



Africa Criminal Justice Reform  
Organisation pour la Réforme de la Justice Pénale en Afrique  
Organização para a Reforma da Justiça Criminal em África



# **ACJR submission to the Western Cape Provincial Police Ombudsman**

## **Quality of victim support services and democratic policing**

April 2020

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# 1. Introduction

1. Africa Criminal Justice Reform (ACJR) is a project of the Dullah Omar Institute for Constitutional Law, Governance and Human Rights at the University of the Western Cape. ACJR seeks to carry out engaged research, teaching and advocacy on criminal justice reform and human rights in Africa.
2. ACJR welcomes the opportunity to provide a written representation to the Office of the Western Cape Provincial Police Ombudsman regarding the investigation concerning allegations that the South African Police Service in the Western Cape Province is not providing the required level of services and support to protect and promote the rights of victims of crime in the Western Cape in terms of their duties in National Instruction 2/2012 – Version 02.00 entitled “Victim Empowerment” issued in terms of section 25(1) of the South African Police Service Act, 1995 (Act 68 of 1995).
3. We understand that the proposed investigation is the result of complaints lodged with the Office of the Ombudsman, including one received from an Non-Governmental Organisation (NGO) regarding the alleged inability of the Western Cape South African Police Service to provide adequate victim support as prescribed in its victim empowerment programme, as well as allegations that victims experience secondary trauma when they approach the police for services and support, often having to wait for hours, or being forced to speak to police officers in public.<sup>1</sup>
4. ACJR supports the Ombudsman in his decision to investigate these allegations but is also concerned that key aspects of policing are often neglected within the South African Police Service (SAPS). As such, **this submission serves as a guide to the Ombudsman in the context of an overall framework on democratic policing** which we describe as (1) the police’s abidance to the rule of law, (2) accountability of the police, and (3) procedural fairness by the police in the service of the public. These three requirements are broadly accepted in the literature as the minimum requirements for democratic policing.
5. Furthermore, ACJR submits that in order for the public to trust the police and to perceive them as legitimate authorities, they need to feel that the police are objective, responsive and empathetic towards them. In the framework of democratic policing, this submission focuses on responsiveness and empathy and proposes that these dimensions receive substantive attention in the Ombudsman’s investigation.

# 2. Legislative Background

6. The South African Police Service (SAPS) National Instruction 2 of 2012 mandates the police to provide practical assistance to victims of crime.<sup>2</sup> The National Instruction recognizes that the SAPS is the first point of entry for citizens to the criminal justice system, and as such, is responsible for providing victim-friendly service to victims

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<sup>1</sup> ‘Police are aggravating the trauma of victims of crime, Ombudsman told’ *Ground Up*, 11 March 2020.

<https://www.groundup.org.za/article/saps-aggravating-trauma-victims-crime-ombudsman-told/> Accessed 11 April 2020.

<sup>2</sup> SAPS National Instruction 2 of 2012 Victim Empowerment Service in the South African Police Service  
[https://www.saps.gov.za/resource\\_centre/women\\_children/amended\\_victim\\_empo\\_service.pdf](https://www.saps.gov.za/resource_centre/women_children/amended_victim_empo_service.pdf)

of crimes, such as sexual offences and other serious and violent crimes.<sup>3</sup> A victim-friendly service is described as one wherein victims' dignity and rights are protected, and where victims feel empowered and not subject to secondary victimization as a result of inefficiencies of members of the criminal justice system.<sup>4</sup>

7. There are a number of frameworks which serve as a background to services provided to victims of crime.<sup>5</sup> This includes the Victims' Charter providing the following rights to victims of crime:

- The right to be treated with fairness and with respect for your dignity and privacy,
- the right to offer information,
- the right to receive information,
- the right to protection,
- the right to assistance,
- the right to compensation,
- and the right to restitution.<sup>6</sup>

8. The complementary Minimum Standards on Service for Victims of Crime issued by the Department of Justice and Constitutional Development serves the purpose of explaining the rights contained in the Victims' Charter.<sup>7</sup>

9. According to the Minimum Standards on Service for Victims of Crime, the following principles are pivotal for Victim Empowerment Services: accountability, empowerment, participation, family-centred, community-centred, continuum of care and development, integration, continuity of care and development, normalisation, effectiveness and efficiency, person-centred.<sup>8</sup>

10. SAPS reports that a police station is deemed capable of rendering a victim-friendly service if it meets two of the following three requirements:

- Firstly, at least 50% of its operational members must have completed one or more of the following training courses: Victim Empowerment Learning Programme, Domestic Violence Learning Programme, Vulnerable Children Learning Programme and First, Responders to Sexual Offences Learning Programme.

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<sup>3</sup> SAPS National Instruction 2/2012 Victim Empowerment Service in the South African Police Service, p. 3.

<sup>4</sup> SAPS National Instruction 2/2012 Victim Empowerment Service in the South African Police Service, p. 3.

<sup>5</sup> Service Charter for Victims of Crime in South Africa, Minimum Standard for services to victims of crime, Legislation, SAPS Instructions (National Instruction 2/2012-Victim Empowerment, National Instruction 7/1999-Domestic Violence, National Instruction 3/2008-Sexual offences, National Instruction 2/2010-The care and protection of children in terms of the Children's act, Standing Operating Procedures for the reporting of Family Violence, Child Protection and Sexual Offences Unit).

