



## **South Africa – Researched and compiled by the Refugee Documentation Centre of Ireland on 13 May 2011**

### **Is sexual violence a problem in South Africa? What sort of state protection is there for those who suffer sexual violence and/or rape?**

The *United States Department of State Country Report on Human Rights Practices* published in April 2011 notes under the heading ‘Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment’:

“The ICD also reported 24 complaints of rape committed by police.” (United States Department of State (8 April 2011) *South Africa: Country Report on Human Rights Practices – 2010*)

Under the heading ‘Women’ the same report notes:

“Rape, including spousal rape, is illegal but remained a serious and pervasive problem. Minimum sentencing for rape convictions is 10 years in prison for the first offense, 15 years for the second, and 20 for the third. Under certain circumstances – such as multiple rapes, gang rapes, or the rape of a minor or a person with disabilities – conviction results in a minimum sentence of life imprisonment (25 years), unless substantial and compelling circumstances exist to justify a lesser sentence. Perpetrators with previous rape convictions and perpetrators aware of being HIV-positive at the time of the rape also face a minimum sentence of life imprisonment, unless substantial and compelling circumstances exist to justify a lesser sentence. According to the 2009-10 SAPS annual report, there were 55,097 cases of rape and indecent assault during the year; many of the victims were elderly women. According to a 2008 study by SAPS and the Centre for the Study of Violence and Reconciliation, only 4.1 percent of reported rape cases resulted in conviction. In most cases attackers were friends or family members of the victim, which contributed to a reluctance to press charges. A poor security climate and societal attitudes condoning sexual violence against women contributed to the problem. A 2005 study by the Medical Research Council estimated that only one in nine rape victims reported the crime to SAPS. A June 2009 report released by the Medical Research Council found that more than 25 percent of men interviewed in KwaZulu-Natal and Eastern Cape provinces admitted to committing at least one rape, and more than half of those persons admitted to raping more than one person.” [...]

“Domestic violence was pervasive and included physical, sexual, emotional, and verbal abuse, as well as harassment and stalking by former partners. The law facilitates the serving of protection orders on abusers, requires the police to take victims to a place of safety, and allows police to seize firearms at the scene and to arrest abusers without a warrant. Violating a protection order is punishable by a prison sentence of up to five years, or 20 years if additional criminal charges are brought. Penalties for domestic violence include fines and sentences of between two and five years’ imprisonment.

According to NGOs, about one in four women were in an abusive relationship, but few reported it. A June 2009 report released by the Medical Research Council found

that more than two-fifths of men interviewed in KwaZulu-Natal and Eastern Cape provinces had been physically violent toward an intimate partner. TCC counselors also alleged that doctors, police officers, and judges often treated abused women poorly." [...]

A response to an information request from the *Immigration and Refugee Board of Canada* states under the heading 'Protection Available to Victims':

"According to the Deputy Justice Minister, "half of all rape and sexual abuse cases reported [in South Africa] occur in the home or are perpetrated by someone known to the victim" (IPS 22 Feb. 2002). This was also a major finding of one survey that was conducted in southern Johannesburg:

... most sexual violence in southern Johannesburg happened in the home, with 60 percent of rapists known to the victim and one in four rapists being a family member. This meant that traditional policing methods and increased police presence on the streets would not alleviate the problem, SAPA [South African Press Agency] said (Xinhua 9 Oct. 1998).

The effectiveness of the justice system is also related to the protection available to victims:

As it is, the system is known for its secondary victimisation of women who turn to it for assistance. If the system operates effectively, it will encourage more women to report rape cases. Inadequate facilities, under-staffing and poor working conditions contribute to the ineffectiveness of the justice system (The Sowetan 25 Nov. 1999).

One news article stated that "if and when [a victim's] case gets to court, she will typically be seen to by a well-meaning but overworked prosecutor who will not have time to prepare the case adequately" (IPS 21 Aug. 2000).

In 2001, the head of the "unit that investigates sexual offences in the National Directorate of Public Prosecutions" stated that "there is talk of closing down the specialised police sexual offences units; district surgeons' offices are already closing, making specialised forensic exams more difficult to get, and in many cases ensuring the rapists walk free" (Mail and Guardian 4 May 2001)." (Immigration and Refugee Board of Canada (17 September 2002) South Africa: Statistics on police investigation of rape cases; police response to rape, including procedures for reporting; protection available to victims; legislation involved; victim support services for female victims (particularly in Johannesburg) (1997-2002))

A report from *IRIN News* notes:

"The South African government has agreed to activist demands to address the increasingly common hate crime of "corrective rape", whereby lesbians are raped by men to "cure" them of their sexual orientation.

