



BASELINE STUDY ON THE EXPERIENCES OF KEY AND VULNERABLE POPULATIONS (KVP) IN THEIR INTERACTIONS WITH LAW ENFORCEMENT AGENTS (LEA) AND PERCEPTIONS WITHIN THESE POPULATIONS OF LEAS' KNOWLEDGE, ATTITUDES AND PERCEPTIONS (KAP) WITH REGARD TO KVP.

RESEARCH REPORT

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ACRONYMS

AFSA	AIDS Foundation of South Africa
AGYW	Adolescent Girls and young Women
CCN	Complex Communication Needs
CPF	Community Policing Forum
CSO	Civil Society Organisations
DDP	Dignity, Diversity and Policing Project
DoH	Department of Health
DoJCD	Department of Justice and Constitutional Development
DSD	Department of Social Development
DV	Domestic Violence
ERAP	GBVF Emergency Response Action Plan
FCS	Family Violence and child protection Units
FGD	Focus Group Discussions
GFATM	Global Fund AIDS TB and Malaria
IPID	Independent Police Investigative Directorate
IPV	Intimate partner Violence
KAP	Knowledge, Attitudes and Perceptions
KII	Key Informant Interviews
KVP	Key and Vulnerable Populations
KP	Key Populations
LEA	Law Enforcement Agents
LGBTI	Lesbian, gay, bisexual and intersex
MSM	Men who have Sex with Men
NAPWA	National Association of People Living with HIV/AIDS
NSP	South Africa's National Strategic Plan for HIV, TB and STIs (2017-2022)
NPA	National Prosecuting Agency
PWID	People who Inject Drugs
SANAC	South African National AIDS Council
SAPS	South African Police Service
SDOH	Social Determinants of Health
SGBVF	Sexual and Gender based Violence and Femicide
SHE	Social health and Empowerment
SWEAT	Sex Workers Education and Advocacy Task Force
TAC	Treatment Action Campaign
TG	Transgender
ToR	Terms of Reference
VP	Vulnerable Populations
WWUD	Women who use Drugs

EXECUTIVE SUMMARY

This report presents research conducted for the AIDS Foundation of South Africa (AFSA) in relation to its work on the Human Rights programme's *programme area 3: Sensitization of Law Makers and Law Enforcement Agents*. . That work is a component of the Global Fund to fight AIDS Tuberculosis and Malaria (GFATM) and South African government's human-rights oriented initiatives to reduce barriers to HIV and TB services for Key Populations (KP) and Vulnerable Populations (VP)¹. The sensitization of LEA has been promoted as a practical means to counter stigma and discriminations against KVPs.

The original brief was for a baseline assessment of the Knowledge, Attitudes and Perceptions (KAP) among LEAs in the South African Police Services (SAPS) towards KVPs. However, the brief had to be amended due to the absence of a Memorandum of Understanding with the SAPS, which would allow a KAP survey with police participants in the AFSA's LEA sensitization training courses, and the Covid-19 pandemic which changed the conditions for conducting the study.

The aim of the revised study has been to assess the KAPs of LEAs towards KVPs through the lens of the experiences and perceptions of constituents of KVPs in their interactions with LEAs. Furthermore, the study design incorporated a review of the numerous, relevant policy and legislative developments in the last decade and the introduction of LEA sensitization training courses in 2015, as a necessary contextual consideration for the AFSA's sensitization work conducted in 2020.

The outcome was a study to find out 'what has and has not changed' for KVPs in their interactions with police officers. Using a qualitative and quantitative phenomenological research study design, the research focused on individuals' experiences and perceptions (their own and those shared by others with them). Bearing in mind the context and purpose of the study, the focus was on individuals' recent experiences and perceptions. January 2019 to March 2020 was defined as one reference period; to enable consideration of 'what has and has not changed' for KVPs following human rights-oriented policy and legislative developments and practical interventions in the last decade, and to provide a baseline of information from a period shortly prior to the AFSA's LEA sensitization courses. March to September 2020 was defined as a reference period for a focus on effects of the Covid-19 epidemic, which was an addition to the study. This was the period of South Africa's national 'lockdown' and the specific focus was on the effects of the regulations on the lives of KVPs and on their interactions with LEAs.

The study design has four components: a situational assessment via secondary research (a literature review); primary research via key informant interviews with representatives of KVPs, primary research via two questionnaire-based surveys (one distributed to paralegal workers, the other distributed to constituents of KVPs) and focus group discussions (FGD) with constituents of three KVPs in particular localities.

12 key informant interviews were conducted, involving 14 informants. Seven interviews involved representatives of People who Use and/or Inject Drugs (3 individuals in one interview), MSM, Queer, and Transgender persons, Women living with HIV, Sex Workers, and Adolescent Girls and Young Women (AGYW). Five interviews were conducted with individuals from organisations that assist KVPs. Three of these interviews were conducted with legal experts, one with a representative of the Commission for Gender Equality in relation to Survivors of Sexual and Gender Based Violence, and one with an LEA sensitization course trainer. The KVP survey included 307 respondents from thirteen different KVP categories with the addition of women due to their extreme vulnerability in the South African context.² The paralegal worker

¹ Throughout the document Key and Vulnerable Populations will be referred to as KVP

² Gay men, Transmen, Transwomen, Lesbian, Persons Who Injects Drugs, Persons Living With HIV, Persons living with TB, Persons With Disabilities, Sex Workers, Survivors of Gender-Based Violence, Survivors of Sexual-Based Violence, Adolescent Girls, Young Women, Women

survey included 203 respondents. The three FGDs included respectively AGYW activists, MSM, and Sex Workers. The AGYW FGD involved individuals located in one district (Lenasia, Johannesburg) in Gauteng province. The MSM FGD involved individuals located in the districts of Buffalo City and Nelson Mandela Bay in the East Cape province. The sex worker FGD involved individuals located three districts (Ugu, Ethekewini and Umgungundlovu) in KwaZulu-Natal province.