<sup>6</sup> Department of Justice and Constitutional Development (2005) Service Charter for Victims of Crime in South Africa: The consolidation of the present legal framework relating to the rights of and services provided to victims of crime, p.2.

<https://www.justice.gov.za/VC/docs/vc/vc-eng.pdf> Accessed: 11 April 2020.

<sup>7</sup> Department of Justice and Constitutional Development (2008) Minimum Standards For Service Delivery In Victim Empowerment (Victims Of Crime And Violence) [https://www.westerncape.gov.za/assets/departments/social-development/minimum\\_standards\\_for\\_service\\_delivery\\_for\\_victim\\_empowerment\\_victims\\_of\\_crime\\_and\\_violence.pdf](https://www.westerncape.gov.za/assets/departments/social-development/minimum_standards_for_service_delivery_for_victim_empowerment_victims_of_crime_and_violence.pdf) Accessed 11 April 2020.

<sup>8</sup> Department of Justice and Constitutional Development (2008) Minimum Standards for Service Delivery In Victim Empowerment (Victims Of Crime And Violence), p.5.

- Secondly, it must have a dedicated Victim-Friendly Room (VFR) or, if space does not allow for that, specific alternate arrangements must be made to provide for privacy during statement taking in cases of gender-based or intimate violence.
- Thirdly, that a Station Order has been issued to direct the management of victim services at the police station, including referral to other service providers, management of the VFR and/or the alternate arrangements referred to above, and where applicable, of volunteers.<sup>9</sup>

11. SAPS sets as the target that 100 % of police stations should render a victim-friendly service and report that it has been achieved. In essence, if measured against the above standards, no corrective measures need to be put in place. Since 2013 this target has been set and achieved. It is thus questionable why, despite the target been met, the above threshold has not been strengthened to ensure that SAPS victim-friendly service is measured against a broader and more informative set of criteria. SAPS does refer to the standardisation of victim-friendly facilities to meet the needs of communities in their Service Delivery Improvement Plan, but this does not measure SAPS performance and merely deals with the improvement of the infrastructure or resources available to police stations.<sup>10</sup> Further, if the three criteria are met, it still does not mean that a victim has received a victim-friendly service because a victim-friendly service is more than good infrastructure and trained staff. Again, as is the case elsewhere, SAPS emphasise input variables in target formulation and shy away from outcome variables.

12. The above-mentioned legislative background underpins victim empowerment services for SAPS. In the following section we provide an understanding of democratic policing and later highlight two dimensions (responsivity and empathy) which we consider essential for SAPS officials when dealing with victims of crime and which we propose the Ombudsman should take into consideration during his investigation.

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<sup>9</sup> SAPS (2017) *Annual Performance Plan 2016/17*, p. 28.

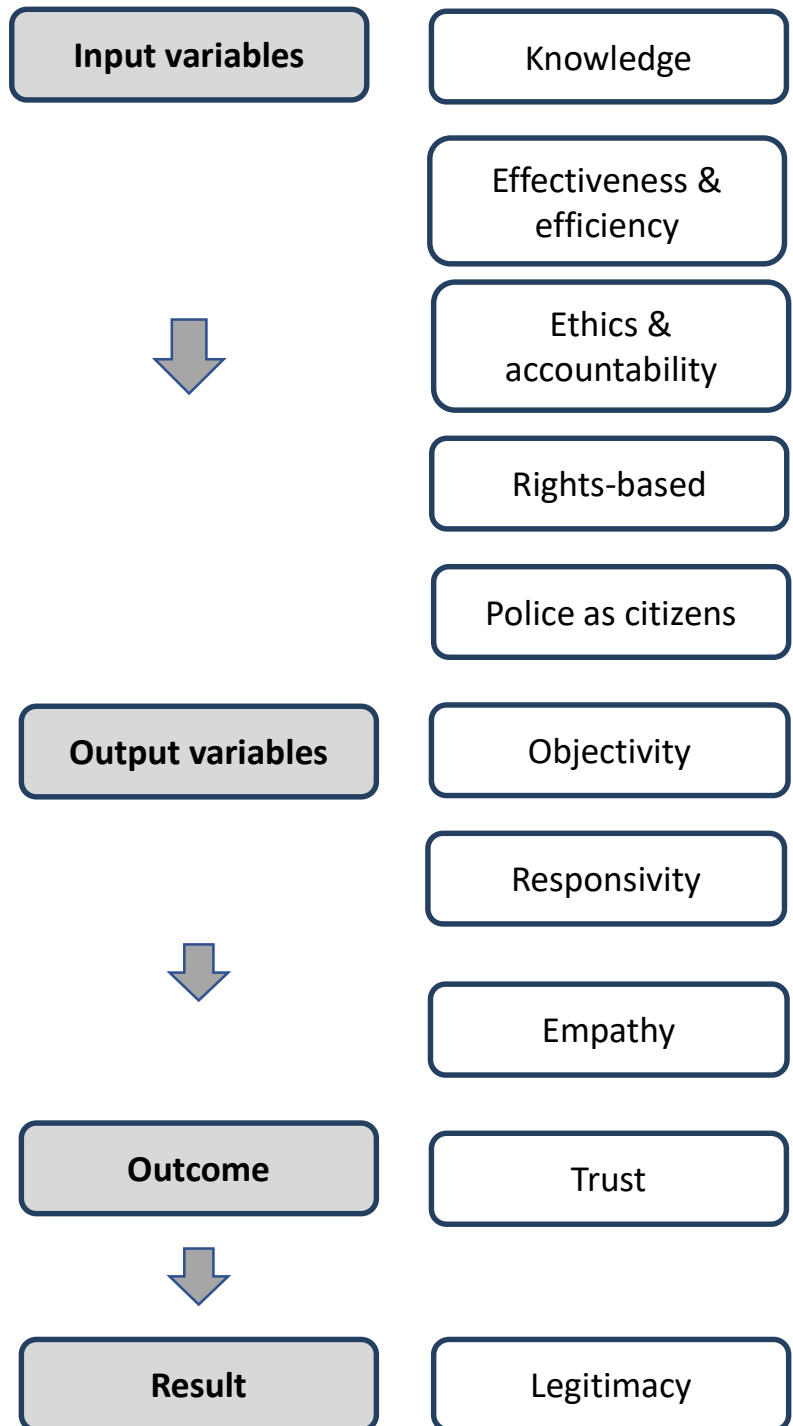
<sup>10</sup> SAPS reported that improvements were made at 34 facilities.

