other orifices) <ul style="list-style-type: none"> - position of bodies - position of hands - position of legs 	4 (26.6%) fully compliant	6 (20.6%) fully compliant
36	Was the suspect's penis erect?	7 (46.6%) partially compliant	5 (17.2%) partially compliant
37	Was any lubricant used?	X	X
38	Was the suspect circumcised?	X	X
39	Did the suspect have difficulty in achieving an erection or maintaining it or experience premature ejaculation?	X	6 (20.6%) partially compliant
40	Was the victim forced manually to masturbate the suspect to achieve or maintain his erection?	X	X
41	Did suspect ejaculate? How did the victim know that the suspect had ejaculated?	2 (13.3%) fully compliant	6 (20.6%) fully compliant
42	Did the suspect use anything to wipe his penis after the offence?	X	6 (20.6%) fully compliant
43	Was anything done by the suspect to remove or stop semen being left behind, e.g. forcing the victim to wash, combing victim's pubic hairs, using a condom?	X	6 (20.6%) partially compliant
44	If tissues were used, what happened to them? Where did they come from?	X	X
45	If oral sex occurred, did the victim spit out semen or vomit - if so, where?	2 (13.3%) fully compliant	√
46	Did the suspect tell or force him/her to take any drugs or medication or alcohol?	X	X
47	Was there any blood anywhere? Describe whether it was on the victim or suspect or scene of crime.	X	X

No	Content	Guilty dockets (n 15)	Not guilty dockets (n 29)
48	If a number of sexual acts were carried out, describe the exact position in which they were committed and the speech used towards the victim, prior, during and after these acts.	2 (13.3%) partially compliant	24 (82.7%) fully compliant
49	Any specific threats made to victim not to report the offence. The exact words used must be given.	10 (66.6%) fully compliant	24 (82.7%) fully compliant
50	Any actions or words used to prevent that the victim recognise the suspect.	X	X
51	Did the suspect take steps to avoid leaving fingerprints?	X	X
52	Was any of victim's property taken to assist the suspect in locating him or her again? Was this taken to stop the victim from reporting the incident? Was this specifically mentioned by the suspect?	X	√
53	Did the suspect suggest they meet again? Give specifics.	X	X
54	Was the suspect curious about the victim's life, family or previous relationships, sexual or otherwise?	X	X
55	Did the suspect pay any compliments to the victim?	X	√
56	Did the suspect make excuses for what he had done or apologise for it?	X	√
57	Did the suspect make any mention of police procedures?	X	X
58	How did the attack end?	√	√
59	How did the victim leave the scene?	8 (53.3%) fully compliant	18 (62%) fully compliant
60	How did the suspect leave the scene? Was it by foot, by car, or bicycle?	9 (60%) fully compliant	18 (62%) fully compliant
61	Did the victim tell anyone and when did he or she do so?	12 (80%) fully compliant	29 (100%) partially compliant
62	A full description of the suspect(s) from head to toe.	15 (100%) partially compliant	29 (100%) partially compliant
63	Include a description of the suspect's clothing. It may be necessary to state what the suspect was not wearing, e.g. a jacket.	2 (13.3%) fully compliant	5 (17.2%) partially compliant
64	Did the suspect speak in language known to victim? Clarify.	√	√
65	Did the suspect have an accent? Clarify, if possible.	X	X
66	Did the victim know the suspect? If the answer is in the affirmative, give details. Would the victim be able to recognise suspect again?	√	√

No	Content	Guilty dockets (n 15)	Not guilty dockets (n 29)
67	How was the incident reported to police?	√	√
68	Permission from victim for the examination of the scene or his/her property and for the removal of items for evidence and forensic examination.	X	6 (20.6%) fully compliant
69	Fully describe all property taken, including serial numbers, colours, sizes, identifying marks.	X	X
70	Get the victim to formally identify any property left by the suspect at the scene.	X	X
71	Describe all the injuries inflicted on the victim.	2 (13.3%) fully compliant	6 (20.6%) fully compliant
72	Include the fact that victim did not consent, even if this is obvious.	√	√
73	Record the absence of consent for the removal of any of the victim's property by the suspect.	10 (66.6%) fully compliant	24 (82.7%) fully compliant
74	Is the victim willing to attend court?	X	X
75	Make sure that the victim reads the statement thoroughly and that it is signed in all the right places.	√	√
76	When was the last time the complainant had sexual intercourse? If within 72 hours before the incident, control blood samples are required from all the partners.	X	X
77	Victim's consent to forensic testing of articles seized for examination and that the victim knows that the articles may be damaged in the process of the forensic examination.	X	X

(Source: Own).

To further emphasise the importance of information, it is noted in comparison that the researcher has done on closed docket for the said period. Closed dockets have been analysed, and remarkable evidence has been found that can be closely related to the interviews held with both first responders and the FCS investigation officers.

The researcher could establish that out of the 'guilty' dockets, only 15 (19%) of the 77 elements have been mentioned (and addressed fully), and out of the 'not guilty' dockets only 19 (25%) of the 77 elements have been mentioned (and addressed fully). The researcher further established that from the 'guilty' dockets 31 (40%) of the 77 elements were not mentioned at all, and from the 'not guilty' dockets 24 (31%) of the 77 elements were not mentioned at all. This doesn't necessarily mean that these elements were forgotten or left out purposefully; it could be that it may not have been relevant to the incident to be specifically included. However, when studying these elements individually, it is probable that some were not addressed because they may have been irrelevant, while others were relevant, but they were simply not addressed.

Furthermore, analysis of the 'guilty' dockets showed that 31 (41%) of the 77 elements were either fully or only partially addressed but by only a proportional part of the sample. Similarly, from the 'not guilty' dockets analysed, 34 (44%) of the 77 elements were either fully or only partially addressed, also only by a proportional part of the sample.

The data shows that there are more instances of non-compliance with the requirements of Annexure E in the 'guilty' dockets than the 'not guilty' dockets. This is also the situation for the proportional full compliance samples: there are more instances of this in the 'guilty' than the 'not guilty' dockets. There is however more partial compliance in the 'not guilty' dockets than in the 'guilty' dockets.

This situation then begs the question: In light of such non-compliance, to what extent is adherence to the requirements of Annexure E contributing to successful convictions? For this the researcher has no answer, but to encourage other researchers to look into this apparent conundrum.

What the research did conclusively illustrate is that there not full adherence to the requirements set out in subsection 9 and subsection 18 of NI 3/2008: Sexual Offences.

3.8 SUMMARY

Rape investigations require of investigation officers and first responders be open-minded and passionate about the task at hand. In this chapter, the researcher discussed and provided feedback on the following aspects: what is a statement, what are the requirements of a good victim statement, who is a first responder, what are the duties of a first responder, who is an FCS investigator, what are the duties of an FCS investigator, what good qualities should an investigation officer possess when recording a rape victim statement, and docket analysis at the hand of Annexure E to the NI 3/2008: Sexual Offences.

The empirical data showed that the participants lack a comprehensive understanding of these concepts from the perspective of similar literature and the applicable National Instruction. It concerns the researcher, as it may negatively influence their ability to do their work, despite being passionate or open-minded.

To discuss the important information needed in the victim statement, it is clear from the literature that the participants from both samples have a narrow understanding of what it entails. A statement is a written document containing information about a criminal incident and the investigation thereof. Furthermore, for the victim statement to be well constructed, it must be accurate, objective, complete and concise. However, the information in a rape victim statement must also adhere to completeness, conciseness, objectivity, and accuracy requirements. When a rape victim statement is taken, it should be accurate about what happened before and after the whole ordeal with the victim.

Furthermore, the FRO and FCS investigators do not fully appreciate their duties when on a crime scene. The data shows that participants from both sample A and sample B lack understanding of their duties, as described by NI 3/2008: Sexual Offences. It is a concern to the researcher that it will affect the quality of the victim statements.

Moreover, the data also showed that the FCS participants are not well versed in their role as investigators of sexual offences and when it relates to taking the statement from the victim. The data also showed that participants are well conversant with the qualities of a good investigator, which will positively contribute to the content of the victim's statement.

The SAPS appear not to have the necessary resources and expertise to investigate sexual offence cases, specifically as it relates to this sample. None of the FCS members have undergone FCS training, but they are expected to perform duties aligned with the mandate of the FCS units. The reduction and conviction of sexual offences in society depend to a large extent on the rape victim statements taken by the FROs and FCS investigators. By not placing well trained and skilled personnel in the field, it is improbable that society will view successful convictions.

The SORMAA (Act 32 of 2007) was introduced in 2008 to deal with and address sex-related offences. It is a concern to what extent the contents of the dockets fail to comply with the guidelines set out in subsection 9 and subsection 18 of NI 3/2008: Sexual Offences. It is even more concerning because the majority of the participants do not have a working knowledge of this NI and what it contains. Some simply operate by word of mouth.

In the next chapter, the findings and recommendations will be discussed.

CHAPTER 4: FINDINGS, RECOMMENDATIONS, AND CONCLUSION

4.1 INTRODUCTION

Creswell (2013:134) states that the interrelationship between design and approach continues with the purpose statement that provides the objective and maps to the study. It must be constructed and written in clear and concise language. Maree (2016:31) explains that by carefully crafting the purpose of the research, the reader is informed of how the research will be done, what the focus will be, where it will be conducted, and who will be involved. The purpose of this research was to evaluate to what extent the guidelines issued in National Instruction 3/2008: Sexual Offences are adhered to by the responsible police officials affiliated with the Graaff-Reinet, Willowmore and Aberdeen police stations, when they take down the statements of rape victims, for further investigation.

To assist the researcher in achieving this aim, the following research objectives were defined:

- To explore what a comprehensive victim statement should contain in a rape investigation to meet the requirements of Annexure E to NI 3/2008: Sexual Offences.
- To explore to what extent the guidelines issued in subsections 9 and 18 of NI 3/2008: Sexual Offences are being complied with when rape victims' statements are being recorded.

The following question guided the research study:

- To what extent are the prescriptions highlighted in sub-sections 9 and 18 of the NI 3/2008: Sexual Offences being complied with by the investigators taking the statement from the rape victim?

Empirical data was collected through semi-structured interviews conducted with first responding officers (FRO) and FCS investigators. In addition, using the checklist attached to the National Instruction as Annexure E, closed rape dockets were analysed to obtain the relevant information needed for the research. The researcher

documents the findings below. In this chapter, the researcher discusses the research findings, offers recommendations, and formulates conclusions.

4.2 FINDINGS

The findings presented below are based on the literature review conducted, semi-structured interviews, and case docket analysis (using a pre-approved checklist based on Annexure E to the NI). Overall, it is evident throughout the research that the participants' understanding of the content, and therefore practical applicability, of subsections 9 and 18 of NI 3/2008: Sexual Offences is not where it should be. The participants lack understanding of what rape is, and what information is crucial when recording rape victim statements. These shortcomings may very possibly impact the quality of the statements being taken for the investigation of rape cases.

4.2.1 Criminal investigation

Crime investigation involves the police action of collecting evidence by interviewing victims and gathering information to identify, apprehend and convict suspected offenders (Cordner, 2014:73; Osterburg & Ward, 2010:5). Similarly, Carter et al. (2016:166), explain that an investigation includes collecting evidence, interviewing perpetrators and witnesses, or conducting forensic analysis. The sole purpose of investigating the crime scene is to determine what happened and how it can be resolved.

The participants were asked how they would define criminal investigation. The empirical data indicates that the participants from both samples are not well conversant with the dynamics involved in a criminal investigation, although they have a vague understanding of it. While not necessarily problematic, it may pose a challenge when they are called upon to investigate, as despite good intentions, they may only attend to some aspects contained in the activities which comprise a criminal investigation.

The researcher's concern is that if one does not fully understand the requirements of doing an investigation, then compliance with the guidelines issued in subsections 9 and 18 and Annexure E of NI 3/2008: Sexual Offences may not occur, or will occur

to only a minor degree. It will undoubtedly impact the investigation and may cause more trauma for the victim.

4.2.2 Forensic investigation

Zinn and Dintwe (2015:443) state that forensic investigation is the practice of lawfully establishing evidence and facts that are presented in a court of law or at another form of hearing or tribunal. Forensic investigation involves applying a scientific process to solve a legal problem within the legal context (Hess & Orthmann, 2010:6). Forensic investigation also makes use of science and technology to test a theory before a court of law on what transpired (Becker & Dutelle, 2012:7). In addition, forensic science is the use of knowledge of natural and physical sciences and techniques to answer important questions to administrative, civil and criminal law (Swanson et al., 2019:10).

The participants were asked how they would define forensic investigation, and whether they thought that it differed from criminal investigation. The empirical data for the first part of the question will be dealt with separately from the second half. The empirical data showed that participants from both samples had a vague understanding of what forensic investigation entails. When one has a vague understanding of what forensic investigation is, and all that it may entail, it is very probable that the scope of what one does will reflect this level of understanding. It may impact the quality of the information in the victim statement; as a result, it will not fuse with the content of Annexure E of the NI 3/2008: Sexual Offences.

4.2.3 Criminal and forensic investigation

Benson et al. (2015:19), state that forensic investigation can be defined as follows:

... an in-depth, meticulous investigation, searching for the truth through the use of specialized skills and expert knowledge and the application of scientific investigation methods and techniques, in order to lawfully discover, collect, prepare, identify and present evidence which can be presented to court of law, disciplinary council, instructing client or company.

Cordner (2014:73) argues that the investigation of crime refers to the actions the police are taking to identify and apprehend suspects of crime, which includes activities such as interviewing, crime scene investigation, and interrogation. Forensic investigation plays an essential role in the investigation of the crime scene. While the definitions are very similar between criminal and forensic investigation, the one activity cannot function without the other. Both investigation techniques are well incorporated into each other. That being said, their common goal is to bring the perpetrator before a formal legal tribunal.

The participants were asked whether they thought there was a difference between forensic and criminal investigation. The empirical data revealed that participants from sample A (FRO) showed an uninformed view of how criminal and forensic investigation differ, while the data from sample B showed something different. This sample appeared to be more informed (albeit not particularly knowledgeable) than their FRO counterparts about the intricacies of forensic investigation, and as a result, it shows how these two may differ. This insight within this sample seems to be more comprehensive, since they are supposedly better trained and more knowledgeable on matters relating to investigation. It is disconcerting, however, that around half of sample B acknowledged the difference but could not explain why they thought so.

The researcher noticed from both sample A and sample B that the participants' point of view dwelt mostly on the forensic part of the investigation. Because of the narrow understanding of forensic investigation, the researcher is concerned about both samples' responses. In this section, the words scientific, physical evidence, and collection of evidence are used.

To understand the latter, the participants should at least have a more precise understanding of what criminal and forensic investigation entail. It will also impact the contents of the investigation and the victim's statement.

4.2.4 Rape as a crime

Rape is considered as one of the most severe crimes and carries heavy penalties in most countries. Section 3 of the SORMAA (Act 32 of 2007) states that any person 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 (Department of Justice ..., 2007:20).