The two surveys reached a cross-section of their respective target populations from across the country. The results from each survey complement each other with regard to perceptions of police officers and the type of crimes which KVP constituents report against their persons and which feature frequently in paralegal workers caseloads. The vast majority of both KVP and paralegal worker respondents recorded very negative perceptions of the attitudes and behaviour of police officers, and perceived little or no change in their behaviour in the period between January 2019 and March 2021.

A wide range of experiences and perceptions are contained in the key informants' narratives with regard to the stigma and discrimination of KVPs. The tenor of these accounts is that such prejudice is pervasive, in society and in their interactions with police officers, such that there is popular distrust and fear of police personnel due to three interlinked forms of societal prejudice: abusive behaviour by police officers and health workers; self-stigma in the sense of internalisation of societal prejudices amongst KVPs in ways that compound their risks of being harmed and prejudicial societal norms. These issues outweigh informants' acknowledgement of positive experiences in their interactions with police officers and, in particular, the value of the sensitization programme. The KII information revealed the significance of intersectionality as a foundation of KVPs' equivocal perspective on positive legislation and policy developments, the police sensitization programme, and their experiences with police officers. It also underpinned their recommendations for a more systematic approach to the design and implementation of the LEA programme.

The focus group discussions (FGD) affirmed experiences and perceptions recorded in the KIIs and the surveys. In particular, they amplified how and why there is popular distrust and fear of police and experiences of self-stigma and prejudicial societal norms.

The principal finding with regard the Covid-19 epidemic was that the national 'lockdown' regulations compounded the vulnerability and risk of harm for KVPs. In particular, informants expressed there was increased police abuse, including unlawful detention and harassment, increased vulnerability of KVPs who were, or became homeless, a marked increase in GBV and incidents of femicide, and limited application of the government's commitment to curtailing sexual and gender-based violence.

In short, the study results suggest that, despite some examples of positive change and experiences, very little has changed for KVPs in their interactions with police officers. Collectively, the views of the KVPs and the paralegal workers were very negative. Prejudice is the general characteristic of police officers' KAPs. Their knowledge of KVPs is limited. Their attitudes reflect societal norms and values; notably, those that disparage drug use and non-conforming sex and gender identities and religious tenets which stigmatise homosexuality and sex work. KVPs' general perspective is that police prejudice is pervasive because, collectively, KVPs experience diverse forms of stigma and discrimination in their interactions with police officers.

However, the study results also revealed the very varied forms of stigma and discrimination and the variable occurrence, for individuals and for a KVP as a group, of one or another form in their interactions with police officers. Furthermore, the results indicated the inter-play of institutional and structural factors and the personal prejudices of police officers that are

perceived and experienced by KVP individuals. These findings point to complex dynamics within positive developments and in the persistence of prejudice.

We drew from these findings an indication of the need for accommodation of countervailing evidence in the design and content of the monitoring and evaluation mechanism for the LEA sensitization programme and in broader reviews of the design of the programme itself.

Accordingly, the basis of the study recommendations is the suggestion to use the countervailing evidence on the many indices of KVP vulnerability and risk of harm as a starting point for defining M&E foci and measures and, for reviews of the programme, to consider what the LEA sensitization courses and the programme generally can and cannot achieve. In other words, the recommendation here is an approach which, for example, accepts the co-presence of indicators of the positive and negative perceptions and experiences of KVPs in their interactions with police officers, addresses the variety of forms, and variable occurrence of discrimination and stigma experienced within and between KVPs and, in the case of specific M&E foci, the interplay between personal, institutional and structural factors.

Three particular findings provide a basis for construction of foci and measures in the design of the M&E mechanism. First, the narratives of the KVP informants' revealed experiences of positive changes in the behaviour of police officers. Secondly, the programme can be viewed as one intervention amidst others which have generated confidence amongst, and opportunities for KVP organisations and activists to confront police, sometimes successfully, in different ways. Thirdly, the generally negative views amongst KVPs does not define the totality of their understanding of police KAPs. Their narratives reveal insights into why, in their experience, prejudice is a common characteristic of police officers' KAPs, how police officer's knowledge of KVPs affects individuals' experiences, how individual police officers' attitudes can reflect their struggle to understand non-conforming gender identities, and why and how societal norms influence interactions between KVP individuals and police officers.