### 3. Democratic Policing

13. There is no universally accepted definition of democratic policing. Concepts often subsumed within the phrase include ‘professional policing’,<sup>11</sup> ‘SMART policing’<sup>12</sup> and ‘evidence based policing’.<sup>13</sup> We submit that democratic policing means, at least, (1) the police’s abidance to the rule of law, (2) accountability of the police, and (3) procedural fairness by the police in service of the public.

14. We further submit that there are nine dimensions required for democratic policing which can be categorized into four categories. These include knowledge, effectiveness & efficiency, ethics & accountability, rights-based, police as citizens (categorized as input variables), objectivity, responsivity, empathy, (categorized as output variables), trust (categorized as the outcome) and legitimacy (categorized as the result).

15. While these concepts can by and large be separated, it appears that in practice they are intertwined, often inter-dependent and frequently mutually reinforcing. Failure in one dimension will have consequences for other dimensions and



<sup>11</sup> Holdaway, S. (2015) ‘The re-professionalization of the police in England and Wales’ *Criminology & Criminal Justice: An International Journal*, Vol. 17 Issue 5, p. 588.

<sup>12</sup> Braga, A. and Schnell, C. (2013) ‘Evaluating Place-Based Policing Strategies: Lessons Learned from the Smart Policing Initiative in Boston’ *Police Quarterly*, Vol. 16 Issue 3, p. 339; Joyce, N. Ramsey, C. and Stewart, J. (2013) ‘Commentary on Smart Policing’ *Police Quarterly*, Vol. 16 Issue 3, p. 358.

<sup>13</sup> McKenna, P. (2018) ‘Evidence-based policing in Canada’ *Canadian Public Administration*, Vol. 61 Issue 1, p. 135; Telep, C. (2017) ‘Police Officer Receptivity to Research and Evidence-Based Policing: Examining Variability Within and Across Agencies’ *Crime & Delinquency*, Vol. 63 Issue 8, p. 977.

vice versa. There is, to some extent, causal and hierarchical relations between the different dimensions.

### 3.1. Legitimacy

16. The result that is sought in democratic policing is legitimacy. Successful democratic policing results in police being perceived as legitimate authorities. This requires that the public trusts police to behave in the broad public interest. Even when difficult to define, 'public interest serves as the fundamental criterion for establishing the legitimation of power. Political power, then, is legitimate and necessary, and even acceptable, only inasmuch as it can be established that it serves public interest.'<sup>14</sup>

### 3.2. Trust

17. In order for the police to gain legitimacy in the eyes of the public, the public must trust the police. Trust is produced when policing is characterised by objectivity, empathy and responsivity, (the latter two dimensions will be discussed in more detail in the next section of this submission).

18. Trust in the police is therefore a function of perceptions of police conduct.<sup>15</sup> Perceptions of competence and effectiveness also inform trust in the police. If the police are seen as competent in carrying out investigations and, at the same time, meet the expected outcomes (catching criminals or managing crisis situations caused by accidents, riots, extreme weather, etc.), people will probably consider the police as successful and place higher trust in them.<sup>16</sup> If people believe that the police treat everyone fairly, they are more likely to trust the police, obey the law in their absence, and cooperate with them.<sup>17</sup> Where the police are perceived as unprofessional, incompetent or abusive, trust will decline.<sup>18</sup> When the police are perceived to be procedurally fair, the public are more likely to co-operate with them and to perceive them as legitimate.<sup>19</sup>

### 3.3. Objectivity

19. In order for the public to build trust in the police, the police must be viewed to be objective. A police officer is expected to be objective and treat people impartially, without bias, and make decisions or draw conclusions that are reasonable and rational. These aspirational notions or values exist because, fundamentally, the public expects equal treatment rather than being disadvantaged by (negative) personal and subjective perceptions held by police officers about individuals or groups. The public's perception of bias or unfair treatment by the

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<sup>14</sup> Méthot, J.F. (2003) How to define public interest? *Collège dominicain de philosophie et de théologie*, Ottawa ON Canada, Lecture given at the EPAC Round-Table held at Saint Paul University, 29 January 2003, [https://ustpaul.ca/uploadfiles/EthicsCenter/activitiesHow\\_to\\_Define\\_Public\\_Interest.pdf](https://ustpaul.ca/uploadfiles/EthicsCenter/activitiesHow_to_Define_Public_Interest.pdf)

<sup>15</sup> Boda, Z. and Medve-Bálint, G. (2017) 'How perceptions and personal contact matter: The individual-level determinants of trust in police in Hungary' *Policing and Society*, Vol. 2 No. 7, p.732.