Subsection (2) of the same Act further states that sexual penetration includes any act which causes penetration to any extent whatsoever by, the genital organs of one person into or beyond the genital organs, anus, or mouth of another person; in subsection (3), penetration is defined as any 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 the genital organs of an animal, into or beyond the mouth of another person. Some of the literature presented still offers a very one-dimensional view of rape: even within a 21st century context. The researcher must emphasise that according to South African legislation, the victim of rape may be either male or female. Similarly, the perpetrator of rape may also be either male or female. In addition, the authors underscore the fact that fear-induced consent does not imply consent: this, too, is supported by the South African legal position.

The participants were asked what their understanding is of rape. The empirical data shows that the participants from sample A may not fully understand, from a legal perspective, who can be raped. This is very concerning and will have an impact when these participants must take the statement of a rape victim. It is very possible that their protracted views of what rape is or is not, will affect how they assist a victim (especially a male victim). Sample A's feedback specifically highlights that most of this sample believe that only females can be raped. A small minority indicated that males do perpetrate rape against males. The whole group did emphasise that consent by the female must be absent for the act to be considered as rape.

On the other hand, the sample B participants did not mention the gender of the perpetrator or the victim. They mention the concepts of vagina or anus – possibly implying that either gender could be raped. They also mention that objects may also be used to perpetrate rape. The researcher is of the view that this sample had a sound knowledge of what rape is, and that it can be committed by either of the sexes.

From the analysis of the closed-off rape dockets, the researcher can confirm that these did contain male victims. It highlights that men can also be victims of rape, and while there is a societal stigma to reporting rape by men, for this group of victims the crime outweighed the stigma.

To take a well-structured victim statement, it is essential for the SAPS and FCS members to clearly understand what rape is (in terms of actions) and who can be raped (in terms of who can be a victim of rape). It will contribute to a more constructive and well-drafted victim statement which will address all the elements of rape. When a complete victim statement is taken by either the FRO or the FCS member, it should meet the requirements of the guidelines as per Annexure E of NI 3/2008: Sexual Offences.

4.2.5 Elements of rape

Before 2007, rape was defined in South African legislation as the ... unlawful and intentional sexual intercourse with a female person without her consent. This crime typology needed to be revised for various reasons, and therefore SORMAA (Act 32 of 2007) was promulgated (Lötter, 2014b:93).

Section 3 of Act 32 of 2007 states that any person who unlawfully and intentionally commits and of sexual penetration with a complainant, without the consent of complainant, is guilty of the offence of rape (Department of Justice ..., 2007:20).

The act states that either a male or a female can commit rape; similarly, the victim may also be male or female. The act further states that rape can also occur between persons of the same gender. To prove an allegation of rape, the victim statement must address the unlawful nature of the act, the intentional penetration of the sexual genitals and anus of the victim (with something), and the absence of consent of the victim. In this instance, forced consent does not equate to voluntary consent.

The participants were asked what the specific elements are that they focus on when they take a rape victim statement. The empirical data shows that the participants from both samples were familiar with the elements of rape. It is noted that some referred to the aspects of 'who, what, where, when, and how'. At the same time, not elements of rape per se, addressing these aspects in the statement of the victim will

enhance the overall comprehensiveness of the statement. The researcher believes that a sound understanding of what elements to address in the statement of the victim will address various aspects in Annexure E of NI 3/2008: Sexual Offences.

The researcher perused the content of the closed-off case dockets to determine to what extent the elements of rape are comprehensively explicated in each case. The researcher noted that of the 'guilty' case dockets, the elements of unlawfulness, intention, penetration and consent were visible in most cases. Conversely, these elements are not that well explained when the 'not guilty' case dockets were analysed. The researcher speculates that this may have contributed to why some of these cases were not prosecutable. If one of the elements of the crime cannot be shown or proved, then the crime cannot have been committed.

The researcher is concerned with the information retrieved from the docket analysis. The elements of the crime of rape must be present so that it can conform to the crime itself, before a prosecutor can convict a suspect.

It is alarming that cases of this nature do not conform to the rules stipulated in NI 3/2008: Sexual Offences, which includes subsections 9, 18 and Annexure E. The guidelines give a specific pathway on how the rape victim statement must look to have all the necessary information. The success and, ultimately, the conviction depend on the content of the rape victim's statement. It is therefore of the utmost importance that the members drafting the rape victim statements familiarise themselves with, and adhere to, the NI requirements relating to victim statements.

Only sample B participants were asked about the number of statements they had taken from rape victims. All the participants reported that they had taken countless statements from the victims of rape. They could not recall the total number, but they all mentioned that they had taken many statements. This underscores the extent of rape in this policing area, and emphasises why these cases, specifically, need to be thoroughly investigated.

4.2.6 National Instruction 3/2008: Sexual Offences

Within the SAPS, National Instructions serve as a benchmark for performance of duties. Failure to comply with these instructions may result in disciplinary steps

being instituted against the non-compliant member (SAPS, 2016). National Instruction 3/2008: Sexual Offences ensures that victims of sexual offences receive the professional assistance they need. Subsection 9 emphasises the role the investigation officer plays during the investigation of a sexual offence, whereas subsection 18 focuses on the importance of an in-depth victim statement after the initial statement. Furthermore, in Annexure E of NI 3/2008: Sexual Offences, specific guidelines are given when a victim statement is recorded, thereby providing guidance for the content of the in-depth statement.

Both samples were asked about their familiarity with NI 3/2008: Sexual Offences, as it relates to their specific roles as FRO and investigator. The empirical data showed that the majority of the participants, from both samples, were not well conversant with the stipulations of the NI pertaining to these specific aspects. This is alarming.

The participants from sample B were asked to what extent they were familiar with the 77 items contained in Annexure E of the National Instruction. The empirical data showed that most of the participants were not familiar with the content, and while a few did indicate that they knew some of them, they were not well versed in the content. It is evident that more intervention is needed to equip participants with the relevant information about it. It is a concern that most participants lack an understanding of the contents of the NI, which forms a vital role in the execution of their duties. For an investigation to be fruitful, the role players must be well-informed about their roles.

The participants from sample B were asked whether they knew of the guidelines issued by the SAPS in relation to how and where an interview with a rape victim should be conducted. The empirical data shows that these participants only had a vague idea on how and where to interview the victim of a sexual offence.

The data showed that most of the participants acknowledged that guidelines exist, and then mentioned the following in relation to this: the use of a victim-friendly room for the interview, and the existence of a victim support centre. Moreover, they mentioned treating the victim with dignity and respect. It is evident that the participants are not well experienced in the guidelines for victim handling in this

context and will therefore inadvertently miss very important steps in dealing with the victim.

4.2.7 Requirements of a good statement

Van Niekerk et al. (2015:226-227), mention that an investigator must consider and look for the following aspects when taking a statement: the place where the statement is obtained; the language that's going to be used as an effective communication tool; the formulation and structure of the statement to include all the facts; and, to make sure that all witnesses are to be interviewed to determine what happened, in order to prepare a good structure and a good statement that cover all the elements of the crime.

A detailed and well-conversant statement will greatly impact the investigation of a crime scene. A good statement must meet the requirements of the following seven principles (SAPS, 2010:3-8; SAPS, 2012:3-6; Van Niekerk et al., 2015:228): accurate, objective, concise, complete, clear, comprehensive and truthful.

The participants from sample A were asked, What important information should be contained in the statement? Similarly, the participants from sample B were asked what they thought were the requirements of a good statement. While the questions appear different, the responses were aligned by converting the WHAT information (asked of sample A) to a specific principle (requirement of a good statement – asked of sample B). Using a tabulated format of the principles of a good statement (considered as the requirements of a good statement, captured from literature) and allocating a number to each principle, the researcher analysed the data from both sets of participants.

The empirical data showed that the participants from both samples would address four of the seven principles identified, when a statement is taken. These are: accuracy (date, time, place, names, description of property, vehicles, suspect), completeness (contains all relevant details), clarity (being unambiguous and having one meaning) and truthfulness (basing the content on fact, not opinion). The remaining three principles of objectivity, conciseness and comprehensiveness were not mentioned.

It is a concern for the researcher, as it may pose a challenge when they have to record victim statements, that they will not mention all the relevant information about the case for investigation, and vital information will be lost. It is a concern for the researcher that not all members are well acquainted with the content regarding the important information that should be contained in a victim statement. It also might be that the members are not well conversant with the information contained in NI 3/2008: Sexual Offences, relating to their work (specifically Annexure E).

Only sample B was asked why they think it is important for an investigator to obtain an in-depth statement from a victim.

According to NI 3/2008: Sexual Offences, subsection 18 (SAPS, 2013:20-21):

the initial statement of the victim must be followed up by an in-depth statement. The investigating officer must take or ensure that the victim's in-depth statement is taken, once the victim has recuperated sufficiently (depending on circumstances, ideally between 24 to 36 hours) after the incident. The investigating officer must be sensitive to the cultural, language and religious background and gender of the victim.

The empirical data showed that participants are not really sure why it is important to obtain an in-depth statement from the victim. The researcher will argue that this may even imply that such in-depth statements are then either not taken at all or taken for the sake of taking another statement (which may not be in-depth at all). Not understanding the reason behind an instruction may inadvertently lead to either poor compliance or non-compliance. Either way, this ignorance will clearly impact on the quality of the case presented in court.

4.2.8 Responsibilities of the first responding officer

The duties and responsibilities of first responding officers (FRO) are dealt with in various SAPS policies and National Instructions. The duties of FRO to sexual offence complaints are dealt with comprehensively by various official SAPS documents and National Instructions.

The participants from sample A were asked what they understood their responsibilities to be when arriving on the crime scene. The empirical data showed

that participants from sample A are not well conversant with dynamics regarding their responsibilities as FROs at the scene of, specifically, a sexual offence. Although they appeared to have a collective understanding of their responsibilities, it is a concern that not all the members are familiar with their responsibilities when responding to the scene of a sexual offence.

The researcher also found that the terms 'role', 'responsibility,' and 'duties' are used interchangeably in literature and also SAPS documents. This may be contributing to some confusion among first responders. While not specifically part of the study, the researcher will make a recommendation to address this.

4.2.9 Role of the First Responding Officer

The FRO's role in recording a rape victim statement is important because it will affect the quality of the rape victim statement. The FRO must let the victim know that they are safe and being kept away from any further harm. The member must find out from the victim whether the suspect is still in the vicinity, so that the victim can feel at ease when giving the statement. Furthermore, the member needs to record everything the victim says, in their own words.

The participants from sample A were asked what the role is, of the FRO, when the victim's statement must be recorded. The empirical data showed that the majority of the participants were not comfortable in taking such a statement, and feel out of their depth. While they will attend to it, they will skirt around questions that may be embarrassing or sensitive. A minority of this group were of the view that it should not be their responsibility to take such a statement, since there are better skilled and well-trained FCS members to do this.

The researcher compared this result with the biographical information in Chapter 1, and noted that 11 of the sample have had additional training to the standard FRO training. Their lack of insight is thus confusing in this instance, but may say something about their inclination to not be involved with the investigation of sexual offences specifically, since this is a crime type that is very challenging to work with. It is also noted that FROs with such a diverse set of training may not necessarily be found everywhere.

4.2.10 Duties of the Family Violence, Child Protection and Sexual Offences Investigator

Jordaan and Dintwe (2015:361) state that an investigating officer's role during the investigation process is to obtain all relevant information and evidence to prove or disprove the investigated incidents. In practice, all sexual offences cases are to be investigated by a designated FCS detective, but if one is not immediately available, the standby detective (from the local SAPS) will be contacted to commence with the investigation. When an FCS detective becomes available, the case is usually transferred to that person. The NI clarifies what the investigating officer of a sexual offence complaint must do. None of the FCS participants had attended the FCS training: compounding the problem.

The participants from sample B were asked what the role is of the investigating officer at the scene of a rape. The empirical data showed that the participants from sample B are not sufficiently familiar with what is expected of the investigation officer at the crime scene. While collectively they may seem to understand what these duties entail, as individual participants there are glaring gaps in their knowledge.

Sample B was also asked why they thought it was important to keep the victim updated on the progress of the case. The empirical data showed that not all participants fully know the importance of informing the victim regarding the case's progress. It is vital to establish a relationship of trust, so that if the victim remembers additional details, they will feel comfortable enough to contact the investigating officer.

It is a concern that only 50% of the members are fully aware of their duties, while the other 50% are not familiar with their duties and what those duties entail. It is also alarming that very few members are familiar with the contents of NI 3/2008: Sexual Offences relating to the duties of an investigation officer. This NI is of the utmost importance, and plays a vital role in the field for the investigation officer and first responding officer. The NI gives clear guidelines and instructions on what role players' duties and responsibilities entail.

With the information received, it is a concern for the whole investigation process that participants are not fully conversant with all the instructions relating to their

work. It will have an impact on the outcome of all cases, as well as rape cases, in total. Fewer suspects will be apprehended and there will be fewer convictions.

4.2.11 Qualities of a good investigation officer for statement taking

The investigation of a crime requires an individual who will search for the truth in systematic manner. The literature showed that professional investigators need to possess specific characteristics and skills.

The participants from sample B were asked what good qualities a good investigator should have when recording a rape victim statement. The empirical data showed that the participants have a good understanding of what qualities a good investigating officer should have for the taking of a rape victim statement. This is a positive aspect within the study.

4.2.12 Closed-off case dockets

The researcher conducted docket analysis on 44 closed-off dockets, which included 15 'guilty' dockets, 29 'not guilty', and two (2) 'withdrawn'. The data showed that the guidelines in NI 3/2008: Sexual Offences are being complied with, but only to a certain extent. A contributing reason may be that not all the participants (FROs and FCS) are fully aware of what their duties entail and the execution thereof. It is also noted that the content of the checklist (Annexure E) is not fully utilised by the FROs and/or the FCS investigators.

4.3 RECOMMENDATIONS

The research aim was to evaluate to what extent the investigators adhere to the guidelines as captured in NI 3/2008: Sexual Offences, subsections 9 and 18 for Sexual Offences when rape victims' statements are being taken for further investigation.

4.3.1 Criminal and forensic investigation

The investigation of criminal cases is one of the core functions of the SAPS; therefore, FRO and FCS investigators must be sent on all relevant courses to equip them in their line of duty. It is also important for the station commander and relief

commander to make sure that all the policies relating to the FROs are readily and freely available at the community service centre (CSC).

FROs must equip themselves with the necessary knowledge regarding their line of duty. All FCS investigators need to be sent on courses relating to sexual offences, which includes the Detective Learning Programme (DLP). The use of more experienced members from the FROs and FCS investigators are to assist and guide new members in the field. Information and experience can be shared among them, and best practices can be applied in the field of work.

4.3.2 Rape as a criminal offence

It is recommended that FROs and FCS investigation officers be sent on sexual offence related courses. The FCS investigation officer must be sent on the DLP and all other sexual offence related courses. It is also important to send members on refresher courses regarding the importance of the elements of rape. Knowing the importance of the elements of rape in criminal investigation plays a vital role when rape victim statements are recorded. Training should be conducted in-service to empower members with the necessary knowledge about investigating rape cases.

4.3.3 National Instruction 3/2008: Sexual Offences

Based on the findings, it is recommended that both the FROs and FCS investigators be equipped and updated on the content of NI 3/2008: Sexual Offences, as well as the annexure and checklist. This could possibly be included in their annual performance plans.

Furthermore, it is recommended that CSC and FCS detective commanders need to ensure that the prescribed instructions are available for the members to read. Members need to also empower themselves by reading up on the literature required in their field of work.