There are also three bases for defining foci and measures on the negative aspects of KAPs amongst police. These bases draw on the finding that KVP perceptions of the pervasiveness, and experiences of diverse forms, of police prejudice stem from three, interlinked forms of prejudice:

- 1) Abusive behaviour by police officers;
- 2) Prejudicial Societal norms;
- 3) Self-stigma in the sense of internalisation of societal prejudices amongst KVPs in ways that compound their vulnerability and risk of harm in interactions with police officers;

With regard to reviews of the LEA sensitization programme, the criticisms and doubts about the model for the LEA sensitization courses and the recommendations voiced by the key informants provide a potentially useful starting point. There is clearly a need for the programme to evolve, which had been discerned by several key informants. First, their comments infer a need to review the theoretical foundations of the programme. Secondly, they infer a need to review the conceptual foundations of the programme; that is, the definitions of KPs and VPs. The issue here, we suggest, is not a challenge to the evidence base for the definitions (e.g. the HIV-risk grounds for defining KPs) but to the usefulness of the HIV-orientation of definitions in a programme that includes KVPs with different even if overlapping challenges, addresses health and broader welfare challenges, and promotes rights to health, justice and dignity. Thirdly, they suggest modifications to the programme that capitalise on existing opportunities such as greater involvement of the range of government, police and civil society structures that now exist to support KVP-focused interventions, curtail police abuse, and improve interactions between civil society and the police services. Fourthly, they infer the need for more investment on the grounds mentioned above, in a recommendation for a national LEA sensitization programme.

In conclusion it should be noted that the study findings and recommendations are a function of the type of research that was conducted. This was a study which, predominantly, sought and relied on experiential data. This type of operational research does not yield

generalizable results. Its value lies in providing insights to inform the foci and content of quantitative investigations of issues that such research suggests are significant. In this case, the suggested bases and foci for design of the M&E mechanism are issues whose significance should be determined via interim monitoring research. A further point - the data was a rich source of information which enabled analysis to identify nuances in the experiences and perceptions of KVP individuals. An inevitable consequence was that compilation of the results involved extensive use of the information to draw out those nuances and, hence, very long 'results' chapters. This revised version of the original report summarises the results as study findings but retains the original results chapters as addenda for reference for the evidence base that supports the findings.

1. INTRODUCTION

Effective HIV management requires that all who are affected by the epidemic, directly and indirectly, should have access to justice. Justice in this instance means protection and support by state agencies to enable individuals to realise their rights to health and dignity. Law enforcement agents (LEAs) are a critical link for individuals to access justice in that they can protect individuals against societal stigma and discrimination and facilitate individuals' access to appropriate health services. Law enforcement agents in South Africa include the South African Police Service (SAPS), Metro Police, Community Policing Forums (CPF), Traffic Police, and numerous private sector 'security' companies.³ All these agencies interact with KVPs and the SAPS. The Metro-Police in particular have been identified as agencies which, via the behavior of police officers, do not uphold the ideal of enabling KVPs rights to justice and, thereby, these agencies are 'barriers' against realization of KVPs rights to health, justice and dignity. The CPFs are one agency which is designed to mediate societal concerns about crime and interest in police protection, and they do provide recourse for KVP. There is no published information to our knowledge on the nature of the interaction of Traffic Police and private sector security companies.

The AIDS Foundation of South Africa's (AFSA) LEA sensitization work is a practical component of broader Global Fund and South African government human-rights oriented initiatives to reduce barriers to HIV and TB services for Key Populations (KP) and Vulnerable Populations (VP)⁴. The key strategic initiatives are the Global Fund's AIDS TB and Malaria (GFATM) *Strategy 2017-2022: Investing to End Epidemics*⁵ and the South African (SA) government's *National Strategic Plan for HIV, STIs and TB, 2017-2022*⁶. Key programmatic initiatives are the GF's *Programmes to Reduce Human Rights Related Barriers to HIV Services*⁷ and the SA government's *Three-Year National Implementation Plan for A Comprehensive Response to Human Rights-Related Barriers to HIV and TB Services and Gender Inequality*.⁸

The South African government's initiatives are outcomes of the GFATM's and the UNAIDS support, which has led to numerous policy and legal developments that are founded upon the human rights principles embedded in South Africa's 1996 Constitution. The Constitution asserts that all citizens have a right to health services and it prohibits any prejudicial discrimination that contradicts the principle of equality of all who live in the country. For purposes of this study, prejudice on the basis of racial classification, age, gender, disability, sexual orientation, and HIV and TB infection are relevant considerations because such prejudice exacerbates the vulnerability and risk of harm for KVPs in particular. Since the early 2000s, via strategic partnerships with global health agencies, bilateral aid agreements and the

³ Metro Police are police forces funded and maintained by metropolitan municipalities. Community Policing Forums are statutory-based means for residents, organisations and businesses in a locality to liaise with SAPS representatives for the purpose of addressing local crime problems and improving accountability, transparency and effectiveness of local police services.

⁴ Throughout the document Key and Vulnerable Populations will be referred to as KVP

⁵ GFATM 2016

⁶ SANAC 2017

⁷ GFATM 2018

⁸ SANAC 2018

advocacy of civil society organisations (CSO), there has been gradual elaboration of an ethic of inclusivity in South Africa's general health and HIV and TB service programming: this has specifically supported the identification of particular sub-populations, KVPs, who have marginal access to health and justice services, for overt inclusion in the country's HIV and TB health care programming.