<sup>16</sup> Boda, Z. and Medve-Bálint, G. (2017), p.734.

<sup>17</sup> Independent Police Commission (2013) Policing for a better Britain, p. 32 <http://www.statewatch.org/news/2013/nov/uk-policecommission-report.pdf> Accessed: 11 April 2020.

<sup>18</sup> Boda, Z. and Medve-Bálint, G. (2017), p.736.

<sup>19</sup> Norman, J. (2009) 'Seen and Not Heard: Young People's Perceptions of the Police' *Policing: A Journal of Policy and Practice*, Vol. 3 No. 4, p.365.

police has immediate negative consequences for the police in respect of trust and, ultimately, legitimacy while fair and respectful treatment builds confidence and trust in, and compliance with police.<sup>20</sup>

### 3.4. Responsivity

20. This dimension refers to the police as being responsive to the needs of the public and of victims of crime and emphasizes community-centred policing practices. (This dimension will be considered in more detail in the following section).

### 3.5. Empathy

21. This dimension refers to the ability of the police to demonstrate empathy to people and victims of crime. (This dimension will be more detailed in the following section).

### 3.6. Knowledge

22. Police officers need to have professional knowledge. Professionalism requires police officers to be worthy of trust and to maintain confidentiality and concealing guilty knowledge by not exploiting it for evil purposes. In return for knowledge, ethics and trust, professionals are rewarded with authority, privileged rewards and higher social status.<sup>21</sup>

### 3.7. Effectiveness & Efficiency

23. Effectiveness and efficiency are the degrees to which something produces a desired result. It does not factor in the related costs. A programme may be effective, but not efficient or cost effective. An assessment of efficiency relates the results or outputs of a programme to its costs.<sup>22</sup>

### 3.8. Ethics and accountability

24. Ethics and accountability are cornerstones of democratic policing.<sup>23</sup> The antithesis of accountability is impunity. Accountability is understood to mean the relationship “between the bearer of a right or a legitimate claim and

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<sup>20</sup> Sunshine, J. and Tyler, T. (2003) ‘The role of procedural justice and legitimacy in shaping public support for policing’ *Law & Society Review*, Vol 37 No.3, p. 514; Tyler, T.R. (2006) ‘Psychological perspectives on legitimacy and legitimation’ *Annual Review of Psychology*, Vol. 57, p. 379.

<sup>21</sup> Evetts, J. (2003) ‘The Sociological analysis of professionalism: Occupational Change in the Modern World’ *International Sociology*, Vol. 18 No.2, p. 400.

<sup>22</sup> Independent Evaluation Group (2009) *Sourcebook for Evaluating Global and Regional Partnership and Programs: Indicative Principles and Standards*, p.65 <http://www.oecd.org/development/evaluation/dcdndep/37981082.pdf> Accessed 11 April 2020.

<sup>23</sup> Organization for Security and Co-operation in Europe (2008) *Guidebook on Democratic Policing* (2nd Ed.) Vienna: OSCE, p. 9; Newham, G. (2005) ‘Strengthening democratic policing in South Africa through internal systems for officer control’ *South African Review of Sociology*, Vol. 36 No. 2, p.167.



the agents or agencies responsible for fulfilling or respecting that right". This means that a government must be able to and indeed explain how it executed its mandate.<sup>24</sup>

25. The first and primary focus of police accountability requires holding individual police officials accountable for their behaviour when performing their policing duties, in particular in relation to their use of force, arrest practices, stop and search, interrogations and treatment of persons in custody.<sup>25</sup> Such behaviour should be tested against clear laws and policies outlining permissible conduct.<sup>26</sup> The second focus of police accountability requires holding police organisations accountable for services rendered.<sup>27</sup> In this regard, police management needs to ensure adequate training, operational direction, supervision, equipment and infrastructure.<sup>28</sup>

### 3.9. Rights-based

26. A police service that respects, promotes and protects the human rights of all people, suspects and victims in particular, is central to democratic policing.<sup>29</sup> The UN Pocket Book on Human Rights Standards and Practice for the Police (UN Pocket Book) provides a comprehensive overview of the rights which police must uphold and protect in their work.<sup>30</sup> It reviews compliance requirements under the following themes: police investigations, arrest, detention, use of force and firearms. Police need to be trained in the theoretical knowledge and practical skills that enable them to perform their policing duties in line with human rights standards and need to be held accountable for violating human rights.

### 3.10. Police as citizens

27. It should be acknowledged that police officials are also citizens and employees of the State. In many parts of the world, police are actively campaigning for their rights as citizens and as employees as they sell their labour and have little control over their work processes.<sup>31</sup> By virtue of being citizens, police officers are entitled to the following rights and privileges that accompanies such citizenship: equity and fairness in the recruitment,

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<sup>24</sup> Muntingh, L. (2007) *Prisons in the South African constitutional democracy*, Johannesburg: Centre for the Study of Violence and Reconciliation, p. 16; Gloppen, S., Rakner, L., and Tostensen, A. (2003) 'Responsiveness to the Concerns of the Poor and Accountability to the Commitment to Poverty Reduction' *Michelsen Institute Development Studies and Human Rights*, p.9.