4.3.4 Duties and role of the FRO and FCS investigators

It is recommended that FROs receive in-depth training (and refresher training) on what their duties entail when dealing with sexual offence complaints and crime scenes. There must be regular workshops and in-service training relating to their

duties. Where possible, community-based partnerships could be established where specialised in-service training can be offered to FROs who wish to specialise in attending to sexual offence scenes and complaints. Both members need to understand their duties fully. The necessary documents must be available at the CSC and easily accessible.

It is also recommended that all SAPS policies and National Instructions that deal with the roles, responsibilities and duties of FROs and FCS members clarify what is meant by these concepts. It is further recommended that junior members be mentored by the more experienced members, to give them greater insight into their working environment. It is vital that the FCS participants are sent for FCS training as a matter of urgency and those who have not yet attended the Detective training, to be sent as soon as possible.

4.3.5 Data analysis (closed dockets)

It is strongly recommended that all FROs and FCS investigators be sent for progressive statement-taking courses. Cluster commanders could liaise with the National Director of Public Prosecutions (NDPP) and negotiate the availability of prosecutors willing to provide skills development training to FROs and FCS detectives, to enhance their statement-taking skills. Historical cases could be used as case studies, to make the training context more realistic for the detectives.

Data integrity needs to be done on all rape victim statements to make sure that all the necessary information is recorded in the statement. The FCS commander and shift commander must scrutinise the content of all rape victim statements before the docket can be captured. It will also make sure that all the elements of the crime of rape itself are recorded. The inspection of the docket before sending it to be closed off is important.

4.4 CONCLUSION

The researcher believes that this study identified severe shortcomings in the way the responsible police officials affiliated with the Graaff-Reinet, Willowmore and Aberdeen police stations, take down the statements of a victim of rape for further investigation. It is evident from the findings that there are shortcomings in recording

rape victim statements. The recording of rape victim statements needs focused and dedicated members from both the FRO and FCS investigation officers. Both these groups need to work hand in hand with each other, to strive to bring the perpetrator before a court of law by drafting a well-constructed victim statement.

The more informed the members from the FROs and the FCS investigation officers are on the guidelines for taking a rape victim statement, the easier it will be for them to construct a better, well-prepared and detailed rape victim statement. Both members are given a heavy task when recording rape victim statements, so it is imperative for them to equip themselves with the necessary information relating to their duties and line of work. The researcher hopes that, through the research findings, members can still be encouraged that if a problem is identified, and addressed as a collective, working together to make small changes can have an impact in larger areas. The researcher believes that divided we fall, but united we can stand together to achieve a common goal.

The journey of a thousand miles begins with a single step – Lao Tzu

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ANNEXURES

ANNEXURE A: DOCKET ANALYSIS CHECKLIST

No	Content	Guilty(15)	Not guilty(29)
1.	Paragraph statements.		
2	Do not prime the victim - it must be his or her own statement. (Never ask leading questions.)		
3	Full names (Maiden name, if applicable) Age and date of birth Identity number Occupation Residential & postal address Telephone number and code Place of employment, if applicable Cellphone number Facsimile number		
4	Detail of events leading up to the incident.(This will vary according to circumstances and there will be more information in some cases than in others.)		
5	Describe the scene of crime prior to the attack.		
6	Fully describe the victim's clothing and the victim (this may assist forensic identification).		
7	Describe the other victims (if more than one victim was involved).		
8	Day & date. Specific day of the week.		
9	Clarify time - how did the victim know what the time was?		
10	Describe, if possible, any route taken by the victim prior to attack.		
11	Witness - any known to victim, describe other witnesses and give their names (if possible), witnesses may link the victim to the suspect.		
12	How the suspect approached victim.		
13	How the suspect maintained control of the victim.		
14	If restraints were used, did the suspect bring them with him or her or did they belong to the victim?		

No	Content	Guilty(15)	Not guilty(29)
15	Weapons, etc, used, displayed, mentioned.		
16	Exact words spoken by the suspect. Use direct speech.		
17	Exact words spoken by the victim to suspect. Use direct speech.		
18	If there is more than one suspect, briefly identify each one by some distinguishing feature such as a moustache, facial mark, colour of shirt.		
19	Details of anything left at the scene by the suspect.		
20	Describe anything touched by the suspect.		
21	Did the suspect have an escape route prepared prior to the attack?		
22	Describe the victim's state of mind throughout the entire incident. What was the victim feeling or thinking in relation to each event as it occurred?		
23	Threats made by suspect - exact language		
24	Was there any resistance by the victim? Include reasons for resisting or not resisting.		
25	If the victim resisted, explain the suspect's reaction (speech, facial expression, physical reaction).		
26	Did the suspect force the victim into any particular physical position?		
27	Did the suspect photograph the victim?		
28	Describe if and how clothing was removed and by whom, and in what order - where the clothing was placed or left.		
29	Was the victim made to dress in any specific items of clothing.		
30	Were these items brought to the scene by the suspect?		
31	Were any items of clothing stolen by the suspect?		
32	Did the suspect force the victim to use any specific words or sentences during the attack?		

No	Content	Guilty(15)	Not guilty(29)
33	<p>Fully describe the sexual assault. Describe the acts. Was the victim given any options? Consider:</p> <p>Touching Where and by whom Victim by suspect Suspect by victim</p> <p>Kissing Suspect by victim Victim by suspect</p> <p>Use of Instruments: Foreign objects used or placed in vagina, anus, etc.</p> <p>Digital penetration: In vagina or anus. (Fingers)</p> <p>Fetishism: Particular attraction/request for certain object (clothing/perfume/baby oil).</p> <p>Voyeurism: Watching a particular act (e.g. suspect watching victim masturbate).</p> <p>Cunnilingus: Mouth to vagina</p> <p>Sexual sadism: Beatings, burning, whipping, biting, twisting breasts, asphyxiation (strangulation) until victim is unconscious, painful bondage (tied up).</p> <p>Annullingus: Licking anus.</p> <p>Urination: Urinating on victim.</p> <p>Defecation: Defecation of human waste matter (faces) on victim.</p> <p>Bestiality: Forced to perpetrate sexual act with animal.</p>		
34	If sexual intercourse took place, exact description of how the victim felt (force, fear, fraud).		
35	<p>How penis entered vagina (or other orifices)</p> <ul style="list-style-type: none"> - position of bodies - position of hands - position of legs 		
36	Was the suspect's penis erect?		
37	Was any lubricant used?		
38	Was the suspect circumcised?		
39	Did the suspect have difficulty in achieving an erection or maintaining it or experience premature ejaculation?		

No	Content	Guilty(15)	Not guilty(29)
40	Was the victim forced manually to masturbate the suspect to achieve or maintain his erection?		
41	Did suspect ejaculate? How did the victim know that the suspect had ejaculated?		
42	Did the suspect use anything to wipe his penis after the offence?		
43	Was anything done by the suspect to remove or stop semen being left behind, e.g forcing the victim to wash, combing victim's pubic hairs, using a condom?		
44	If tissues were used, what happened to them? Where did they come from?		
45	If oral sex occurred, did the victim spit out semen or vomit - if so, where?		
46	Did the suspect tell or force him/her to take any drugs or medication or alcohol?		
47	Was there any blood anywhere? Describe whether it was on the victim or suspect or scene of crime.		
48	If a number of sexual acts were carried out, describe the exact position in which they were committed and the speech used towards the victim, prior, during and after these acts.		
49	Any specific threats made to victim not to report the offence. The exact words used must be given.		
50	Any actions or words used to prevent that the victim recognize the suspect.		
51	Did the suspect take steps to avoid leaving fingerprints?		
52	Was any of victim's property taken to assist the suspect in locating him or her again? Was this taken to stop the victim from reporting the incident? Was this specifically mentioned by the suspect.		
53	Did the suspect suggest they meet again? Give specifics.		
54	Was the suspect curious about the victim's life, family or previous relationships, sexual or otherwise?		
55	Did the suspect pay any compliments to the victim?		

No	Content	Guilty(15)	Not guilty(29)
56	Did the suspect make excuses for what he had done or apologize for it?		
57	Did the suspect make any mention of Police procedures?		
58	How did the attack end?		
59	How did the victim leave the scene?		
60	How did the suspect leave the scene? Was it by foot, by car, or bicycle?		
61	Did the victim tell anyone and when did he or she do so?		
62	A full description of the suspect(s) from head to toe.		
63	Include a description of the suspects clothing. It may be necessary to state what the suspect was not wearing, e.g. a jacket.		
64	Did the suspect speak in language known to victim? Clarify.		
65	Did the suspect have an accent? Clarify, if possible.		
66	Did the victim know the suspect? If the answer is in the affirmative, give details. Would the victim be able to recognize suspect again?		
67	How was the incident reported to police?		
68	Permission from victim for the examination of the scene or his/her property and for the removal of items for evidence and forensic examination.		
69	Fully describe all property taken, including serial numbers, colours, sizes, identifying marks.		
70	Get the victim to formally identify any property left by the suspect at the scene.		
71	Describe all the injuries inflicted on the victim.		
72	Include the fact that victim did not consent, even if this is obvious.		
73	Record the absence of consent for the removal of any of the victim's property by the suspect.		
74	Is the victim willing to attend court?		

No	Content	Guilty(15)	Not guilty(29)
75	Make sure that the victim reads the statement thoroughly and that it is signed in all the right places.		
76	When was the last time the complainant had sexual intercourse? If within 72 hours before the incident, control blood samples are required from all the partners.		
77	Victim's consent to forensic testing of articles seized for examination and that the victim knows that the articles may be damaged in the process of the forensic examination.		

ANNEXURE B: INTERVIEW SCHEDULE: SAMPLE A: FIRST RESPONDING OFFICERS (FRO)

PARTICIPANT NUMBER: _____

TOPIC: AN EVALUATION OF THE NATIONAL INSTRUCTION 3 OF 2008 DURING RAPE INVESTIGATIONS AT THE GRAAFF-REINET FCS UNIT IN THE EASTERN CAPE

I am Ricardo Kayster student no 39530329 a post graduate student that is currently busy conducting research for the degree – Masters in Criminal Justice: Police Science, Forensic Science and Technology (98629) at the University of South Africa. My supervisor is Prof Bernadine Benson who can be contacted at the university on 079 5282869 with regard to any matters pertaining to my research.

The aim of the research is to evaluate to what extent does the investigators adhere to guidelines as captured in the National Instructions (NI) 3/2008 sub-sec 9 and 18 for Sexual offences when rape victims' statements are being taken for further investigation.

The following research question will be answered in this study:

Research question:

1. To what extent are the prescriptions highlighted in sub sec 9 and 18 of the NI 3 of 2008 being complied with by the investigators taking the statement from the rape victim?

Your participation in this research is of major importance for the successful answering of the research questions.

The researcher is bound to his assurances and guarantees by the research ethics code of the University of South Africa. The information you provide will be used in a research project for a Master's in Criminal Justice: Police Science, Forensic Science and Technology (PFS) at the University of South Africa. The analysed and processed data will be published in a research report.

The interviewer will personally note your answers on paper and record the interview with an audio voice recorder. Should any question be unclear, please ask the researcher for clarification. Only one answer per question is required. When answering the questions, it is very important to note that there are no right or wrong answers and to give your own opinion.

All interviews will be treated as strictly confidential

Your participation in this study is voluntary and can be terminated at any time. All responses will be treated with the utmost confidentiality by the researcher and all participants will

INTERVIEW SCHEDULE FOR THE FIRST RESPONDING OFFICERS

SECTION A: BIOGRAPHICAL INFORMATION: FOR SAMPLE A

1. What is your age?
2. What is your gender?
3. What are your qualifications?
4. How many years of experience do you have in the South African Police Service?
5. What is your rank? (How long have you been on this rank?)
6. In which unit of the South African Police Service are you currently working and for how long?
7. What training courses have you attended in the South African police service? Please elaborate (type of training, where attended, when).
8. Did you received any training in rape cases? Please elaborate.
9. Have you ever attended to a scene of a rape as part of your duties as FRO? (if not do you think it must be a standard for FRO to attend to such cases? – please elaborate)
10. Did you complete your Basic Detective Learning Programme, or do you still need to attend?

SECTION B: RAPE IN THE CONTEXT OF A CRIMINAL OFFENCE.

1. How would you define what a criminal investigation is?
2. How would you define what a forensic investigation is, and do you think it differs from that of a criminal investigation? (Please elaborate)
3. What is your understanding of rape?
4. When you take the statement of a rape victim, what are the specific elements that you focus on in the statement?

SECTION C: KNOWLEDGE OF NATIONAL INSTRUCTION

1. How familiar are you with the duties of the FRO in NI 3 of 2008?
 - a. Very familiar
 - b. Familiar
 - c. Not familiar at all (heard of the NI but not sure what it entails)
 - d. Never heard of this NI
2. According to your understanding what is the role of the FRO officers when arriving on the crime scene?
 - a. Probing: How do you handle/treat the victim when you arrive at the scene?
 - b. What assurance do you as the FRO give to the victim when you arrive at the crime scene?
3. What is the role of the FRO when recording the rape victim statements?
 - a. Probing: Do you think that it should be the role of the FRO to take this statement? (why/why not)
 - b. Explain to me how you go about conducting this interview to obtain the statement?
 - c. Are there questions that you specifically do or do not ask the victim? Why?
 - d. What do you specifically ask the victim about the suspect?

4. What important information should be contained in the statement?
5. What would you do to improve the SAPS protocol (NI 3 of 2008) for the recording of the rape victim statement?
6. Is there anything else you would like to add that I have not asked you about?
Thank you for taking part in this interview.

**ANNEXURE C: INTERVIEW SCHEDULE: SAMPLE B: FCS
INVESTIGATION OFFICERS**

PARTICIPANT NUMBER: _____

**TOPIC: AN EVALUATION OF THE NATIONAL INSTRUCTION 3 OF 2008
DURING RAPE INVESTIGATIONS AT THE GRAAFF-REINET FCS UNIT IN THE
EASTERN CAPE**

I am Ricardo Kayster student no 39530329 a post graduate student that is currently busy conducting research for the degree – Masters in Criminal Justice: Police Science, Forensic Science and Technology (98629) at the University of South Africa. My supervisor is Prof Bernadine Benson who can be contacted at the university on 079 5282869 with regard to any matters pertaining to my research.

The aim of the research is to evaluate to what extent does the investigators adhere to guidelines as captured in the National Instructions (NI) 3/2008 sub-sec 9 and 18 for Sexual offences when rape victims' statements are being taken for further investigation.

The following research question will be answered in this study:

Research question:

1. To what extent are the prescriptions highlighted in sub sec 9 and 18 of the NI 3 of 2008 being complied with by the investigators taking the statement from the rape victim?

Your participation in this research is of major importance for the successful answering of the research questions.

The researcher is bound to his assurances and guarantees by the research ethics code of the University of South Africa. The information you provide will be used in a research project for a Master's in Criminal Justice: Police Science, Forensic Science and Technology (PFS) at the University of South Africa. The analysed and processed data will be published in a research report.

The interviewer will personally note your answers on paper and record the interview with an audio voice recorder. Should any question be unclear, please ask the researcher for clarification. Only one answer per question is required. When answering the questions, it is very important to note that there are no right or wrong answers and to give your own opinion.