There have been policy, legal and social interventions to remove the barriers of societal stigma and discrimination which inhibit against KVPs' access to health and associated legal and welfare services in place since 2011. One focus within these developments is the prejudice frequently experienced by constituents of KPs and VPs in their interactions with LEAs. The interventions acknowledge that such prejudice constitutes a barrier against individuals' accessing health, justice and associated welfare services. In turn, LEA sensitization has been promoted as a practical means to counter that prejudice. In view of the above, there are three sets of issues which inform the content of this research study: (1) The KVPs to be included; (2) Policy, legal and social interventions pertinent to the focus of the study; (3) LEAs as a barrier against KVPs' access to health and welfare services. While efforts are made to sensitize law enforcement agents on the rights of KVPs, the impact of these efforts need to be reviewed on a regular basis to identify gaps and improve efforts. A critical question therefore is do we have enough or structured ways of assessing impact of policies and sensitization efforts aimed at improving the experiences or respecting rights of KVPs?

The aims of this study are:

- 1) To assess the knowledge, attitudes and perceptions of LEAs towards HIV and KVPs through the lens of the experiences and perceptions of constituents of KVPs in their interactions with LEAs. These interactions include:
 - KVPs using certification and affidavit signing services at police stations
 - KVPs reporting (at police stations) crimes against them that are based on prejudice about their 'identity' (e.g. person living with HIV; woman; LGBTQI)
 - KVPs reporting crimes against them wherein their 'identity' is irrelevant (e.g. property theft)
 - KVP's reporting crimes of physical and/or sexual assault which require police officers to follow particular protocols for cases of domestic violence and/or sexual and gender-based violence that include immediate referral to HIV treatment services and referrals as necessary to other health and welfare services (e.g. hospital care; counselling; safe shelters)
 - KVPs experiencing police harassment and abuse (in police stations and by police patrols) on the basis of their behavior which in some cases is legally prohibited (e.g. sex work; illicit drug use), in others, as a result of circumstance and other illegal behavior (e.g. being homeless and harassed for breaking municipal byelaws against sleeping in public places), and, in other cases, on the basis of their non-conforming 'identity' (e.g. MSM, trans-sexual person).
- 2) To Provide a baseline assessment of the nature and tenor of KVP interactions with LEAs, to inform subsequent monitoring and evaluation of the AFSA LEA sensitization courses.

This report is divided into the following chapters: Background to the Study; Methodology and Methods; Situational Assessment; Study Findings; Ramifications of Study Findings and Recommendations.

2. BACKGROUND TO THE STUDY

The original Terms of Reference (ToR) for this study called for a "...a baseline assessment of the Knowledge, Attitudes and Perceptions among Law Enforcement Agents in the South African Police Services towards Key and Vulnerable Populations...". This was to be a component of the AIDS Foundation of South Africa's (AFSA) programme involving sensitization of police personnel

with regard to officially designated 'key populations' and 'vulnerable populations and their human rights within the country's initiatives to create an inclusive health system. The intention was that this study would provide a basis on which AFSA could, at a later date, conduct a subsequent 'evaluation' study to assess whether the sensitization programme had been effective in changing the perspectives of police personnel. AFSA's LEA sensitization programme is a component of its broader human rights programme which is supported by the Global Fund for AIDS, TB and Malaria (GFATM) as part of latter's human rights programme in relation to key and vulnerable populations in South Africa. The GFATM programme is being conducted in 25 districts across 8 provinces in South Africa.

This study was scheduled to run from January 2020 to April 2020. Two issues affected the original focus and projected design of the study. One, was the impossibility of obtaining permission from the South African Police Service (SAPS) to conduct research with SAPS personnel within the projected timeframe for the study, based on our previous experience. The second issue was the Covid-19 pandemic which delayed inception of the study and also constrained standard research practices and, therefore, entailed a re-thinking of the study design. Consequently, following discussions between AFSA, the GFATM Human Rights Task Team and Enza, a modified research protocol that retained the study's original intent and purpose, was proposed and agreed upon. Subsequently, the proposal was submitted to, and approved by the Ethics Review Board of the University of Pretoria.

There are two principal modifications to the original ToR. One, is a necessary redefinition of the 'baseline assessment' that the study could provide. The issue here is that, ideally, the study would have been conducted prior to the AFSA's sensitization of police personnel in the designated districts and provinces where the activities occurred, and identified common knowledge, attitudes and perceptions (KAP) amongst police in those districts. Such information would then be the basis for future monitoring and evaluation of the programme; for example, its effects on KAPs amongst police personnel; at a later time, the influence of those who participated in the sensitization activities on how SAPs protocols for interactions with KVPs are implemented and/or the broader influence of the sensitization on development of new or revised SAPS protocols.

Delays to inception of the study meant that this form of baseline assessment could not be done. However, the study could be designed to provide information on whether or not KVPs in the designated districts and generally in the designated provinces have experienced and/or perceived any changes in KAPs amongst police personnel such that their experiences of interactions with policemen and policewomen have improved or not. In other words, the modified baseline assessment has been about showing 'what has and has not changed' for KVPs. In turn, that information can usefully inform future evaluations of the medium to longer term influences of the sensitization programme.