<sup>25</sup> Walker, S. (2005) *The New World of Police Accountability*. Thousand Oaks, CA: Sage Publications, p. 7; United Nations Office on Drugs and Crime (2011) *Handbook on police accountability, oversight and integrity* New York: United Nations, p. iv and p.9.

<sup>26</sup> United Nations Office on Drugs and Crime (2011), p. iv.

<sup>27</sup> Walker, S (2005), p.7; United Nations Office on Drug and Crime (2011), p. 11; Bruce, D. (2011) *Unfinished Business: The architecture of police accountability in South Africa*, Policy Paper No. 2, Cape Town: African Policing Civilian Oversight Forum, p.13; Auerbach, J, (2003) 'Police accountability in Kenya' *African Human Rights Law Journal*, Vol. 3 No.2, p. 275.

<sup>28</sup> United Nations Office on Drugs and Crime (2011), p. iv.

<sup>29</sup> Bayley, D. (2001) *Democratizing the Police Abroad: What to Do and How to Do It* Washington United States of America: National Institute of Justice, p.14 and p.76.

<sup>30</sup> UNHCHR, (2004) *Human Rights Standards and Practice for the Police*, Professional Training Series No. 5/Add.3, UN Doc. No. HR/P/PT/5/Add.3, New York and Geneva: United Nations, p. 2.

<sup>31</sup> Marks, M. and Flemming, J. (2007) 'Police as Workers: Police Labour Rights in Southern Africa and Beyond' *SA Crime Quarterly* No. 19, p.13.

promotion and remuneration processes of the police service; basic conditions of service; due processes in criminal matters against them; organisational rights and safety in the workplace.<sup>32</sup>

28. We submit that the conceptual framework presented above is not merely intended to describe what democratic policing looks like, but rather to guide strategic planning in police organisations, including the SAPS. The next section focuses on responsiveness and empathy as key dimensions in the work of SAPS officials when providing victim empowerment services.

## 4. Responsivity

29. ACJR submits that it is important for the police to be responsive to the needs of the public and victims of crime. Responsivity precedes accountability in terms of how role players take action in response to the issues raised, problems identified and solutions proposed. As such, police responsiveness is a vital component of democratic policing.<sup>33</sup>

30. Democratic policing literature points towards the value of responsiveness: the police must be 'responsive to some expression of the views of the public'.<sup>34</sup> Importantly, responsiveness is not simply acquiescing to a generally expressed will. Rather, 'responding' can mean refuting, with reason, public demands.<sup>35</sup>

31. We submit that responding effectively to the needs of communities and victims of crime is a vital component of policing. The police's initial response to a victim will have a long-lasting impact on that individual's view of the justice system and participation in the investigation and prosecution of the crime. It can have both an immediate and a long-term impact on the victim's emotional recovery.<sup>36</sup>

32. We further submit that responsiveness requires a policing approach that includes addressing the needs and concerns of communities (community-centred) and victims of crime (victim-centred). Such policing approaches are an important part of building public confidence and, ultimately, trust in the police.

33. The Commission for Gender and Equality (CGE) conducted assessment studies of SAPS on their implementation of the Victims' Charter between 2009 and 2012.<sup>37</sup> The assessment noted that while police officers accompanied victims to places of safety, some police stations lacked transport; some areas did not have places of safety at all.<sup>38</sup> Furthermore, although SAPS police stations were rendering victim-friendly services to the victims, consistent with the minimum standards of the Victims Charter, the training of personnel did not always transpire in the actual implementation of the members' obligations.<sup>39</sup> The assessment found that not all VFRs

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<sup>32</sup> Bruce, D. and Neild, R. (2005) *The Police That We Want: A Handbook for Oversight of Police in South Africa*, Johannesburg: Center for the Study of Violence and Reconciliation, p.41.

<sup>33</sup> Rossler, M. T. and Terrill, W. (2012) 'Police Responsiveness to Service-Related Requests' *Police Quarterly*, Vol. 15 No. 1, p. 5.

<sup>34</sup> Aitchison, A. and Blaustein, J. (2013) 'Policing for democracy or democratically responsive policing? Examining the limits of externally driven police reform' *European Journal of Criminology*, Vol. 10 Issue 4, p. 501.

<sup>35</sup> Aitchison, A. and Blaustein, J. (2013), p. 501.

<sup>36</sup> United States Department of Justice (2010) *First Response to Victims of Crime: A guidebook for law enforcement officers*, p. ix, <https://www.ovc.gov/publications/infores/pdfxt/2010FirstResponseGuidebook.pdf> Accessed 11 April 2020.

<sup>37</sup> Commission for Gender Equality (2009) Research Report on the Victims Charter (DOJ&CD and SAPS), <http://www.cge.org.za/wp-content/uploads/2014/05/CGE-Victims-Charter-1.pdf>

<sup>38</sup> Commission for Gender Equality (2009) Research Report on the Victims Charter (DOJ&CD and SAPS), p.38.