All interviews will be treated as strictly confidential

Your participation in this study is voluntary and can be terminated at any time. All responses will be treated with the utmost confidentiality by the researcher and all participants will

remain anonymous. All participants will be allocated a number and completed interview schedules will be captured in an electronic database. All computerised notes will be stored on a secure, password-protected computer. The researcher himself will transcribe the interviews by using the free Cell phone Application called Otter. The transcribed interviews will be kept in a secure place for a period of three years as required by the university rules. The transcribed interviews (hard copies) will thereafter be destroyed by shredder and the e-copies will also be destroyed by deleting the information off the hard drive of the Laptop.

Research agreement between researcher and participant:

I undertake not to disclose your name. All information will be treated confidentially. When reporting on the findings, no names of individuals or companies will be mentioned. You are free to terminate the questioning at any stage of the interview. The above information has been explained to me and I understand it. My name will not be disclosed, and I will allow my information or responses to be used in a confidential manner that will not harm me or my employer in any way and I am also aware that the thesis might be published in future.

If you have any queries about this interview schedule, please contact Wo Ricardo Kayster on 0723991701 and via email at rkkayster@gmail.com.

Thank you for your cooperation.

Master's in Criminal Justice student
UNISA

Signature of participant

Place

Date

PARTICIPANT

I hereby give permission to be interviewed and that information supplied by me can be used in this research.

YES	NO
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INTERVIEW SCHEDULE FOR THE FCS INVESTIGATION OFFICERS

SECTION A: BIOGRAPHICAL INFORMATION:

1. What is your age?
 2. What is your gender?
 3. What are your qualifications?
 4. How many years of experience do you have in the South African Police Service?
 5. What is your rank? (how long have you been on this rank?)
 6. In which unit of the South African Police Service are you currently working and for how long?
 7. What training courses have you attended in the South African police service? Please elaborate (type of training, where attended, when).
 8. Did you received any specialised training to deal with rape cases?
 9. Have you ever investigated rape case?
 - a. Yes, can you perhaps say how many.....
 - b. No, can you explain if you ever have to deal with rape victim and do you find it challenging.....
 10. Did you complete your Basic Detective Learning Programme, or do you still need to attend?
-

SECTION B: RAPE IN THE CONTEXT OF A CRIMINAL OFFENCE. (SAMPLE B)

1. How would you define what a criminal investigation is?
2. How would you define what a forensic investigation is, and do you think it differs from that of a criminal investigation? (Please elaborate)
3. What is your understanding of rape?
4. When you take the statement of a rape victim, what are the specific elements that you focus on in the statement?
5. What do you think is the role of the investigator in the investigation of a rape?
6. Are you aware of any guidelines that the SAPS have issued in relation to how and where an interview with a rape victim should be conducted? Please elaborate.?
7. Have you ever taken a statement from a rape victim and if so how many)?

SECTION C: FORMAL SAPS GUIDELINES FOR INVESTIGATING RAPE

1. How familiar are you with the duties of the Investigating officer in NI 3 of 2008?
 - a. Very familiar
 - b. Familiar
 - c. Not familiar at all (heard of the NI but not sure what it entails)
 - d. Never heard of this NI
2. Annexure E of this NI contains 77 items that the investigating officer is reminded to attend to. To what extent are you familiar with these aspects?
 - a. Very familiar with them – I use them consistently

- b. Familiar with them - but I do not always remember all of them
 - c. Not familiar with them at all – I know the NI but not Annexure E
 - d. Never heard of this NI
3. How long have you been investigating rape cases?
- a. What does your conviction record look like? (what do you think contributes to this?)
 - b. Probe what a good conviction rape is and what is meant by just feedback from the lab
4. According to your understanding what is the role of the investigation officers at the scene of a rape?
- a. Probe: what do you do when you arrive at such a scene?
5. I am sure that you know what a statement is, but when you think of a statement, what do you think are the requirements of a good statement?
- a. Probe: What information should be contained in a rape victim's statement for it to be effective in court?
6. According to your understanding why is it important for an investigation officer to obtain an in-depth statement from the victim?
7. What would you do to improve the SAPS protocol (NI 3 of 2008) for the recording of the rape victim statement?
8. What good qualities should a good investigation officer always have when recording the rape victims' statement?
9. Why do you think it's important for an investigation officer to keep the victim updated on the progress of the case?
10. Is there anything you would like to add that I have not asked?

Thank you for taking part in this interview.

ANNEXURE D: NATIONAL INSTRUCTION 3/2008 SEXUAL OFFENCES

NATIONAL INSTRUCTION 3/2008

SEXUAL OFFENCES

1. Background

The Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007) creates a framework which will ensure the provision of adequate and effective protection to *victims of sexual offences*. The purpose of this National Instruction is to ensure that members render a professional service to *victims* in respect of the investigation of offences of this nature and to assist *victims* in this regard.

2. Definitions

In this instruction, unless the context otherwise indicates, –

- (a) **“child”** means a person below the age of 18 years;
- (b) **“crime scene”** means the place, including, where applicable, the vehicle or vessel at or in which an alleged *sexual offence* took place;
- (c) **“health care professional”** means the district surgeon or a person appointed by the Department of Health to conduct a medical examination of a *victim* of a *sexual offence*;
- (d) **“interested person”** means any person who has a material interest in the well-being of a *victim*, including a spouse, same sex or heterosexual permanent life partner, parent, guardian, family member, care giver, curator, counsellor, *medical practitioner*, health service provider, social worker or teacher of such *victim*;
- (e) **“investigating officer”** means a member of the Service designated to investigate the complaint of a *sexual offence*. If no member has yet been designated as such, the member or detective on standby. If the *victim* of the offence is a *child*, only a member trained by the FCS unit may be designated as *investigating officer*;
- (f) **“medical practitioner”** means a person registered as a medical practitioner in terms of the Health Professions Act, 1974 (Act No. 56 of 1974), and who, for purposes of section 33 of *the Act*, is authorised to take blood samples as contemplated in Chapter 5 of the *Act*;
- (g) **“nurse”** means a person registered as such in terms of the Nursing Act, 2005 (Act No. 33 of 2005) and who, for purposes of section 33 of *the Act*, is authorised to take blood samples as contemplated in Chapter 5 of the *Act*;
- (h) **“PEP”** means Post Exposure Prophylaxis, which is medical treatment to minimize the risk of HIV infection;

- (i) **“public health establishment”**, means a place designated by the Minister of Health (set out in Annexure A) to provide *PEP* to *victims* and to carry out compulsory HIV testing;
- (j) **“sexual offence”** means any offence contained in Annexure B;
- (k) **“the Act”** means the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007); and
- (l) **“victim”** means a person, irrespective of gender or age, alleging that a *sexual offence* has been perpetrated against him or her.

3. Responsibility of Station Commissioner

- (1) Every station commissioner must liaise with local representatives of the Departments of Health (including representatives of *Public Health Establishments*, referred to in Annexure A, that are within the station area), the Department of Social Development, the local Community Police Forum and any other relevant local institution, to identify local organisations which are willing and able to provide counselling and other support services (including medical services) to *victims*.
- (2) After having identified the organisations referred to in subparagraph (1), the station commissioner must liaise with the said organisations to determine –
 - (a) the specific services that are rendered by each;
 - (b) whether the services are rendered after hours, during weekends and on public holidays, and, if so, the after hour contact numbers that may be used to access the services;
 - (c) whether the services are rendered free of charge or at a fee; and
 - (d) the contact particulars of each.
- (3) The station commissioner must compile a list of the relevant organisations and include in it, in respect of each organisation, at least the information referred to in subparagraph (2) as well as information relating to hospitals, ambulance services and *health care professionals* that may be contacted to provide medical treatment to *victims*.
- (4) The original list referred to in subparagraph (3) must be kept by the station commissioner who must update it at least once every six months.
- (5) The station commissioner must ensure that a copy of –
 - (a) *the Act*;
 - (b) the Regulations promulgated in terms thereof;
 - (c) this National Instruction;
 - (d) the station orders issued by him or her in terms of subparagraph (6); and
 - (e) the list referred to in subparagraph (3);are at all times available in the Community Service Centre and that a copy of the list referred to in subparagraph (3) is at all times available in

each police vehicle at his or her station which is utilized to attend to complaints.

- (6) The station commissioner must, taking into account the unique circumstances prevailing in his or her specific station area, available resources, etc., issue station orders –
 - (a) requiring a member under his or her command to inform a *victim* of the services rendered by organisations mentioned in the list and how to inform the *victim* thereof (e.g. by providing the *victim* with a copy of the list or allowing the *victim* to peruse the list or reading the information from the list to the *victim*);
 - (b) setting out the steps that must be taken by such member to assist the *victim*, when requested thereto by the *victim*, to gain access to any service rendered by an organisation mentioned in the list or to obtain medical treatment should this be required; and
 - (c) in general, instructing members under his or her command on any other matter relating to the treatment of *victims* which he or she deems necessary to determine in respect of his or her specific station area.
- (7) Where a police station area forms part of a larger area consisting of more than one police station area and a radio control unit has been established to patrol and attend to complaints in such larger area, every station commissioner of a station in such larger area must, for information purposes, provide the commander of such radio control unit with a copy of –
 - (a) the list referred to in subparagraph (3) and, when he or she has updated the list, a copy of the updated version thereof; and
 - (b) a copy of the station orders issued in accordance with subparagraph (6) and, if he or she amends the orders, a copy of the updated version thereof.
- (8) The station commissioner must see to it that all functional members at his or her station receive in-service training (also at station meetings) on *the Act*, the Regulations, this Instruction and the station orders issued by him or her.

4. Receiving a report of a sexual offence at a police station

- (1) The alleged commission of a *sexual offence* is usually reported by –
 - (a) the *victim* of the offence;
 - (b) a family member, friend or colleague of the *victim*; or
 - (c) a person who witnessed or received information about the commission of the offence.
- (2) The person reporting the alleged commission of the offence, normally does so voluntarily (except in the circumstances referred to in subparagraph (3)) and is accordingly normally willing to provide all the information at his or her disposal to the police.

- (3) (a) In terms of section 54(1) of *the Act*, any person who has knowledge that a *sexual offence* has been committed against a *child*, must report such knowledge to a police official. A failure to do so, constitutes an offence, and a person convicted of such offence, may be sentenced to five years' imprisonment.
- (b) In terms of section 54(2) of *the Act*, any person who has knowledge or a reasonable belief or suspicion that a *sexual offence* has been committed against a mentally disabled person, must report such knowledge to a police official. A failure to do so, constitutes an offence, and a person convicted of such offence, may be sentenced to five years' imprisonment.
- (4) A person reporting his or her —
- (i) knowledge that a *sexual offence* has been committed against a *child* or mentally disabled person; or
- (ii) reasonable belief or suspicion that a *sexual offence* has been committed against a mentally disabled person,
- as a result of the legal duty to do so in terms of section 54 of *the Act*, may sometimes do so out of fear of being prosecuted if he or she fails to do so.
- (5) If a person (referred to in subparagraph (4)) reports such knowledge or his or her belief or suspicion to a police official, the member receiving the report may under no circumstances turn such a person away. Such a member must consider the information and —
- (a) if the member is satisfied that there are reasonable grounds to believe that such an offence was indeed committed, take an affidavit from the person setting out the information provided by that person, open a docket for the investigation of the offence that was allegedly committed and register the docket on the CAS system; or
- (b) if the member is not satisfied that there are reasonable grounds to believe that such an offence was indeed committed, consult with the Community Service Centre Commander who must make a comprehensive OB entry of the report and the reasons why the Commander is not satisfied that there are reasonable grounds to believe that such an offence was indeed committed and provide the number of the OB entry to the person who made the report. The entry must include sufficient particulars of the person that made the report to enable him or her to be located and be interviewed if this turns out to be necessary.
- (6) Any person who reports the alleged commission of a *sexual offence* to a member must be treated in a professional manner and must be reassured that the report is viewed in a serious light and will be thoroughly investigated.

5. Victim assistance

- (1) During the commission of a *sexual offence*, the *victim* suffers severe trauma. It is difficult to conceive of any other offence during the commission of which the bodily and psychological integrity, privacy and dignity of a *victim* is simultaneously violated more severely than during the commission of a *sexual offence*. Furthermore, the commission of a *sexual offence* not only affects the *victim* alone, but also his or her family and personal life. A member must continuously be mindful of this fact during his or her interaction with the *victim* and the family or friends of the *victim*.
- (2) During the commission of a *sexual offence*, the *victim* normally experiences feelings of powerlessness, helplessness and of being exposed. When reporting the offence to a police official, the *victim* re-lives the event and, in so doing, experiences secondary trauma. The secondary trauma is exacerbated if the member conducts the interview in an insensitive manner or unnecessarily touches the *victim*. On the other hand, the secondary trauma is lessened if the *victim* is permitted to have a person of his or her choice present to support and re-assure him or her during the interview and if the interview is conducted in surroundings that are either familiar to the *victim* or are re-assuring to the *victim* (inducing in him or her a sense that he or she is safe and that what he or she says cannot be heard by others and is treated in confidence).
- (3) In view of the above, it is imperative that the member to whom a *victim* reports the commission of a *sexual offence* at a police station, —
 - (a) immediately requests the *victim*, to accompany him or her to an appropriate area which is away from the main duty desk in the community service centre and which is out of sight and hearing of persons in the community service centre;
 - (b) reassures the *victim* that he or she is now safe and will be protected. If the *victim* and the alleged offender are in a domestic relationship, the member must advise the *victim* in accordance with the National Instruction on Domestic Violence;
 - (c) determines whether the *victim* requires medical assistance and if so, make arrangements for the *victim* to obtain medical assistance as soon as possible;
 - (d) asks the *victim* whether he or she would prefer to have another person present to support him or her during the interview and, if the *victim* prefers that such person be present, allow such person to be present to support him or her during the interview;
 - (e) reassures the *victim* that he or she did the right thing to report the matter to the police and that the matter will be dealt with sensitively and that he or she will not unnecessarily be exposed to further traumatization;
 - (f) listens to what the *victim* says, without interrupting him or her and put him or her at ease; and
 - (g) writes down everything that the *victim* says, as it may be evidence that may assist the police in the investigation (make investigative notes).