A consideration in adopting this approach to designing the study is the context in which the AFSA sensitization programme has been conducted. The content of the courses may have been novel for many policemen and policewomen in most of the districts where the programme has been implemented. However, it has been conducted on the basis of development of KVP-focused government policies and legislation, associated reforms within the SAPS, associated training of legal and para-legal workers, and advocacy and support campaigns for KVPs by many civil society organisations, that have occurred in the last 6-7 years. Therefore, the study needed to investigate the possible positive effects of these developments for KVPs in the districts where it would be conducted, in association with perceived changes amongst these sub-populations as a result of the recent AFSA's LEA sensitization programme.

The second principal modification is that the study focused on investigating the experiences of KVP's in their interactions with law enforcement agents and perceptions within these populations of LEAs' KAPs. In other words, since it was not possible to conduct research directly

with LEAs, the study identified proxy indicators of KAPs amongst LEAs through the focus on 'what has and has not changed' for KVPs.

3. METHODOLOGY AND METHODS

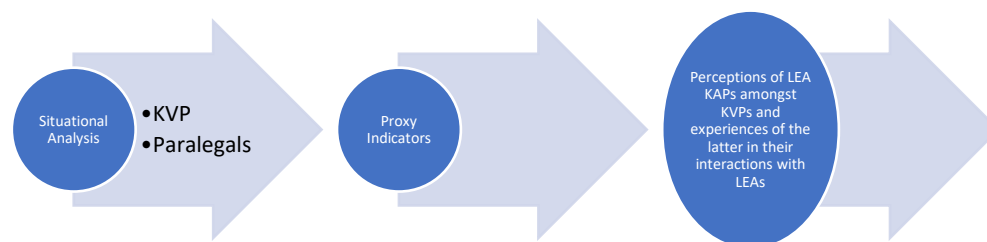
3.1 Methodology

This is a qualitative and quantitative phenomenological research study that focuses on individuals' experiences (first-hand or reported to service providers). It analyses police officers' knowledge, attitudes, and perceptions (KAP) towards and KVPs from the perspective of individual constituents of KVPs and representatives of KVP organisations. As was mentioned earlier, assessing KAPs of police officers from the perspective of KVPs was a necessary modification of the original study design. Furthermore, the modification took into account the numerous, relevant policy and legislative development in the last decade and the introduction of LEA sensitization training courses in 2015, The outcome was a study to find out 'what has and has not changed' for KVPs in their interactions with police officers.

The study design has four core components: a situational assessment via secondary research (a literature review); primary research via key informant interviews with representatives of KVPs, and primary research via two questionnaire-based surveys (one distributed to paralegal workers, the other distributed to constituents of KVPs) and focus group discussions (FGD) with constituents of three KVPs in particular localities.

The purpose of these research components has been to identify proxy indicators of KAPs amongst police officers and to enable assessment of KVP perceptions of KAPs amongst police officers and KVP accounts of their experiences in their interactions with police officers. Diagram 1 below illustrates the research methodology.

Diagram 1: Representation of the study methodology: "What has and has not changed"



A consequence of this approach was specification of timeframes for the primary research data to be collected. Generally, the study sought information for the period between January 2019 and March 2020. The rationale was twofold. First, the study needed 'baseline' information from the period just prior to, and during the period when LEA sensitization courses were being conducted. Secondly, to find out 'what has and has not changed' for KVPs, the study needed 'recent' information on KVPs experiences rather than information drawn from experiences over a long period of time. With regard to the effects of the Covid-19 epidemic, specifically the effects of 'lockdown' regulations, the study sought information for the period (mid) March 2020 to September 202. In the event, as primary research continued till mid-December 2020, the study also obtained information for the period from October to mid-December 2020. For the questionnaire surveys, the questions were specific for these timeframes. For the KIIs, there was more latitude with regard to the January 2019-March 2020 timeframe because some

questions and follow up questions referred to longer term changes (e.g. policies and evidence of implementation). For the FGDs, the discussions were oriented towards recent and current experiences. In turn, data derived from the primary research informed revision of the initial situational assessment, drawing on publications up to February 2020.

The research process was iterative. Findings from the literature review informed the design and content of questions for the KIs and the questionnaire-based surveys. Findings from the KIs and the surveys informed continuation and refining of the literature review. One aspect of this process was not followed through. The intention was to use findings from the three core components to review and refine the topics for focus group discussions (FGD) with constituents of the 10 KVPs included in the study. This would have been a means for qualifying and validating findings from the other components of the study. However, completing the KIs and surveys (online due to Covid-19 restrictions) took longer than anticipated. Securing participants for the FGDs (early to mid-December) proved to be difficult as we were dependent in some instances on key organisations to draw on their databases for contacts and staff in many organisations were not operating from their offices. Consequently, not all the projected FGDs could be organised within the time frame for data collection and those that were conducted adhered to the original proposed topics.

This study was designed overtly to yield experiential data from a large cross-section of KVPs and, via a survey of paralegal workers and some of the KIs, to include individuals who provide services to assist KVPs. This approach was partly dictated by the unusual circumstances in which the study was conducted. The intention was to provide insights, not generalizable results, about the perceptions and experiences of KVPs in particular locations and circumstances and generally across the country.