<sup>39</sup> Commission for Gender Equality (2009) Research Report on the Victims Charter (DOJ&CD and SAPS), p.38.

were being used for their intended purpose and also that SAPS members were not always observing some of the basic requirements of their training, such as introducing themselves to victims.<sup>40</sup>

34. Furthermore, the CGE raised concerns that complaint lines were not an effective tool for assessing victim satisfaction with regard to SAPS services related to the Victims Charter because officials could not clarify how reports from the Crime/Crime Stop lines have assisted the SAPS to improve on its services to victims.<sup>41</sup>

35. A brief overview of the measurements applicable to SAPS under responsiveness indicates that they measure the following areas pertaining to their work: reaction to calls for service complaints, community and sector policing, border service, service complaints and crowd management.<sup>42</sup> A breakdown is provided below:

- Quality Service Delivery and Responsiveness:
  - 100% of all police stations must render a victim friendly service.
  - In terms of the processing of new firearm applications, 90% of all new applications must be completed within 90 days.
  - The average national police reaction time SAPS must respond to Alpha, Bravo and Charlie complaints should be: 19:05, 24:33 and 21:45 respectively.
- Enhancing Partnership Policing:
  - Ensuring that 99% of police stations have functional Community Policing Forums.
  - 95% of stations must implement Sector Policing
  - Number of rural urban mix stations implementing the 4 pillars of rural safety strategy. (759/879 have implemented)
  - Number of community outreach programmes – 65 national campaigns concluded.
  - Implementation of school safety programme to be set at 100%
- Effective Border Security Management
  - SAPS must maintain a 100% reaction to hits on persons and vehicles
- Police Incidents of Public Disorder and Crowd Management:
  - SAPS must maintain a 100% peaceful crowd
- Management of service complaints against SAPS
  - A performance target of 70% is set within which service delivery complaints against SAPS must be finalised within 30 working days.<sup>43</sup>

36. Given that the recent complaints received by the Ombudsman allude to allegations that victims experience secondary trauma when they approach the police station, often having to wait for hours or being forced to speak to police officers in public, it is important that the Ombudsman investigates the quality and rate of responsiveness that SAPS in the Western Cape offer to victims of crime as per the measurements described above particularly with regards to quality service delivery and responsiveness. This is because although there may be

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<sup>40</sup> Commission for Gender Equality (2009) Research Report on the Victims Charter (DOJ&CD and SAPS), p.38.

<sup>41</sup> Commission for Gender Equality (2009) Research Report on the Victims Charter (DOJ&CD and SAPS), p.42.

<sup>42</sup> SAPS (2017) *Annual Report 2016/17*, p.22-29 and p.57.

<sup>43</sup> SAPS (2017) *Annual Report 2016/17*, p.22-29 and p.57.

improvements in dealing with complaints, more needs to be done in terms of knowing whether complainants are satisfied with the manner in which their complaints are dealt with.

## 5. Empathy

37. Empathy is a narrower concept than responsiveness. Empathy is most commonly defined as the ability to understand the situation of another.<sup>44</sup> However, there are three other meanings conveyed by this word: feeling the emotion of another; understanding the experience or situation of another, both affectively and cognitively, often achieved by imagining oneself to be in the position of the other; and actions brought about by experiencing the distress of another.<sup>45</sup>
38. Living within a society of multiple and continuous trauma exposure, with few safe spaces, poses a different set of psychological challenges and requires different intervention approaches.<sup>46</sup> It is therefore essential that victims of violence receive appropriate care, treatment and interventions. More importantly, criminal justice processes and key role-players, such as the police service, should take special care and allow for a professional, sensitive and empathetic response when dealing with the public and victims of crime.
39. SAPS is mandated to pay specific attention to gender-based violence, such as victims of domestic and sexual violence and violence against women and children.<sup>47</sup> Victim-friendly support services are provided to address immediate trauma and to minimise secondary victimisation.<sup>48</sup> A number of SAPS policies have been put in place to deal with this, which include:
- National Instructions and Standing Orders and Operating Procedures to guide police officials to deal with family violence, child protection and sexual offences complaints;<sup>49</sup>
  - Victim Friendly Rooms to provide victims of intimate violence to make their statements in private, in a non-threatening environment;<sup>50</sup>
  - Specialised family violence, child protection and sexual offences units (FCS) to investigate these crimes;<sup>51</sup> and;

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<sup>44</sup> Henderson, L. N. (1987) Legality and empathy *Michigan Law Review*, Vol. 85 No.7, p. 1579.

<sup>45</sup> Henderson, L. N. (1987) p. 1579.

<sup>46</sup> Kaminer, D. and Eagle, G. (Undated) Psycho-Social Effects of Trauma and Violence: Implications for Intervention, Department of Psychology, University of Cape Town, p.226, [https://www.academia.edu/27434292/PSYCHO-SOCIAL\\_EFFECTS\\_OF\\_TRAUMA\\_15\\_AND\\_VIOLENCE\\_IMPLICATIONS\\_FOR\\_INTERVENTION](https://www.academia.edu/27434292/PSYCHO-SOCIAL_EFFECTS_OF_TRAUMA_15_AND_VIOLENCE_IMPLICATIONS_FOR_INTERVENTION).