- (4) Any member receiving a report that a *sexual offence* has allegedly been committed against any person, must always view the report in a very serious light and must pay immediate attention thereto, irrespective of how long ago (before the report) the offence was allegedly committed or in which station area it was allegedly committed. No *victim* may be turned away simply because the alleged offence took place a long time ago or was allegedly committed in the station area of another police station.
- (5) While taking statements from the *victim* and his or her family, the member must at all times act in a professional manner and be sensitive towards the emotions of the *victim* and his or her family. The member must be patient with the *victim* to allow him or her to explain what happened during the alleged commission of the offence without unnecessarily interrupting the *victim*. A member may never be judgmental while interacting with the *victim* irrespective of the circumstances surrounding the offence.
- (6) Once sufficient particulars have been obtained from the *victim*, a docket must be opened, registered on the CAS and an affidavit must be made in which the following must be clearly specified:
 - (a) the time and date on which the offence was allegedly committed;
 - (b) the place where the offence was allegedly committed;
 - (c) the nature of the alleged offence;
 - (d) the manner in which it was allegedly committed;
 - (e) the first person to whom the *victim* has reported the alleged commission of the *sexual offence* before he or she reported it to the police;
 - (f) any details regarding the alleged offender(s) that may assist in identifying and finding them; and
 - (g) any details regarding possible witnesses that may assist in identifying and locating them.
- (7) If the *victim* is unable to make a coherent statement, a skeleton docket must be opened, a statement must be obtained from any person that may be accompanying the *victim* and the *victim* must be allowed time before a statement is obtained from him or her.
- (8) The member must, as soon as possible after the incident has been reported, inform the *victim* of —
 - (a) the case number; and
 - (b) the details of the *investigating officer*.
- (9) The member must inform the *victim* of the processes that will follow next and why the processes need to be followed, to enable the *victim* to understand the procedure and to instill confidence in the *victim* that the police deal with the matter in a professional manner.
- (10) The *victim* must be informed of the importance of undergoing a medical examination as soon as may be reasonably possible. The *victim* must be informed that the examination will be conducted at state expense and that

he or she is entitled to ask the *health care professional* that conducts the examination for medical advice on how any aspect of his or her health may be affected as a result of the alleged *sexual offence*.

- (11) The member must also inform the *victim* of available services as contemplated in paragraph 11(2)(b) (below) as well as information on the witness protection programme. The *victim* must also, on a regular basis be informed on the progress of the investigation.

6. Telephonic report of a sexual offence

If a *sexual offence* is reported by phone, the member receiving the complaint must determine whether the caller is the *victim* and —

- (a) if so, attempt to keep the *victim* on the line and reassure the *victim* that a police vehicle has been despatched and provide the *victim* with appropriate advice while he or she waits for the vehicle to arrive; and
(b) if not, instruct the person to stay with the *victim* and not to disturb the *crime scene*, and

in both cases, immediately dispatch a police vehicle to the scene to assist the *victim*.

7. Responsibility of the first member on the crime scene

- (1) The first member arriving at a scene where a *sexual offence* has allegedly been committed, must deal with the *victim* professionally and must safeguard the *crime scene* until an *investigating officer* is available to take charge of the investigation.

- (2) The member on the scene must enquire from the *victim* whether the suspect could possibly still be in the vicinity and, if so, obtain a description of the suspect. The description of the suspect must immediately be relayed to all police vehicles in the area.

- (3) A member who comes into contact with a *victim* of a *sexual offence* must, as far as possible, avoid touching the *victim* unnecessarily. The member interviewing the *victim* must —

- (a) reassure the *victim* that he or she is now safe and will be protected;
(b) obtain a brief explanation of the events that took place (take investigative notes, not a statement);
(c) listen to what the *victim* says, without interrupting him or her and put him or her at ease;
(d) write down everything that the *victim* says, as it may be evidence that may assist the police in the investigation; and
(e) later make a comprehensive statement concerning the interview and the investigative notes taken and file the notes in the docket under part A of the docket.

- (4) The member must avoid unnecessary or uncomfortable questions about the intimate details of the alleged *sexual offence* at this stage. Since a *victim* is often worried that everyone will know the intimate facts of the

case, it is important that the member explain to the *victim* that the exact details of the incident will only be disclosed to the necessary role players and that it will not be necessary for intimate details to be told repeatedly.

- (5) It is of utmost importance that the member on the scene safeguard the *crime scene*. Members must take note that in most cases of *sexual offences*, there are three basic *crime scenes*, namely the bodies of the *victim* and the suspect and the place including, where applicable, the vehicle or vessel at or in which the incident took place and where the *victim* and offender moved to. Important evidence in the case will often be that contained on the person of the *victim* and at the *crime scene*.

8. Steps to be taken to safeguard the crime scene

- (1) A member or members arriving at the scene first, must emphasize the importance of the preservation of evidence of the *sexual offence* to the *victim* and all other persons who may be present and who support the *victim* (eg the parents of the *victim*). It is very important that a *victim* realises that his or her body is regarded as a *crime scene* and that he or she should, as far as possible preserve any possible evidence until the medical examination has been conducted.
- (2) In order to preserve evidence on the body of the *victim*, the member must inform the *victim* to —
 - (a) retain any toilet paper and other sanitary material if the *victim* needs to use the bathroom (toilet paper and other sanitary material must be air dried and be placed in an envelope or brown paper packet and despatched to the Forensic Science Laboratory);
 - (b) refrain from drinking any liquid, if the *victim* has been forced to perform an oral sexual act, as evidence may be lost in the process. (This restriction is applicable only if the *victim* has not already rinsed his or her mouth.) An oral swab must be taken as soon as possible after the incident;
 - (c) retain the clothes that he or she was wearing at the time of the commission of the *sexual offence*, since the clothing may be needed for forensic testing; and
 - (d) if possible, arrange for additional underwear and other clothing when he or she goes for the medical examination.
- (3) The member must ensure that the *crime scene* is guarded and protected from contamination until the *investigating officer* can take charge of the scene. Nothing on the *crime scene* should be touched or moved.
- (4) The member must take steps to protect the privacy and dignity of the *victim* and must ensure that the *victim* is removed from the *crime scene* to a nearby private place. If there is no suitable private place nearby, the *victim* should be screened from public view. It is important that a member must remain with the *victim* until the *investigating officer* arrives.

- (5) If the suspect is still on the scene, the member must keep him or her away from the *victim* and take appropriate steps to remove the suspect from the scene to prevent allegations of contamination of evidence or intimidation of the *victim* or other witnesses.
- (6) The member must identify any person at the scene that may assist in the investigation and obtain sufficient particulars of that person to enable the *investigating officer* to contact him or her afterwards.

9. The role of the investigating officer

- (1) The *investigating officer* is responsible to conduct a thorough and professional investigation in every case.
- (2) The *investigating officer* must, as soon as possible after he or she has been informed that he or she has been designated to investigate a *sexual offence*, —
 - (a) take charge of the investigation. If the *investigating officer* cannot attend to the investigation immediately, he or she must give instructions by cellular or telephone or radio to a member attending to the *victim* and the *crime scene*, to inform the *victim* of procedures that the *victim* will have to undergo and explain to the *victim* the role of the *investigating officer* and how he or she will assist the *victim*;
 - (b) if the *victim* is a *child*, ensure the safety of the *child*. This includes, determining whether the *child* is in need of care and protection and, if so, taking appropriate steps to ensure the safety and protection of the *child*.
 - (c) obtain information from the *victim*. Initially, the *investigating officer* should only take a statement from the *victim* that sets out what happened (this is only a preliminary statement). The *investigating officer* must take this statement in private although a person of the *victim's* choice may be present;
 - (d) obtain the in-depth statement of the *victim* as soon as the *victim* has recuperated sufficiently from the ordeal (depending on circumstances, ideally within 24 - 36 hours). The reason for this is that a better statement can be obtained from the *victim* once the trauma he or she has experienced is less intense and a better rapport has been established with the *investigating officer*;
 - (e) keep the *victim* informed of the progress of the investigation (eg if the suspect is arrested, released on bail, dates of appearance in court). The details of all contacts by the *investigating officer* with the *victim* must be recorded in the investigation diary, mentioning *inter alia* date, time and place of contact and whether this was in person, telephonically or in writing. The *victim* must also be informed of the contact details of the *investigating officer* and be invited to contact the *investigating officer*; and
 - (f) submit a statement with regard to the *crime scene* irrespective of how long ago the incident occurred.

10. Medical examination of the victim

- (1) The purpose of the medical examination of the *victim* is to examine the body of the *victim* to establish whether there is any evidence relating to the alleged *sexual offence* on or in the *victim's* body and to ascertain the mental and emotional state of the *victim*.
- (2) The *victim* must, as soon as possible, be taken for the medical examination. Even if the *sexual offence* was only reported more than 72 hours after it had been committed, and even if the *victim* has already washed and may possibly have destroyed evidence in the process, the *victim* must nevertheless be taken for the medical examination. The possibility of still obtaining evidence can never be discounted.
- (3) When taking the *victim* for the medical examination, the following points must be taken note of:
 - (a) The medical examination must be conducted as soon as possible.
 - (b) The medical examination must be done by a trained *health care professional*.
 - (c) The *investigating officer* must take the *victim* to the *health care professional* for the medical examination.
 - (d) A male member may not be present during the medical examination of a female *victim*, and *vice versa*. Even a member of the same gender as the *victim* may only be present during the medical examination if the *victim* agrees thereto.
 - (e) The *health care professional* will not conduct the medical examination before a case docket has been registered and an SAPS 308 form and J 88 form has been completed.
- (4) If there are allegations of drugs or alcohol usage, whether voluntary or not, by either the *victim* or the alleged offender, the *health care professional* must be requested to obtain a urine sample as well as a blood sample from the *victim*. These samples must, if at all possible, be obtained within 24 hours after the commission of the offence.
- (5) The *investigating officer* must inform the *victim* —
 - (a) of HIV testing and *PEP*, as provided for in paragraph 11;
 - (b) of the purpose of obtaining the samples;
 - (c) the reasons why the forms (SAPS 308 and J 88) must be completed and the process that will be followed;
 - (d) that he or she may request the return of all articles seized as evidence after the conclusion of the criminal case, (the articles may, however, be damaged by the forensic process);
 - (e) that he or she will be allowed to wash or bath once the medical examination is completed; and
 - (f) that the *health care professional* will be able to answer questions relating to medical treatment or services available if the *victim* needs further treatment and will be able to refer the *victim* to a *public health establishment*.

- (6) The *investigating officer* must —
- (a) complete a form SAPS 308 stating all the relevant details of the *sexual offence* or attach it to the form (ie a short description of events);
 - (b) supply a form J 88 and the relevant evidence collection kit to the *health care professional*;
 - (c) record precisely which medical samples are required and ensure that they are taken (see Annexure C);
 - (d) if it appears from the J 88 that the *victim* had sexual contact less than 72 hours prior to the commission of the alleged *sexual offence*, samples must be obtained from the partner(s) concerned;
 - (e) mark samples clearly; and
 - (f) ensure that the samples are forwarded to the Forensic Science Laboratory within 7 days. In cases involving fetuses, the fetus must, as soon as reasonably possible, be taken to the Forensic Science Laboratory.
- (7) If the *victim* requires immediate medical attention and the *investigating officer* is not present, all possible steps must be taken to ensure that a thorough medical examination is conducted and the correct samples are obtained without delay.
- (8) (a) If the *victim* of the alleged *sexual offence* is a *child*, the *investigating officer* must explain the necessity of the examination to the parents or guardian of the *child* and obtain their consent for the examination to be performed and complete form SAPS 308.
- (b) The *investigating officer* must also inform the parents or guardians of the *child victim* that they may accompany the *child* during the examination.

IF ...	THEN ...
a parent or guardian of a <i>child victim</i> — <ul style="list-style-type: none"> ▶ cannot be traced within a reasonable time; ▶ cannot grant consent in time; ▶ is a suspect in respect of the offence in consequence of which the examination must be conducted; ▶ unreasonably refuses consent; ▶ has a mental disorder and cannot consent to the examination; or ▶ is dead 	an application must be made to a magistrate in terms of section 335B of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) for consent to conduct the medical examination.

IF ...	THEN ...
a magistrate is not available	a member who is a commissioned officer, or the local station commissioner, may give consent when presented with the following two affidavits: <ul style="list-style-type: none"> ▶ One by the <i>investigating officer</i>, or another member from the station dealing with the matter, which states that a magistrate's consent cannot be obtained within a reasonable period. ▶ One from a <i>health care professional</i> which states that the purpose of the medical examination will be defeated if it is not conducted forthwith.

- (9) If a *victim* is not capable of consenting to medical treatment on account of his or her mental illness, consent for a medical examination must be obtained in writing in terms of the procedure as set out in section 32 of the Mental Health Care Act, 2002 (Act No. 17 of 2002). This section deals, *inter alia*, with the care and treatment of mental health care users who are incapable of making informed decisions.

11. Inform the victim of a sexual offence of services available and hand over a Notice to the victim

- (1) From the contents of the affidavit made by the *victim*, the member must form an opinion on whether the *victim* may have been exposed to the risk of being infected with HIV as a result of the commission of the offence. The *victim* will have been exposed to the risk of being so infected if the offence is a *sexual offence* that resulted in the *victim* coming into contact with the **blood, semen or vaginal fluid** of the alleged offender.
- (2) A *victim* of a *sexual offence* who has been exposed to the risk of being infected with HIV as a result of the commission of the offence, must be —

- (a) provided with a copy of the Form SAPS 580(a) (Notice of services available to *victim*) in English or Afrikaans (if the *victim* is able to read and understand the Notice in English or Afrikaans); and
- (b) informed by a member, in accordance with the Notice referred to in (a), —
 - (i) of the importance of obtaining *PEP* for HIV infection without any delay, but within 72 hours after the alleged *sexual offence* has been committed against him or her;
 - (ii) that *PEP* will be administered at state expense at *public health establishments* in accordance with the state's prevailing norms and standards;
 - (iii) that the *victim* will receive free medical advice and assistance on the administering of *PEP* prior to the administration thereof;
 - (iv) of the need to obtain medical advice and assistance regarding the possibility of other sexual transmitted infections; and
 - (v) that the *victim* or *interested person* may apply for an order at the magistrate court compelling the alleged offender to undergo an HIV test at state expense.
- (3) If the *victim* is unable to read and understand the Notice in English or Afrikaans, the member, or any other person who may be willing and able to assist the member to explain the contents of the Notice to the *victim* in a language that the *victim* understands, must explain the contents of the Notice to the *victim*. The *victim* must also be provided with the list of *public health establishments* in the province that are able to provide *PEP* to the *victim*. A list of such establishments is attached hereto as Annexure A.
- (4) Once a *victim* has been informed as set out in subparagraph (2)(b) above, the *victim* must be asked whether he or she prefers to apply that the alleged offender, once arrested or located, be tested for HIV at state expense. The *victim* must be informed that he or she does not have to make the decision immediately, but must be aware that, if he or she should later decide to apply that the alleged offender be tested as set out above, he or she is only entitled to apply for such a test to be undertaken **within 90 days** from the date of the alleged commission of the offence.
- (5) If the *victim* prefers to immediately apply that the alleged offender be tested for HIV, he or she must be provided with a copy of the Form SAPS 580(b) (Application by *victim* or *interested person* for HIV testing of alleged offender) and be requested to complete the application form. If the *victim* needs assistance to complete the application, the member must assist the *victim* and, if necessary, complete the application on behalf of the *victim*. Once the application has been completed, the *victim* must either attest under oath to the truth of the content of the application or solemnly declare that it is true, and the member must complete the relevant part of the application and sign that this was done.

- (6) If the *victim* prefers not to immediately apply that the alleged offender be tested for HIV, he or she must be provided with a copy of Form SAPS 580(b) (Application by *victim* or *interested person* for HIV testing of alleged offender) and be informed that, if he or she later decides to apply that the alleged offender be tested for HIV, he or she must complete the application form and hand the completed application form to the *investigating officer* **within 90 days** from the alleged commission of the offence. If the *victim* hands the completed application form to the *investigating officer* within the 90 days, the *victim* must either swear to the truth of the content of the application or solemnly declare that the information provided in the application is true, and the member must sign that this was done by completing the relevant part of the application.
- (7) Any steps taken in accordance with this paragraph must be recorded in the investigation diary of the docket.