3.2 Methods

3.2.1 Study Populations

The study included a selection of the KVPs that are included in the National Strategic Plan for HIV, TB and STIs 2017-2022.⁹ The selection criterion was that these populations are the focus of the AFSA's broader human rights programme. Consequently, following discussions with the AFSA, the study included five KPs and three VPs as is illustrated in Table 2 below. The study also included two additional sub-populations: survivors of sexual and gender-based violence and women other than adolescent girls and young women (AGYW). The rationale for including survivors of SGBV is the very high rate of SGBV in South Africa and the bi-directional link with HIV and evidence that LEAs constitute a significant barrier for people who experience violence, (primarily girls and women), to access judicial, medical and welfare services following incidents of rape, coerced sex, domestic abuse, and assaults. Women have been included given their disproportionate vulnerability to HIV and STI's. In this instance, the study did not to seek to involve women as a specific population as respondents and informants; rather the category 'women' was highlighted for attention during data analysis as we anticipated that disaggregation of some data would indicate the gender basis of vulnerability and risk of harm in addition to those generally for KVPs. We refer here to risk and vulnerability being not only a function, for example, of disability or being a sex worker, but also to being a woman.

Table 1: Key, Vulnerable and additional populations included in the study

Key Populations (HIV &STI)	Vulnerable Populations (HIV &STI)	Additional Populations
Sex Workers	Adolescent Girls and Young Women (AGYW)	Survivors of SGBV

⁹ SANAC 2017

Men who have Sex with Men (MSM)	People with Disabilities	Women
Transgender people	Other lesbian, gay, bisexual, transgender and intersex (LGBTQI) persons	
People Who Use Drugs (PWUD)		
Key Populations (TB)		
People living with HIV		

3.2.2 Geographical Foci

The aim was to reach KVP's and paralegal workers across South Africa but with a focus on those in some of the districts and provinces where the AFSA programme is being conducted. The AFSA programme covers 25 districts across 8 provinces (see Table 2 below). Following discussions with the AFSA, it was agreed that the research would focus on 3 provinces (Western Cape, Gauteng and KZN). The rationale here stems from a previous programme¹⁰ which found that the highest number of assault and rights violations by SAPS personnel, against sex workers and PWUD, occurred in these provinces. In turn, these provinces were prioritised for LEA sensitization and, hence, included in the AFSA programme. Consequently, in the discussions to decide the feasible reach of the baseline study, these three provinces stood out as appropriate foci. However, the study ToR also required the research to provide insights across all areas where the AFSA programme is being conducted; hence, data was collected (largely via the questionnaire-based surveys) from respondents located across South Africa.

Table 2: Districts included in the GFATM Programme

Province	District
Mpumalanga	Gert Sibande
Eastern Cape	Amathole; Buffalo City; Alfred Nzo; Nelson Mandela Bay; OR Tambo
Free State	Thabo Mofutsanyana; Mangaung
Limpopo	Mopani; Capricorn; Greater Sekhukhune
North West	Bojanala
Gauteng	West Rand; Ekurhuleni; Johannesburg; Sedibeng
KwaZulu-Natal	King Cetshwayo; Zululand; Ugu; Ethekwini; Umgungundlovu
Western Cape	Cape Town; Garden Route

3.2.3 Research Duration

Several iterations of the protocol were compiled from January – October 2020 for reasons described earlier. This process included interaction with the AFSA, the GFATM and the Human Rights Task Team to resolve the challenges for doing the study; most importantly, conducting research during the COVID19 pandemic. Once the protocol, data collection instruments and consent processes were finalized the following steps were followed:

1. Submission to Ethics Committee University of Pretoria: 15/10/2020
2. Protocol approved: 5/11/2020
3. Introduction to key stakeholders through AFSA (8/11/2020)
4. Liaison with key stakeholders (8/11 – 15/12/2020)
5. Data collection: 15/11 – 20/12 2020
6. Analysis and completion of draft 1 report sent to AFSA: 1/02/21

¹⁰ AIDS Fonds 2016

7. Completion of Draft 2: 25/02/21

3.2.4 Sampling

Schematically, the sampling procedure involved three steps. The first step, with the assistance of the AFSA, was to identify and consult with relevant stakeholders; notably, representatives of relevant 'sub-recipients' of AFSA grants who included national KVP organisations, para-legal workers who have been trained by Enza as part of the AFSA programme and (in addition to KVP representative organisations) national CSOs that have been working with particular KPs, VPs and LEAs. This was the foundation for the second step of purposive sampling. This involved approaching representatives of KP and VP organisations which operated in the selected 11 districts and three provinces to be key informants and using social media to draw in participants for the KVP questionnaire-based survey across the country and, likewise, to distribute the questionnaire to paralegal workers. The third step was to use these contacts to identify and approach individuals from the ten KVPs who were located in the 11 districts of the three provinces, to participate in FGDs.