<sup>47</sup> The Criminal Law (Sexual Offences and Related Matters) Amendment Act No. 32 of 2007; Domestic Violence Act 116 of 1998; National Instruction on Domestic violence, NI 7 of 1999; National Instruction on Sexual Offences, NI 3 of 2008.

<sup>48</sup> National Instruction on Domestic Violence, NI 7 of 1999; National Instruction on Sexual Offences, NI 3 of 2008.

<sup>49</sup> National Instruction on Sexual Offences, NI 3 of 2008; The National Policy Framework Management of Sexual Offence Matters; National Instruction on Domestic violence, NI 7 of 1999; National Instruction on the Care and Protection of Children in terms of the Children's Act NI 3 of 2010; National Instruction of Victim Empowerment, NI 2 of 2012; National Instruction on the Protection of Older Persons, NI 1 of 2014; Standard Operating Procedure for the Reporting of FCS-Related Crimes.

<sup>50</sup> National Instruction 2/2012 – Victim Empowerment Service, p.15.

<sup>51</sup> National Instruction 2/2012 – Victim Empowerment. Service, p.24.

- Through an integrated governmental approach, SAPS must refer victims to victim support centres in the communities where there are multidisciplinary services or crisis centres.<sup>52</sup>
40. A study conducted in the United Kingdom found police empathy to be positively correlated with victims' ratings of likelihood of taking their cases to court.<sup>53</sup> When police respond sensitively and empathetically, rape case attrition may be reduced.<sup>54</sup> Negative gender attitudes may include victim blaming, affirming rape myths, expressing conservative patriarchal attitudes toward gender relations including notions of male sexual entitlement and justifying men's use of violence against women as being "caused" by the victim.<sup>55</sup>
41. Another study conducted by the South African Medical Research Council reported that many of the investigating officers assisting victims of crime held conservative gender attitudes and supported rape myths.<sup>56</sup> This has led to a number of deficiencies in the work of police investigation. The study notes that when rapes are reported, there are a notable number of issues. For instance, half of these cases are investigated by constables and the addresses of the complainants were not always recorded in dockets (2.1% of cases), the complainant's statements were not signed (13.4% of cases) and the complainants or guardian's telephone number were missing (21.5% of cases).<sup>57</sup>
42. In addition, the study revealed that in only half the cases were crime scenes visited by the police; and that in cases where Sexual Assault Evidence Collection Kit (SAECKS) were taken on time, over a fifth of them were not sent to the Forensic Science Laboratory of the South African Police Service for analysis. The report further notes that there are instances when victims decide to withdraw cases before arrest. However, in 23.7% of dockets without arrests, the perpetrator was identified and the victims wanted to pursue the case, but arrests were not executed and the reason is not clear.<sup>58</sup> This shows that basic policing protocols prescribed in the Victim Empowerment Service National Instruction are not consistently followed by the police.
43. Furthermore, a Compliance Audit and Gap Analysis conducted in 2016 of the Thuthuzela Care Centres which serve as crisis centres for victims of sexual violent crimes, evaluated the roles of the various inter-sectoral government departments. The audit found that clients (victims) still experienced secondary victimisation due to the actions of other stakeholders and participants in the study believe that a lot of secondary victimisation comes from the police, despite their training.<sup>59</sup> They believe that the police have become desensitised towards clients and their situations.

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<sup>52</sup> National Instruction 2/2012 – Victim Empowerment. Service, p.16.

<sup>53</sup> Maddox, L., Lee, D., and Barker, C. (2011) 'Police empathy and victim PTSD as potential factors in rape case attrition' *Journal of Police and Criminal Psychology*, Vol. 26 No.2, p. 113.

<sup>54</sup> Maddox, L., Lee, D., and Barker C. (2011) p. 112.

<sup>55</sup> Lockwood, D and Prohaska, A. (2015) 'Police officer gender and attitudes toward intimate partner violence: How policy can eliminate stereotypes' *International Journal of Criminal Justice Sciences*, Vol. 10 No.1, p. 77.

<sup>56</sup> Machisa, M. et al. (2017) *Rape Justice in South Africa: A Retrospective Study of the Investigation, Prosecution and Adjudication of Reported Rape Cases from 2012*. Pretoria: South African Medical Research Council, p.14.

<sup>57</sup> Machisa, M. et al. (2017), p.14.

<sup>58</sup> Machisa, M. et al. (2017), p.14.

<sup>59</sup> Foundation for Professional Development (2016) Thuthuzela Care Centres Compliance Audit and Gap Analysis. Pretoria, p.64  
[https://www.researchgate.net/publication/313846069\\_Thuthuzela\\_Care\\_Centres\\_Compliance\\_Audit\\_and\\_Gap\\_Analysis](https://www.researchgate.net/publication/313846069_Thuthuzela_Care_Centres_Compliance_Audit_and_Gap_Analysis)