12. Handling of application for HIV testing of offender

- (1) The *investigating officer* must place the application in a sealed envelope marked "Confidential/Vertroulik" and write on the envelope —
 - (a) "Application by *victim* or *interested person* for HIV testing of alleged offender" or "Application by *victim* or *interested person* to access HIV test result already obtained by *investigating officer*", as the case may be; and
 - (b) the case number and name, rank and Persal number of the *investigating officer*,and must submit it to the clerk of the court as soon as is reasonably practicable, but not later than two working days, after the application has been received by the *investigating officer*. The *investigating officer* must file a copy of the application under part "B" of the docket.
- (2) If the magistrate who considers the application requires additional evidence, either in the form of oral evidence or by means of an affidavit, the clerk of the court will inform the *investigating officer* personally telephonically and will confirm it in writing.
- (3) If the magistrate requires further evidence by means of an affidavit, the *investigating officer* must obtain the affidavit(s) as soon as reasonably practicable or within the period determined by the magistrate and place the affidavit(s) in a sealed envelope —
 - (a) marked "Confidential/Vertroulik"; and
 - (b) reflecting the case number and name, rank and Persal number of the *investigating officer*,and hand it over to the clerk of the court.
- (4) If the magistrate requires further oral evidence, the *investigating officer* must —
 - (a) inform the *victim*, *interested person* or other witness in writing on an official police letterhead (SAPS 21) to appear before the magistrate on the arranged date and time as conveyed by the

- clerk of the court and obtain his or her signature on the copy of the written notice as proof of the fact that he or she was informed as aforesaid;
- (b) if the alleged offender is required to testify, and he or she —
 - (i) is in the custody of the Police, bring him or her on the arranged date and time to appear before the magistrate; or
 - (ii) is not in the custody of the Police, provide the alleged offender with a written notice on an official police letterhead (SAPS 21) informing him or her of the arranged date and time to appear before the magistrate and obtain his or her signature on the copy of the written notice as proof of the fact that he or she was informed as aforesaid; and
 - (c) attend the hearing on the arranged date and time and, if the *victim*, *interested person*, other witness or the alleged offender is absent, provide the magistrate with the copy of the written notice handed to the *victim*, *interested person*, other witness or the alleged offender and on which he or she has acknowledged receipt by means of his or her signature.
- (5) Once a magistrate has decided on the application, the clerk of the court will hand the sealed decision to the *investigating officer* who must acknowledge receipt thereof in the register kept by the clerk of the court.
- (6) The *investigating officer* must, as soon as is reasonably practicable or within the period determined by the magistrate, hand a Form SAPS 580(d) (Notice to alleged offender in respect of order for HIV testing) informing him or her of the order issued by the magistrate.
- (7) Any steps taken in accordance with this paragraph must be recorded in the investigation diary of the docket.

13. Application for HIV testing of offender by investigating officer

- (1) An *investigating officer* may, if he or she finds it necessary for the purposes of an investigation into a *sexual offence*, in terms of section 32 of the Act, himself or herself apply, as soon as is reasonably practicable after a docket has been opened in respect of the alleged *sexual offence*, on the Form SAPS 580(c) (Application by *investigating officer* for HIV testing of alleged offender) to a magistrate of the magisterial district in which the *sexual offence* is alleged to have been committed, in chambers, for an order that —
- (a) the alleged offender be tested for HIV; or
 - (b) the result of the HIV test in respect of the alleged offender that was already obtained on application from the *victim* or *interested person*, be made available to the *investigating officer* or the prosecutor who needs the result for purposes of the prosecution of the case or any other court proceedings.

- (2) The procedure set out in paragraph 12 must also be followed in a case in which an application for the HIV testing of the alleged offender is made by the *investigating officer*.

14. Execution of order for HIV testing of offender

- (1) As soon as an order for the HIV testing of the alleged offender has been handed to an *investigating officer*, he or she must —
- (a) make the alleged offender available to ensure that two blood samples are obtained from him or her;
 - (b) request any *medical practitioner* or *nurse* to take two blood samples from the alleged offender; and
 - (c) deliver the blood samples to the head of a *public health establishment* or person designated by the head of the *public health establishment*.
- (2) The *investigating officer* may, if the alleged offender is not being detained, and —
- (a) there is reason to believe that he or she may avoid compliance with an order; or
 - (b) he or she has avoided compliance with an order,
- for the compulsory HIV testing of an alleged offender, apply on form SAPS 580(f) (Application for Warrant of Arrest) to the magistrate who issued the said order, to issue a warrant for the arrest of the alleged offender to collect blood samples from him or her for HIV tests. If the magistrate who issued the order is not available or able to consider such application, the application may be submitted to any other magistrate.
- (3) The *investigating officer* must, when arresting the alleged offender in terms of a Warrant of Arrest referred to subparagraph (2), take reasonable steps to verify the identity of the alleged offender and must, without delay after the arrest, take the alleged offender to a *public health establishment* for the taking of the blood samples. The alleged offender must be released as soon as the samples have been taken.
- (4) Once the *investigating officer* has obtained the duplicate sealed records of the test results from the *public health establishment* and has acknowledged receipt of the duplicate sealed records, he or she must —
- (a) if the application was made by the *victim* or *interested person*, hand a sealed record of the result together with a copy of Form SAPS 580(e) (Notice containing information on confidentiality of and how to deal with HIV test results) to each of the *victim* or *interested person* and alleged offender; or
 - (b) if the application was made by the *investigating officer*, hand a sealed record of the result together with a Form SAPS 580(e) (Notice containing information on confidentiality of and how to deal with HIV test results) to the alleged offender, and retain the other record of the test results (as provided for in paragraph 15(3)) and make the record of the test results available to a prosecutor who

needs to know the results for purposes of the prosecution or any other court proceedings.

- (5) If an order had been issued in terms of which an HIV test was conducted on an alleged offender as a result of an application made by an *investigating officer*, the *investigating officer* may inform the *victim* or an *interested person* whether or not the alleged offender in the case in question is infected with HIV with the view to —
 - (a) reduce secondary trauma and empower the *victim* to make informed medical, lifestyle and other personal decisions; or
 - (b) use the test results as evidence in any ensuing civil proceedings as a result of the *sexual offence* in question.
- (6) If the prosecutor withdraws a charge on the request of the *victim* after a magistrate, on application by the *victim*, has issued an order for a HIV test of the alleged offender, the order will lapse and the test result may not be disclosed to the *victim*. The *investigating officer* must inform the Head of the *public health establishment* of the withdrawal of the charge and any sample taken or results obtained in respect of the alleged offender must be destroyed in accordance with the instructions of the Department of Health. If the *investigating officer* is in possession of sealed records of the HIV test result in such a case, he or she must likewise destroy the records containing the result.
- (7) Any steps taken in accordance with this paragraph must be recorded in the investigation diary of the docket.

15. Record keeping of results of HIV testing

- (1) Every commander of the detectives at a station or of a detective unit must keep a register in his or her office in which the particulars relating to every application for a compulsory HIV test must be recorded. A B16 book must be utilised as a register until further notice. The information (set out in Annexure G) relating to every such application must be recorded in that register. One full page of the register must be utilized to record the particulars (including the outcome of the application and the results of any tests) for every application. The pages of the register must be numbered and a table of contents of all applications containing the CAS number and the corresponding number of the page in the register containing the particulars of the application, must be recorded on the first pages of the register.
- (2) The relevant commander is personally responsible to ensure that access to the register is only granted to —
 - (a) a member investigating a case in which an application for HIV testing was made;
 - (b) the *victim*;
 - (c) a person who has a material interest in the well-being of a *victim*, including a spouse, same sex or heterosexual permanent life partner, parent, guardian, family member, care giver, curator,

- counsellor, *medical practitioner*, health service provider, social worker or teacher of such *victim*;
- (d) the alleged offender;
 - (e) a prosecutor;
 - (f) a person who is required to execute the court order to conduct the HIV testing; and
 - (g) the Station Commissioner or an officer attached to provincial or national level for the purposes of inspecting the register.
- (3) The record containing the result of an HIV test conducted on an alleged offender, must be filed in a file which is kept in the office of the commander of the detectives at the relevant station or in the office of the commander of the relevant detective unit (together with the register referred to in subparagraph (1)) and may not be filed in the docket. The said commander may only grant access to the record to the persons mentioned in subparagraph (2) above. Appropriate entries must be made in the investigating diary of the docket concerning all steps taken in respect of the HIV testing of an alleged offender. However, the result of an HIV test may not be disclosed in the investigating diary.
- (4) An *investigating officer* may disclose the result of an HIV test of an alleged offender to the prosecutor that is responsible to conduct the prosecution of the alleged offender. If the prosecutor requests that the record containing the result be provided to him or her for the purposes of the prosecution of the alleged offender, the *investigating officer* must request the prosecutor to complete an Form SAPS 580(g) - Application for access to HIV test result of alleged sexual offender and comply with the request. The *investigating officer* must also make an appropriate entry in the investigating diary of the docket and request the prosecutor to sign at the entry to acknowledge receipt of the record.

16. Medical examination of the suspect

- (1) The purpose of the medical examination of the suspect is to examine the body of the suspect to establish whether there is any evidence relating to the alleged *sexual offence* on or in the body of the suspect. Samples obtained from the body of a suspect are utilized to link the suspect with the offence and to ensure that the perpetrator is prosecuted for the offence.
- (2) The *investigating officer* must ensure that a suspect is taken for a medical examination, if this is necessary for the proper investigation of the case. In terms of section 37 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), a member has the power to request a *health care professional* to establish certain bodily features of the suspect and to take bodily samples of the suspect and provides for the circumstances in which the bodily features may be established and the samples may be taken.
- (3) If it is necessary for the proper investigation of the case that bodily samples be taken from the suspect, the *investigating officer* must, once

the suspect has been identified and located, take the suspect to a *health care professional* to establish the bodily features of the suspect and to obtain the necessary blood samples (including a control sample) from the suspect. Upon receipt of a control sample, the sample must be handed over to the Forensic Science Laboratory as soon as possible. A letter must then be obtained from the prosecutor concerned in which the prosecutor requests that a DNA analysis be conducted on the samples. This letter must be handed over to the Forensic Science Laboratory as soon as possible and a copy of the letter must be filed under part "B" of the docket.

- (4) The *investigating officer* must ensure that —
- (a) a form J 88 is available when the suspect is examined and that the form is properly completed by the *health care professional*;
 - (b) all the necessary samples are taken (see Annexure D);
 - (c) the samples are clearly marked;
 - (d) the samples are forwarded to the Forensic Science Laboratory without delay; and
 - (e) any visible injuries of the suspect are noted.

17. Preventing contamination of exhibits

- (1) It is imperative that reasonable steps be taken to secure and protect samples of physical evidence obtained during the investigation of *sexual offences* from contamination. An allegation of any *sexual offence* is often extremely difficult to prove. Generally, the offence is committed in the absence of other witnesses and it therefore becomes the word of the *victim* against the word of the suspect.
- (2) A member who is not trained or experienced in the gathering, handling, storing and transporting of evidence, must not gather, handle, store or transport evidence. Such a member must safeguard the *crime scene(s)* against contamination and request the assistance of a trained member or contact the Local Criminal Record Centre (LCRC) for assistance.
- (3) The contamination of exhibits (including the loss of evidence on the *victim* and the suspect) must be secured by —
- (a) avoiding contact by the same member of the *victim* and suspect. If a member arrests the suspect shortly after the offence was committed, that member must avoid coming into contact or interviewing the *victim*, before **both** the *victim* and the suspect —
 - (i) have been medically examined;
 - (ii) have dressed in different clothes, and
 - (iii) the clothes worn during the alleged *sexual offence* have been removed for forensic analysis;
 - (b) transporting the *victim* and suspect in different vehicles;
 - (c) avoiding contact by the same member of the clothes of the *victim* and the suspect. Both sets of clothes must not be packaged by

- the same member unless this is done at different stages of the investigation;
- (d) ensuring that different tables or work surfaces are used for the packaging of the exhibits; and
 - (e) ensuring that the medical examination of the *victim* and suspect are done separately and not on the same surface.

18. Taking an in-depth statement from the victim

- (1) The initial statement of the *victim* must be followed up by an in-depth statement. The *investigating officer* must take or ensure that the *victim's* in-depth statement is taken, once the *victim* has recuperated sufficiently (depending on circumstances, ideally between 24 to 36 hours) after the incident. The *investigating officer* must be sensitive to the cultural, language and religious background and gender of the *victim*.

- (2) A guideline for the taking of the in-depth statement of the *victim* is contained in Annexure E. In the case of a *child victim* of a *sexual offence*, the guidelines contained in Annexure F must be taken into account when the *investigating officer* takes a statement from the *child victim*. The following general guidelines must be adhered to by the *investigating officer* when taking the in-depth statement of the *victim*:

- (a) **Preparation for taking the statement**

The *investigating officer* must allow sufficient time to take a statement of this nature. It is important that the *victim* is not rushed. The statement must be comprehensive and contain detail. The *investigating officer* must take steps to set the *victim* at ease and the statement must be taken in a relaxed, private atmosphere where there are few distractions.

- (b) **Presence of an interested person**

The *investigating officer* should enquire from the *victim* whether he or she wishes to have an *interested person* present in support of the *victim*. If the *interested person* identified by the *victim* to support him or her during the taking of the statement is a potential witness to the reported crime, the *investigating officer* must inform the *victim* that such a person is a potential witness and may not be present during the taking of his or her statement.

If the *victim* wishes to have an *interested person* present during the taking of the statement, the *interested person* must be informed that he or she may not —

- (i) comment on the merits of the case;
- (ii) prompt the *victim*; or
- (iii) interfere with the *investigating officer* in any other manner in the process of obtaining the statement from the *victim*.

- (c) **Discussion of intimate details**

The *investigating officer* must explain to the *victim* that the taking of the statement will involve the discussion of intimate details of

the sexual incident. If the presence of an *interested person* may inhibit the *victim* to disclosure these details, the *investigating officer* may suggest to the *victim* that the *interested person* should not be present. However, the decision to allow the *interested person* to be present, remains that of the *victim*.

(d) Victim must be told not to hide anything

The *investigating officer* must inform the *victim*, with great sensitivity, that if he or she has done something that might put him or her in a bad light when he or she is cross-examined, it is essential that he or she does not try to hide this fact, but state it clearly.

Example 1: If the *victim* had consumed liquor or drugs. Exactly what and how much was used must be included in the statement.

Example 2: If the *victim* had originally found the accused attractive and had allowed the accused to kiss him or her. (The fact that the *victim* acted in this way, does not mean that permission was given for the *sexual offence* to be committed.)

The fact that the *victim* states everything in his or her statement, even information that will reflect negatively on the *victim*, will enhance the credibility of the *victim*.

19. Victim after-care

(1) The importance of victim after-care

The *victim* of a *sexual offence* has undergone a traumatic experience and most *victims* of a *sexual offence* will need some form of counselling to enable them to deal with this. *Victims* of *sexual offences* may also fear that they have contracted AIDS or another sexually transmitted disease during the *sexual offence*.