In the event, there were two variations from the intended procedure. One, was that national CSOs (that have been working with particular KPs, VPs and LEAs) were not a source for this category of key informants. They (an experienced LEA sensitization course trainer, a representative of women living with HIV, and legal experts) were approached through ENZA's own contacts. The reasons for this were that there was a poor response from the CSOs which were approached via the AFSA's contacts; in turn, in view of the limited time for the research, Enza could not allow much time to pass after follow up requests; hence, the recourse to Enza's own contacts. The second variation was that only three of the projected 10 FGDs were conducted due to difficulties with identifying participants from the designated districts and organising virtual FGDs online. This was a substantive challenge. Normally the procedure would be to physically visit the designated districts, to identify and recruit individuals with the assistance of local KVP representatives and, also in person, sort out the logistics such as day, time, venue, and then conduct face-to-face FGDs. This was not possible in the context of the Codi-19 restrictions. Identifying, and recruiting individuals via phone calls, and organising and conducting virtual meetings with individuals dispersed across a district and/or districts was very time consuming and, in most instances, proved to be impossible to complete within the research time frame.

12 key informant interviews were conducted, involving 14 informants (see Table 3 below). Seven interviews involved representatives of People who Use and/or Inject Drugs (3 individuals in one interview), MSM, Queer, and Transgender persons, Women living with HIV, Sex Workers, and Adolescent Girls and Young Women (AGYW). Five interviews were conducted with individuals from organisations that assist KVPs. Three of these interviews were conducted with legal experts, one with a representative of the Commission for Gender Equality in relation to Survivors of Sexual and Gender Based Violence, and one with an LEA sensitization course trainer.

Table 3: List of Key Informants Interviewed

KVP category	Description/ Organisation
People who use/ inject drugs	South African Network of People who Use Drugs (SANPUD) <i>Interview included three participants</i>
LGBTQI (3 interviews)	OUT (MSM)
	Gay and Lesbian Network (Queer)
	SHE (Transgender)
Women Living with HIV (WLHIV)	Her Rights Initiative (HRI)
Sex workers	SWEAT

Survivors of sexual and gender-based violence (SGBVF)	Commission for Gender Equality (CGE)
AGYW	Youth Representative
Legal expert (3 interviews)	Lawtons Africa Jwili Legal Consultants Section 27
LEAS sensitization trainer	Triangle Project

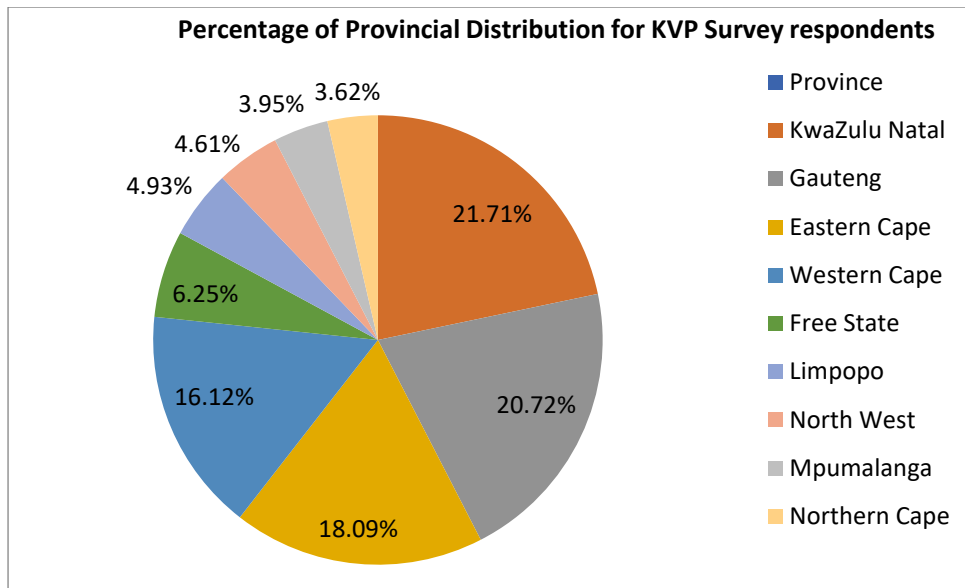
The KVP survey included 307 respondents from fourteen different KVP categories as is indicated in Table 4 below. These categories were prescribed in the survey form and individuals could identify more than one identity. This was not intended to be a representative sample in view of the impossibility of defining population sizes and locations of respondents in advance, the necessary distribution online via different KVP organisations, and voluntary anonymous participation. The intention was to include a cross-section of KVPs from across the country as indicated in Figure 1 below.

Table 5: Identities cited by Respondents as applicable to themselves

Category		
Woman (25 and above) ¹¹	131	30.90%
Adolescent girl (10 to 18)	2	0.47%
Young women (19 to 24)	36	8.49%
Gay man	41	9.67%
Transman	3	0.71%
Transwomen	7	1.65%
Lesbian	40	9.43%
Person who injects drugs	24	5.66%
Person living with HIV	48	11.32%
Person with TB	8	1.89%
Person with a disability	19	4.48%
Sex worker	21	4.95%
Sexual-based violence Survivor	18	4.25%
Gender-based violence Survivor	26	6.13%
Total	424	