44. The latest Victims of Crime Survey conducted by Statistics South Africa shows that South African households' satisfaction with police has been on a general decline since 2011.<sup>60</sup> More than a third of households surveyed who were satisfied with the police, were satisfied because they believed that the police were committed and a further 27% were happy because the police came to the crime scene.<sup>61</sup> Among households who were dissatisfied with the way in which the police deal with crime in their area, the majority (59%) felt that the police never recover their goods and 15% complained that the police do not respond on time. Only 1 % felt SAPS were disability or gender insensitive/intolerant and 0.9 % felt that they are harsh towards victims.<sup>62</sup>
45. The Repeat Victimization Index (RVI) showed an upward trend.<sup>63</sup> The interpretation of this is that the number of the same types of crime increased during the previous four years.<sup>64</sup> Statistics SA noted that it is important to investigate this phenomenon further to find out why households repeatedly fall victim to the same type of crime and questions whether inadequate measures taken in response to crime or are victims unable to afford effective measures of protection. <sup>65</sup>
46. The provision of victim support is a key element in the legitimacy of any police agency. This includes protection provided to victims from perpetrators and re-victimization; the ability to participate in the justice process and obtain information and services recovery from trauma, and continuity of support through all stages of the justice process.
47. Within SAPS there exists an institutional framework that makes provision for these fundamental aspects, but there is good reason to believe that there is widespread dissatisfaction with the police's performance. However, SAPS need to ensure that there is routine sensitisation training for all staff members and more is needed to strengthen public confidence in its services.
48. Four issues are key to police legitimacy: respect, neutrality, trustworthiness, and voice, with the last referring to the broader notion of 'communication'.<sup>66</sup> Empathy is part of effective communication. Procedurally, just policing requires that police commit to these four key principles when interacting with others.<sup>67</sup> Apart from treating people with respect, they must show "that they can make neutral decisions based on consistently applied legal rules and principles and the facts of a case, not on personal opinions and biases."<sup>68</sup>

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<sup>60</sup> Statistics South Africa (2017) *Victims of Crime Survey 2016/2017*, Statistical Release 28 September 2017, p.64, <https://www.statssa.gov.za/publications/P0341/P03412016.pdf>

<sup>61</sup> Statistics South Africa (2017) *Victims of Crime Survey 2016/2017*, Statistical Release 28 September 2017, p.65, <https://www.statssa.gov.za/publications/P0341/P03412016.pdf>

<sup>62</sup> Statistics South Africa (2017) *Victims of Crime Survey 2016/2017*, Statistical Release 28 September 2017, p.65, <https://www.statssa.gov.za/publications/P0341/P03412016.pdf>

<sup>63</sup> Statistics South Africa (2017) *Victims of Crime Survey 2016/2017*, Statistical Release 28 September 2017, p.31, <https://www.statssa.gov.za/publications/P0341/P03412016.pdf>

<sup>64</sup> Statistics South Africa (2017) *Victims of Crime Survey 2016/2017*, Statistical Release 28 September 2017, p.31, <https://www.statssa.gov.za/publications/P0341/P03412016.pdf>

<sup>65</sup> Statistics South Africa (2017) *Victims of Crime Survey 2016/2017*, Statistical Release 28 September 2017, p.31, <https://www.statssa.gov.za/publications/P0341/P03412016.pdf>

<sup>66</sup> Murphy, K. and Tyler, T. (2017) 'Experimenting with procedural justice policing' *Journal of Experimental Criminology*, Vol. 13, p. 288.

<sup>67</sup> Murphy, K. and Tyler, T. (2017), p.288.

<sup>68</sup> Murphy, K. and Tyler, T. (2017), p.288.

49. Police are expected to display empathic qualities and skills when dealing with victims of crime. As an authority in which a great deal of trust is placed, particularly when affected by a crime or having had your rights violated, it is important for the police to convey a compassionate impression, beyond the qualities of responsivity.
50. In many instances the police will be the first responders to a crime scene, accident or other calamity and must therefore be able to deal with such situations in a manner that respects the dignity of those affected and acknowledging the impact of the event on those involved.
51. Simple acts such as listening and communicating can help transform stressful situations into successful trust-building exercises.<sup>69</sup> When police empathise with the public, citizens are more likely to agree that the result of their interaction was fair and deserved, even when they are sanctioned.<sup>70</sup>
52. We propose that the police should use client satisfaction surveys and publish the findings. When conducting his investigation, the Ombudsman should also consider making use of victim satisfaction surveys to correct the current problems within the SAPS in the Western Cape. Furthermore, we recommend that SAPS should provide training on effective communication and empathy skills to all its members and consider testing gender attitudes and views on rape victims as part of selection processes for the Family Violence, Child Protection and Sexual Offences Units.

## 6. Conclusion

53. The allegations regarding the inability of the Western Cape South African Police Service to provide adequate victim support as prescribed in its victim empowerment programme, as well as allegations that victims experience secondary trauma when they approach the police, often having to wait for hours or being forced to speak to police officers in public, are worrying.
54. Flowing from the above, this submission offers a framework of democratic policing and highlights empathy and responsivity as key dimensions necessary for police to improve the quality of victim empowerment services, particularly in the Western Cape.
55. ACJR is grateful for the opportunity to make this written representation to the Office of the Ombudsman and is open to engage with the Ombudsman regarding the framework on democratic policing and particularly on the dimensions of empathy and responsivity.

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<sup>69</sup> Posick, E. (2017) Empathy on the street: How understanding between police and communities makes us safer, <http://theconversation.com/empathy-on-the-street-howunderstanding-between-police-and-communities-makes-ussafer-40041> Accessed 26 October 2017.

<sup>70</sup> Posick, E. (2017) Empathy on the street: How understanding between police and communities makes us safer, <http://theconversation.com/empathy-on-the-street-howunderstanding-between-police-and-communities-makes-ussafer-40041> Accessed 26 October 2017.

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