(2) Safety of victims of sexual offences

Both in so far as crime prevention in general is concerned, as well as in terms of specific legislation, the Service has the duty to take appropriate steps to ensure that a vulnerable *victim* is protected.

(a) Sexual offence as a result of domestic violence

The member at the scene must, in the event of a *sexual offence* during an incident of domestic violence, act in accordance with the National Instruction on Domestic Violence and inform the *victim* of his or her right to —

- (i) apply for a protection order in terms of the Domestic Violence Act, 1998 (Act No 116 of 1998); and
- (ii) lodge a criminal complaint (a criminal case does not have to be made before the *victim* can apply for a protection order).

- (b) **If the victim is a child**
If the *victim* is a *child*, a member trained by the FCS Unit or specialised individual must be contacted. Where there are grounds for believing that it will be in the best interest of the *child* to be removed to a place of safe care, the provisions of the appropriate legislation relating to *children* must be applied.
- (c) **Mentally disabled persons**
If the *investigating officer* encounters difficulty when dealing with a mentally disabled person, the matter must be discussed with Legal Services as the procedure may necessitate an urgent application to the High Court.
- (4) **Investigating officer to assist victims**
It is the responsibility of the *investigating officer* to —
 - (a) provide a *victim* with the details of medical and counselling services available in the area;
 - (b) provide reasonable assistance the *victim* in making use of such services; and
 - (c) ensure that appropriate steps are taken to safeguard *children* or other vulnerable *victims*.

20. Identification parades

The *investigating officer* must ensure that an identification parade is held in the circumstances provided for and in accordance with the provisions contained in the National Instruction on Identification Parades.

21. Preparation for court proceedings

- (1) The *investigating officer* must keep the *victim* informed of any developments in the investigation of the case and must explain to the *victim* the court process and what to expect in court in order to prepare *victim* for the court hearing.
- (2) In terms of section 153 of the Criminal Procedure Act, 1977 (Act No 51 of 1977), the court may order that the evidence of a *victim* of a *sexual offence* be heard behind closed doors. The *investigating officer* must explain the provisions of this section to the *victim* and may request the prosecutor to assist him or her to explain the implications and practicalities to the *victim*.
- (3) The *investigating officer* must take a further statement from the *victim* before the *victim* testifies in court. The purpose of this statement is to bring the effect (impact) of the *sexual offence* on the life of the *victim* to the attention of the prosecutor. The *investigating officer* must enquire from the *victim* how the incident has affected his or her life and relationships with loved ones. This will include any affects on the personality and health of the *victim* as a result of the *sexual offence*. If appropriate, an impact statement from a psychologist, social worker or forensic social worker or any other person must also be obtained.

- (4) If the *victim* is a *child*, the *investigating officer* must obtain an impact statement from a parent, guardian, psychologist, social worker or forensic social worker or any other person that can testify on how the *child* was affected by the offence. Facts already stated in the in-depth statement must not be repeated in the impact statement.
- (5) If at all possible, the *investigating officer* must take the *victim* to the court where the case will be heard prior to the day of the trial. The *investigating officer* must arrange for a pre-trial consultation between the prosecutor, the *investigating officer*, the *victim*, and key witnesses.
- (6) The consultation between key witnesses must not be held in the presence of each other and the *victim*. During the consultation, the possibility of having the trial heard behind closed doors must also be discussed with the prosecutor. The docket must be supplied to the prosecutor timeously to enable him or her to prepare both for the pre-trial meeting, as well as the trial.

22. Assisting the victim during the court proceedings

- (1) On the day of the trial or earlier if so requested by the *victim*, the *investigating officer* must hand the *victim* copies of his or her statements to read through again to refresh his or her memory.
- (2) The *investigating officer* must, if there are any reporters in the court, inform the *victim* that, in terms of section 335A of the Criminal Procedure Act, 1977 (Act No 51 of 1977), his or her particulars will not be reported unless authorized by the presiding officer and that any report without such authorisation will constitute an offence. The *investigating officer* must also request the *victim* to report any contravention of this section to the *investigating officer* as soon as he or she becomes aware of it.
- (3) The *investigating officer* must explain the court proceedings and the possibility of postponements to the *victim*. The *investigating officer* must encourage the *victim* to press ahead with the case, despite any delays in the finalisation of the case.

23. Discontinuation of an investigation

- (1) The provisions of Standing Order (General) 325.2 must, subject to subparagraph (2), at all times be strictly adhered to when the closing of a docket, opened in respect of a *sexual offence*, is concerned.
- (2) Insofar as a docket opened in respect of a *sexual offence* is concerned, the authority to close a docket, conferred upon a "warrant officer" (now "inspector") by Standing Order (General) 325.2, is hereby withdrawn. Only an officer with the rank of Captain or a higher rank, who is a Station Commissioner or is in charge of the detectives at a station or unit, may close a docket in the circumstances provided for in Standing Order (General) 325.2.

- (3) If a Station Commissioner at a police station does not hold the rank of Captain or a higher rank, dockets opened in respect of *sexual offences* at that station, may only be closed in the circumstances outlined in Standing Order (General) 325.2, by the Station Commissioner of the Accounting Station under which that station resorts or by an officer designated for that purpose by the Station Commissioner of the Accounting Station.
- (4) An officer considering whether or not to close a docket that was opened in respect of a *sexual offence* because the suspect or complainant cannot be traced, must satisfy himself or herself that the *investigating officer* has made every effort to trace the complainant or suspect. If the said officer is not so satisfied, he or she must give clear instructions in the investigation diary to the *investigating officer* on the steps to take in order to trace the suspect or complainant and determine a date on which the *investigating officer* must present the docket with the outcome of the steps taken.

ANNEXURE E: SEXUAL OFFENCE STATEMENT CHECKLIST

ANNEXURE E

SEXUAL OFFENCE STATEMENT CHECKLIST

Please note that the checklist should only be used as a guideline, and that it remains the responsibility of the investigating officer to take a full statement in every case.

Item	Detail
1	Paragraph statements.
2	Do not prime the victim - it must be his or her own statement. (Never ask leading questions.)
3	Full names (Maiden name, if applicable) - Age and date of birth - Identity number - Occupation - Residential & postal address - Telephone number and code - Place of employment, if applicable - Cellphone number - Facsimile number
4	Detail of events leading up to the incident. (This will vary according to circumstances and there will be more information in some cases than in others.)
5	Describe the scene of crime prior to the attack.
6	Fully describe the victim's clothing and the victim (this may assist forensic identification).
7	Describe the other victims (if more than one victim was involved).
8	Day and date. Specify the day of week.
9	Clarify time - how did the victim know what the time was?
10	Describe, if possible, any route taken by the victim prior to attack.
11	Witness - any known to victim, describe other witnesses and give their names (if possible), witnesses may link the victim to the suspect.
12	How the suspect approached victim.
13	How the suspect maintained control of the victim.
14	If restraints were used, did the suspect bring them with him or her or did they belong to the victim?
15	Weapons, etc, used, displayed, mentioned.

Item	Detail						
16	Exact words spoken by the suspect . Use direct speech.						
17	Exact words spoken by the victim to suspect. Use direct speech.						
18	If there is more than one suspect, briefly identify each one by some distinguishing feature such as a moustache, facial mark, colour of shirt.						
19	Details of anything left at the scene by the suspect.						
20	Describe anything touched by the suspect.						
21	Did the suspect have an escape route prepared prior to the attack?						
22	Describe the victim's state of mind throughout the entire incident. What was the victim feeling or thinking in relation to each event as it occurred?						
23	Threats made by suspect - exact language.						
24	Was there any resistance by the victim? Include reasons for resisting or not resisting.						
25	If the victim resisted, explain the suspect's reaction (speech, facial expression, physical reaction).						
26	Did the suspect force the victim into any particular physical position? .						
27	Did the suspect photograph the victim?						
28	Describe if and how clothing was removed and by whom, and in what order - where the clothing was placed or left.						
29	Was the victim made to dress in any specific items of clothing.						
30	Were these items brought to the scene by the suspect?						
31	Were any items of clothing stolen by the suspect?						
32	Did the suspect force the victim to use any specific words or sentences during the attack?						
33	Fully describe the sexual assault. Describe the acts. Was the victim given any options?						
	<table> <tr> <td>Consider:</td> <td></td> </tr> <tr> <td>Touching</td> <td>Where and by whom; Victim by suspect. Suspect by victim.</td> </tr> <tr> <td>Kissing</td> <td>Suspect by victim. Victim by suspect.</td> </tr> </table>	Consider:		Touching	Where and by whom; Victim by suspect. Suspect by victim.	Kissing	Suspect by victim. Victim by suspect.
Consider:							
Touching	Where and by whom; Victim by suspect. Suspect by victim.						
Kissing	Suspect by victim. Victim by suspect.						

	Use of Instruments	Foreign objects used or placed in vagina, anus, etc.
	Digital penetration (Fingers)	In vagina or anus.
	Fetishism	Particular attraction / request for certain object (clothing / perfume / baby oil).
	Voyeurism	Watching a particular act (eg suspect watching victim masturbate).
	Cunnilingus	Mouth to vagina
	Sexual sadism	Beatings, burning, whipping, biting, twisting breasts, asphyxiation (strangulation) until victim is unconscious, painful bondage (tied up).
	Annullingus	Licking anus.
	Urination	Urinating on victim.
	Defecation	Defecation of human waste matter (faces) on victim.
	Bestiality	Forced to perpetrate sexual act with animal.
34	If sexual intercourse took place, exact description of how the victim felt (force, fear, fraud).	
35	How penis entered vagina (or other orifices) - position of bodies - position of hands - position of legs	
36	Was the suspect's penis erect?	
37	Was any lubricant used?	
38	Was the suspect circumcised?	
39	Did the suspect have difficulty in achieving an erection or maintaining it or experience premature ejaculation?	
40	Was the victim forced manually to masturbate the suspect to achieve or maintain his erection?	
41	Did suspect ejaculate? How did the victim know that the suspect had ejaculated?	
42	Did the suspect use anything to wipe his penis after the offence?	
43	Was anything done by the suspect to remove or stop semen being left behind, Eg forcing the victim to wash, combing victim's pubic hairs, using a condom?	

44	If tissues were used, what happened to them? Where did they come from?
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Item	Detail
45	If oral sex occurred, did the victim spit out semen or vomit - if so, where?
46	Did the suspect tell or force him/her to take any drugs or medication or alcohol?
47	Was there any blood anywhere ? Describe whether it was on the victim or suspect or scene of crime.
48	If a number of sexual acts were carried out, describe the exact position in which they were committed and the speech used towards the victim, prior, during and after these acts.
49	Any specific threats made to victim not to report the offence. The exact words used must be given.
50	Any actions or words used to prevent that the victim recognize the suspect.
51	Did the suspect take steps to avoid leaving fingerprints?
52	Was any of victim's property taken to assist the suspect in locating him or her again? Was this taken to stop the victim from reporting the incident? Was this specifically mentioned by the suspect?
53	Did the suspect suggest they meet again ? Give specifics.
54	Was the suspect curious about the victim's life, family or previous relationships, sexual or otherwise?
55	Did the suspect pay any compliments to the victim?
56	Did the suspect make excuses for what he had done or apologize for it?
57	Did the suspect make any mention of Police procedures?
58	How did the attack end?
59	How did the victim leave the scene?
60	How did the suspect leave the scene. Was it by foot, by car, or bicycle?
61	Did the victim tell anyone and when did he or she do so?
62	A full description of the suspect(s) from head to toe.
63	Include a description of the suspects clothing. It may be necessary to state what the suspect was not wearing, eg a jacket.
64	Did the suspect speak in language known to victim? Clarify.
65	Did the suspect have an accent? Clarify, if possible.

Item	Detail
66	Did the victim know the suspect? If the answer is in the affirmative, give details. Would the victim be able to recognize suspect again?
67	How was the incident reported to police?
68	Permission from victim for the examination of the scene or his/her property and for the removal of items for evidence and forensic examination.
69	Fully describe all property taken, including serial numbers, colours, sizes, identifying marks.
70	Get the victim to formally identify any property left by the suspect at the scene.
71	Describe all the injuries inflicted on the victim.
72	Include the fact that victim did not consent, even if this is obvious.
73	Record the absence of consent for the removal of any of the victim's property by the suspect.
74	Is the victim willing to attend court?
75	Make sure that the victim reads the statement thoroughly and that it is signed in all the right places.
76	When was the last time the complainant had sexual intercourse? If within 72 hours before the incident, control blood samples are required from all the partners.
77	Victim's consent to forensic testing of articles seized for examination and that the victim knows that the articles may be damaged in the process of the forensic examination.

ANNEXURE F: PERMISSION TO CONDUCT RESEARCH IN SAPS

South African Police Service



Suid-Afrikaanse Polisie

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APPROVED

Mr R Kayster
UNIVERSITY OF SOUTH AFRICA

RE: PERMISSION TO CONDUCT RESEARCH IN SAPS: AN EVALUATION OF THE NATIONAL INSTRUCTION 3 OF 2008 DURING RAPE INVESTIGATIONS AT THE GRAAFF-REINET FCS UNIT IN THE EASTERN CAPE: MASTERS DEGREE: UNIVERSITY OF SOUTH AFRICA: RESEARCHER: R KAYSTER

The above subject matter refers.

You are hereby granted approval for your research study on the above mentioned topic in terms of National Instruction 1 of 2006.

Further arrangements regarding the research study may be made with the following office:

The Provincial Commissioner: Eastern Cape:

- **Contact Person:** Capt Bangani
- **Contact Details:** (040) 608 7223
- **Email Address :** BanganiP@saps.gov.za

The Provisional Commissioner: Eastern Cape has stressed that they researcher must share the research findings with the SAPS Management Eastern Cape before it is published.

Kindly adhere to paragraph 6 of our attached letter signed on the **2021-06-04** with the same above reference number.

MAJOR GENERAL

**THE HEAD: RESEARCH
DR PR VUMA**

DATE: **2021-07-21**

ANNEXURE G: UNISA 2021 ETHICS REVIEW COMMITTEE



UNISA 2021 ETHICS REVIEW COMMITTEE

Date: 2021:05:12

ERC Reference No. : ST43-2021

Dear Ricardo Kayster

Name : R Kayster

**Decision: Ethics Approval from
2021:05:12 to 2024:05:12**

Researcher: Mr Ricardo Kayster

Supervisor: Prof B Benson

***AN EVALUATION OF THE NATIONAL INSTRUCTION 3 OF 2008 DURING RAPE
INVESTIGATIONS AT THE GRAAFF-REINET FCS UNIT IN THE EASTERN CAPE***

Qualification: MA Criminal Justice

Thank you for the application for research ethics clearance by the Unisa 2021 Ethics Review Committee for the above mentioned research. Ethics approval is granted for 3 years.

The Low risk application was reviewed by the CLAW Ethics Review Committee on 12 May 2021 in compliance with the Unisa Policy on Research Ethics and the Standard Operating Procedure on Research Ethics Risk Assessment.