Although statistics are lacking, gay advocacy groups estimate about 10 new cases of corrective rape occur every week in Cape Town, a city of 2.5 million." (IRIN (15 March 2011) *South Africa: Activism makes inroads on "corrective rape"*)

The report also notes:

“According to activists, suicide is not uncommon among victims of corrective rape, who also often experience torture, exposure to HIV and an unresponsive justice system. Last week, the case of Zoliswa Nkonyane, a 19-year-old lesbian from the Cape Town township of Khayelitsha, who was murdered in 2006, was postponed for the 32nd time.

South Africa was the first country in the world to outlaw discrimination based on sexual orientation in its constitution, and the first African country to legalize same-sex marriage. However, the country also leads the world in the prevalence of violent crime, and violence against women in particular.

"We're famous as a country with beautiful laws that are not implementable," Yvette Abrahams, the commissioner for gender equality, told IRIN.

"We're sitting in a country where six women a day die at the hands of a husband or intimate partner, so if straight violence is like that, to try and get attention for homophobic violence becomes very difficult." (ibid)

Page 16 of a report from *Amnesty International* published in March 2008 noted that:

“Although the scale of incidents of sexual and other forms of violence against women remains persistently high ... the state has taken some measures to improve the response of the criminal justice system to these crimes and access to civil remedies in cases of domestic violence.” However, the report warned that further reforms and ongoing review of the effectiveness of current legislation is required. (*Amnesty International (March 2008) 'I am at the lowest end of all' Rural women living with HIV face human rights abuses in South Africa*)

Page 29 of the same report observed:

“The National Commissioner of Police in his report to parliament at the end of 2007 acknowledged that the number of complaints against the SAPS for failing to undertake their duties under the DVA had been rising.” Amnesty also noted that: “Nearly ten years after the DVA [Domestic Violence Act] came into force ... there is still evidence that some members of the SAPS do not understand their legal responsibilities or do not feel under sufficient pressure to fulfil them.” (ibid)

*Amnesty International's* Annual Report published in May 2010, noted that:

“The ICD [Independent Complaints Directorate] reported to Parliament in February that its inspection of 430 police stations showed many were failing to comply with their obligations under the Domestic Violence Act (DVA). There were also a number of substantiated complaints brought against the police, including failing to arrest the perpetrator for non-compliance with a Protection Order, to advise complainants of their options under the DVA and for ‘chasing away’ complainants.

“NGOs and support organizations reported that the police had not received adequate or in some cases any training on their obligations under the sexual offences and domestic violence laws. By the end of the year, the authorities had established 17 out of the targeted 50 planned one-stop centres for the provision of treatment, support and access to justice for survivors of genderbased violence. In July, the Minister of Police announced he would review the decision to close the specialized family violence and sexual offences units. Research confirmed that the decision in 2006 to close the units led to a deterioration in services and a reduced rate of arrests and

convictions.” (Amnesty International (28 May 2010) *Amnesty International Report 2010 – South Africa*)

*Human Rights Watch World Report* published in January 2010 note under the heading Women’s and Girls’ Rights:

“South Africa has the highest rates in the world of rape reported to the police. A survey released in June by the Medical Research Council of South Africa found that 28 percent of men surveyed had raped a woman or girl; one in 20 said they had raped a woman or girl in the past year. Arrest and conviction rates of rape perpetrators are extremely low, and consequently women and girls who experience these violations are denied justice, factors that contribute to the normalization of rape and violence against women and girls in South African society. Women and girls who have been raped face numerous obstacles in accessing healthcare and other forms of assistance, such as delays in the provision of medical treatment, an absence of counselling services, and lengthy waits for medico-legal examination. Despite the high rates of rape, many health facilities do not provide post-exposure prophylaxis (PEP) services. NGOs working on women’s health rights continue to receive reports from healthcare workers and survivors of rape who have been unable to access timely PEP services in the public health system.” (Human Rights Watch (January 2010) *World Report 2010 – South Africa*)

## References

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This response was prepared after researching publicly accessible information currently available to the Refugee Documentation Centre within time constraints. This response is not and does not purport to be conclusive as to the merit of any particular claim to refugee status or asylum. Please read in full all documents referred to.

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