The proposed research may now commence with the provisions that:

- 1. The researcher will ensure that the research project adheres to the relevant guidelines set out in the Unisa Covid-19 position statement on research ethics attached. Provisional authorisation is granted.**
- 2. The researcher(s) will ensure that the research project adheres to the values and principles expressed in the UNISA Policy on Research Ethics.**



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3. Any adverse circumstance arising in the undertaking of the research project that is relevant to the ethicality of the study should be communicated in writing to the CLAW Committee.
4. The researcher(s) will conduct the study according to the methods and procedures set out in the approved application.
5. Any changes that can affect the study-related risks for the research participants, particularly in terms of assurances made with regards to the protection of participants' privacy and the confidentiality of the data, should be reported to the Committee in writing, accompanied by a progress report.
6. The researcher will ensure that the research project adheres to any applicable national legislation, professional codes of conduct, institutional guidelines and scientific standards relevant to the specific field of study. Adherence to the following South African legislation is important, if applicable: Protection of Personal Information Act, no 4 of 2013; Children's act no 38 of 2005 and the National Health Act, no 61 of 2003.
7. Only de-identified research data may be used for secondary research purposes in future on condition that the research objectives are similar to those of the original research. Secondary use of identifiable human research data require additional ethics clearance.
8. No field work activities may continue after the expiry date **2024:05:12**. Submission of a completed research ethics progress report will constitute an application for renewal of Ethics Research Committee approval.

Note:

The reference number ST 43-2021 should be clearly indicated on all forms of communication with the intended research participants, as well as with the Committee.

Yours sincerely,



Prof T Budhram
Chair of CLAW ERC
E-mail: budhrt@unisa.ac.za
Tel: (012) 433-9462



Prof M Basdeo
Executive Dean : CLAW
E-mail: MBasdeo@unisa.ac.za
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URERC 16.04.29 - Decision template (V2) - Approve

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ANNEXURE H: LETTER FROM LANGUAGE EDITOR

15 February 2023

I, Marlette van der Merwe, hereby certify that the text and list of references of the master's dissertation titled An evaluation of the implementation of National Instruction 3 of 2008 during rape investigations: a case study at Graaff Reinet, Eastern Cape by Ricardo Kayster, have been edited by me, according to the Harvard referencing method as used by the Department of Criminal Justice at the University of South Africa.

A handwritten signature in black ink, appearing to read 'Marlette van der Merwe'. The signature is written in a cursive style with some loops and flourishes.

Marlette van der Merwe
BA (English) HDipLib (UCT)

ANNEXURE I: TURNITIN REPORT



Digital Receipt

This receipt acknowledges that Turnitin received your paper. Below you will find the receipt information regarding your submission.

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Assignment title: Revision 1
Submission title: An evaluation of the implementation of National Instruction ...
File name: Kayster_whole_document_2023-01-12_Draft_1.docx
File size: 168.68K
Page count: 117
Word count: 34,842
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Submission date: 14 Jan 2023 07:55AM (UTC+0200)
Submission ID: 1992651386

AN EVALUATION OF THE IMPLEMENTATION OF NATIONAL INSTRUCTIONS
OF 2013 DURING PAPER INVESTIGATION: A CASE STUDY AT
GRANAT HOME1, KAFERIN CAMP

BY
RICARDO KAYSTER

Submitted in accordance with the requirements for the degree of

MA (M) OF ARTS IN INTERNATIONAL JUSTICE

in the subject

INTERNATIONAL EDUCATION

at the

University of South Africa

Supervisor: Prof R. D. Gordon

Academic year:

2022

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ANNEXURE J: UNISA COVID 19 GUIDELINES FOR POSTGRADUATE STUDENTS



UNIVERSITY OF SOUTH AFRICA COVID-19 GUIDELINES: IMPLICATIONS OF ALERT LEVELS FOR RESEARCHERS AND POSTGRADUATE STUDENTS

Issued by: Prof T Meyiwa, Vice-Principal: Research, Postgraduate Studies, Innovation and Commercialisation

Date: 28 September 2020 (revisions approved by URERC on 28 Sept 2020)

Version 3.0

This guideline document is complementary to the Unisa Covid-19 position statement on research ethics, dated 8 April 2020, and the Unisa Covid-19 guidelines for ERCs, dated 28 April 2020. The document aims to provide ERCs, researchers and postgraduate students with practical guidance on the implications of the alert levels on research to limit the transmission of the coronavirus and reduce the risk for both the researcher and the research participants.

Unisa supports the continuation of research activities, where possible, and researchers are advised to follow national regulations and adhere to the restrictions imposed by the various alert levels. ERCs, researchers and postgraduate supervisors must consider the potential risks of harm to research participants, communities, researchers, postgraduate students and the university relating to the collection of data during this time.

1. The potential risks of harm to the researcher/postgraduate student/members of research teams relating to Covid-19

1.1 Researchers, postgraduate students, and members of research teams might become infected with Covid-19 when:

- 1.1.1 They come in contact with an asymptomatic/symptomatic person.
- 1.1.2 They are handling objects contaminated by the virus.
- 1.1.3 They are entering a high-risk/hotspot Covid-19 area.

1.2 The aforementioned actions pose a risk of transmitting Covid-19 to their families and subsequently to the community.

1.3 They could be fined or arrested for violating lockdown laws or appropriate lockdown level restrictions, such as:

- visiting participants when social contact is restricted, and
- travelling between provinces without the necessary permits.

1.4 Researchers, postgraduate students, and members of research teams that are above 60, and have co-morbidities, could put their health in jeopardy when they collect data by means of face-to-face activities.

2. The potential risks of harm to the University

Potential reputational harm to the University relating to risks of real or perceived non-adherence to governmental directives by staff, postgraduate students and members of research teams, as a result of:

- 2.1 Claims that the participants contracted Covid-19 due to their interaction with researchers or members of a research team.
- 2.2 Claims that researchers, postgraduate students, or members of research teams contracted the virus during the conduct of the study.

3. The implications of the alert levels for researchers:

- 3.1 The government is following a risk-adjusted approach based on the following criteria:
- 3.1.1 The level of the infection rate;
 - 3.1.2 The rate of transmission;
 - 3.1.3 The capacity of health facilities;
 - 3.1.4 The extent of public health intervention;
 - 3.1.5 The economic and social impact of continued restrictions.
- 3.2 The restrictions for the alert levels are set out below. The current Covid-19 context is dynamic, and the implications below could change in tandem with adjustments to governmental directives.
- 3.3 Consider whether your data collection methods can be adapted considering the national restrictions.
- 3.4 Should researchers choose to adjust their data collection methods (for instance to electronic interviews), these amendments must be scientifically justifiable.
- 3.5 Requests for amendments must be submitted for approval by the relevant ERC.
- 3.6 In principle, any adjustments to data collection methods should limit the risks to researchers of breaking national Covid-19 regulations or putting the researcher at risk of contracting or spreading the virus.
- 3.7 Postgraduate students must consult their supervisors in relation to possible changes to data collection methods.
- 3.8 Issues of connectivity, online accessibility and data costs should be considered when switching to online means of data collection.

Alert levels	Implications for researchers and postgraduate students
<p>Alert level 5: Drastic measures to contain the spread of the virus and save lives. Higher Education under total lockdown with only essential services allowed on campus.</p>	<ul style="list-style-type: none"> o No research activities e.g., laboratory work or contact with human participants. o Only critical clinical research as part of patient care or treatment and vaccine trial research or laboratory work linked to Covid-19 research. o Telephone and/or online platform interaction with human participants. o Online quantitative research, e.g., surveys.
<p>Alert level 4: Extreme precautions to limit community transmission and outbreaks while allowing some limited activity. Higher Education under total lockdown with only essential services allowed on campus.</p>	<ul style="list-style-type: none"> o Essential laboratory work with a Unisa permit. o No research that requires physical human participant interactions in close proximity e.g. face-to-face interviews; focus groups or human sample collection (excluding clinical research as permitted by national guidelines and relevant Unisa permit). o Telephone and/or online platform interaction with human participants. o Online quantitative research e.g., surveys.

<p>Alert level 3: Restrictions on many activities including workplaces and socially, to address a high risk of transmission.</p> <p>Maximum of 33% of students return to campus.</p> <p>Controlled return of students:</p> <ul style="list-style-type: none"> o Final year students o Practical/clinical training o Laboratory work 	<ul style="list-style-type: none"> o Essential laboratory work with a permit conditional to level 3 restrictions and relevant Unisa permit. o Access to university and research facilities only if you are a final year student conditional to level 3 restrictions and relevant Unisa permit. o No research that requires physical human participant interactions nearby, e.g., face-to-face interviews, focus groups, or human sample collection (excluding clinical research as permitted by national guidelines and relevant Unisa permit). o Telephone and/or online platform interaction with human participants. o Online quantitative research, e.g., surveys. o No research is to be conducted in homes, communities, restricted government facilities for the aged.
<p>Advanced alert level 3:</p> <p>33% of the student population will be allowed to return to campuses which include:</p> <ul style="list-style-type: none"> o All groups that have already returned. o Students in the final year of their programmes. o Student in years of study that require clinical training. o Postgraduate students who require laboratory equipment and other technical equipment. 	<ul style="list-style-type: none"> o Essential laboratory work with a Unisa permit. o Telephone and/or online platform interaction with human participants. o Online quantitative research, e.g., surveys. o Limited research that requires physical human participant interaction in close proximity conducted under strict conditions, in pre-arranged public space and adhering to strict safety conditions. o <i>Postgraduate students that need to proceed with data collection methods involving physical human interaction with participants must inform their supervisors and notify the ERC by completing an amendment form, signed by the supervisor and student – the safety precautions must be clearly described (Refer to the "toolkit" in section 4 below).</i> o <i>All other researchers that want to proceed with data collection methods involving physical human interaction with participants must notify the ERC by completing an amendment form, signed by the researcher – the safety precautions must be clearly described (Refer to the "toolkit" in section 4 below).</i>
<p>Alert level 2: Physical distancing and restrictions on leisure and social activities to prevent a resurgence.</p> <p>Maximum of 66% of the student population may return to campus.</p> <p>Controlled return of students:</p> <ul style="list-style-type: none"> o Final year students o Practical/clinical training o Laboratory work o First-year undergraduate students 	<ul style="list-style-type: none"> o <i>Essential laboratory work with a Unisa permit.</i> o <i>Telephone and/or online platform interaction with human participants.</i> o <i>Online quantitative research e.g., surveys.</i> o <i>Limited research that requires physical human participant interaction in close proximity conducted under strict conditions, in pre-arranged public space and adhering to strict safety conditions.</i> o <i>Postgraduate students that need to proceed with data collection methods involving physical human interaction with participants must inform their supervisors and notify the ERC by completing an amendment form, signed by the supervisor and student – the safety precautions must be clearly described (Refer to the "toolkit" in section 4 below).</i>

	<ul style="list-style-type: none"> o <i>All other researchers that want to proceed with data collection methods involving physical human interaction with participants must notify the ERC by completing an amendment form, signed by the researcher – the safety precautions must be clearly described (Refer to the "toolkit" in section 4 below).</i>
<p>Alert level 1: Most normal activities can resume with certain restrictions, precautions, and health guidelines to be followed at all times.</p> <p>100% of the student population returns with:</p> <ul style="list-style-type: none"> o Physical distancing o Health protocols o International students return <p>Age and co-morbidity of staff and students managed</p>	<ul style="list-style-type: none"> o <i>Access to University and research activities managed according to national regulation and University specific guidelines</i> o <i>Laboratory work with relevant permission from Campus Management.</i> o <i>Telephone and/or online platform interaction with human participants.</i> o <i>Online quantitative research, e.g., surveys.</i> o <i>Research that requires physical human participant interaction in proximity conducted under strict conditions in homes, communities, restricted government facilities, schools, facilities for the aged. No more than two researchers and eight participants present for any type of group work in community facilities. (Refer to the "toolkit" in section 4 below).</i> o <i>Postgraduate students that need to proceed with data collection methods involving physical human interaction with participants must inform their supervisors and notify the ERC by completing an amendment form, signed by the supervisor and student – the safety precautions must be clearly described (Refer to the "toolkit" in section 4 below).</i> o <i>All other researchers that want to proceed with data collection methods involving physical human interaction with participants must notify the ERC by completing an amendment form, signed by the researcher – the safety precautions must be clearly described (Refer to the "toolkit" in section 4 below).</i>

4. Strict safety and protocol guidelines with human participant contact (alert 1 and 2) – also referred to as the "toolkit":

The following guidelines are recommended to ensure the safety of the researcher(s) and participant(s):

- 4.1 Do not proceed with the intended contact data collection visit or meeting if the researcher and/or participant is feeling unwell.
- 4.2 Telephonic pre-screening before the visit is advised, as well as keeping a register of participants that were involved in face-to-face data collection activities.
- 4.3 The researcher and members of the research team must also be screened before any human participant contact. Keep evidence of the screening data signed by a witness.

- 4.4 Useful Covid-19 guidance is provided on the Department of Health WhatsApp group +27 60 012 3456.
- 4.5 When the visit can go ahead, please be mindful of the following procedures:
- 4.5.1 Wearing an appropriate cloth mask. Do not touch your face and advise the participants to do the same.
 - 4.5.2 The researcher has to ensure that the research team and participants have masks and sanitizer.
 - 4.5.3 In specific contexts, it will be essential to handout sanitiser and sealed cloth masks to the participants.
 - 4.5.4 If possible, do a pre-screening by measuring the participants' temperature (including those of the researcher) and ask questions that were not included in the telephonic pre-screening.
 - 4.5.5 Keep a physical distance of 2 meters;
 - 4.5.6 Sanitize hands with 70% alcohol-based sanitizer or wash with soap and water for at least 40 seconds before commencing any activities.
 - 4.5.7 Sanitize all surfaces before commencing activities and again before leaving.
 - 4.5.8 Avoid the exchange of paper between participants and researchers, unless the use of paper is ethically or scientifically justified.
 - 4.5.9 Use disposable gloves with the handling of hard copies of documents, put it in a paper envelope, and store it away. Researcher and participants to remove the gloves or sanitize your hands since the novel coronavirus can reside on paper for up to 3 days.
 - 4.5.10 Store documents for a minimum of 3 days before taking them out.
 - 4.5.11 The risk of contagion during the use and exchange of pens, digital devices, smartphones, and tablets must be considered and mitigated. Please refer to the links below, how to clean these devices.
 - 4.5.12 No food may be shared. Pre-packed, sanitized items such as chips or water could be handed out if necessary.

Resources:

<https://www.cdc.gov/coronavirus/2019-ncov/community/disinfecting-building-facility.html>

<https://www.ehs.washington.edu/covid-19-health-and-safety-resources>

Acknowledgment:

The guideline document was informed, with permission from Prof Minnie Greeff, Emeritus Professor: Africa Unit for Transdisciplinary Health Research, by:

- o M. Greeff (21 May 2020), Implications of Alert Levels for Researchers and Postgraduate students during the Covid-19 pandemic. Guideline document.
- o M. Greeff (11 June 2020), Implications of Alert Levels for Researchers and Postgraduate students during the Covid-19 pandemic. Webinar hosted by AUTEr, North West University.
- o M. Greeff (23 September 2020), Implications of Alert Levels for Researchers and Postgraduate students during the Covid-19 pandemic (version 3).

Additional resources consulted:

Watermeyer, J, Knight, J & Small, M, WITS non-medical REC guidelines for research during Covid-19.

South African Government, Webpage - Corona information and updates,
<https://www.gov.za/Coronavirus>