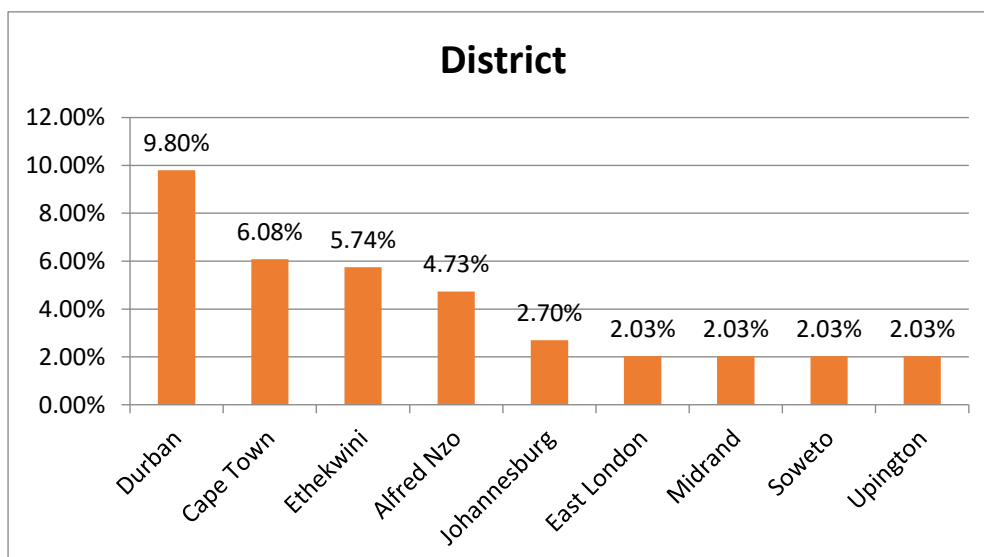
Figure 1: Provincial Distribution of KVP Survey respondents

¹¹ As noted previously, women as a category is not a KVP but given the vulnerability of women in South Africa we have included women as a parameter for analysis



The district distributions of the respondents are illustrated in Figure 2 below. The bias towards majority of respondents being located in the three focus provinces is due, in part, to much of the assistance to distribute the questionnaire coming from KVP representative organisations which are located in these provinces and partly because the questionnaire reached and was responded to, primarily by KVP located in metropolitan and urban areas. It may be noted, that there were few respondents from the Gauteng metropolitan area (approximately 21 individuals; combining the statistics for Johannesburg, the Mid Rand and Soweto). There were informants located in numerous other districts which are not indicated in the Figure because the numbers were in single figures and hence, the percentage frequencies in any one location were very low.

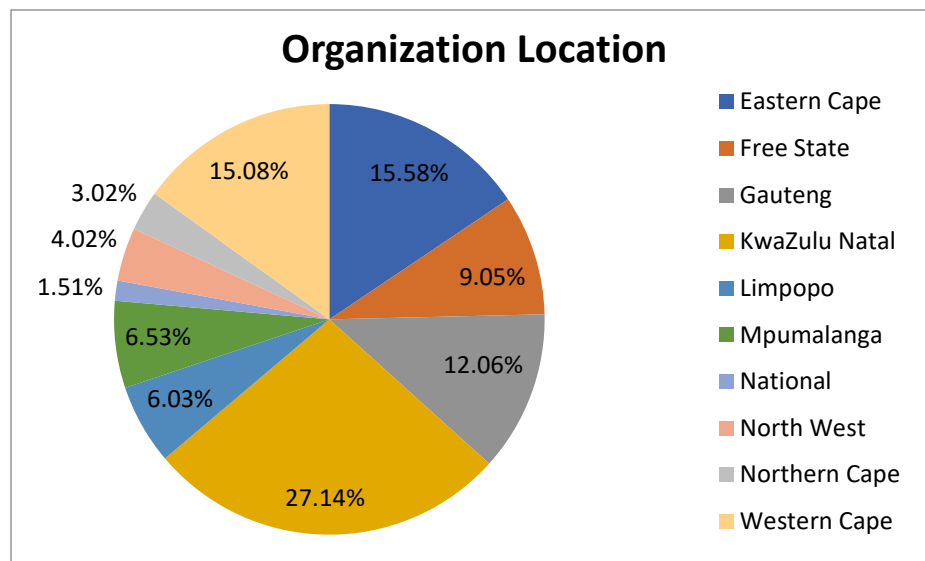
Figure 2 | Significant District Distribution of KVP Survey Respondents



The paralegal worker survey included 203 respondents. This survey was directed to 300 paralegal workers who had previously participated in sensitivity training conducted by Enza and who were located across the country. We also targeted paralegals from various Community Advice Offices mainly in KZN and Gauteng. Given the voluntary anonymous basis

for participation we are unable to determine precise numbers from this category. Figure 3 below illustrates the distribution of the respondents

Figure 3: Provincial Distribution of the Paralegal Worker Respondents



The three FGDs included respectively AGYW activists, MSM, and Sex Workers. The AGYW FGD involved individuals located in one district (Lenasia, Johannesburg) in Gauteng province. The MSM FGD involved individuals located in the districts of Buffalo City and Nelson Mandela Bay in the East Cape province. The sex worker FGD involved individuals located three districts (Ugu, Ethekwini and Umgungundlovu) in KwaZulu-Natal province.

3.3 Data collection

3.3.1 Surveys

An anonymous online questionnaire was distributed to constituents of different KVPs workers (see Addendum 7). An anonymous online questionnaire was also circulated to paralegal workers (See Addendum 8).¹² The questionnaires were formatted to be user friendly for smart phones; in view of the probability that many potential respondents would be reached via their cell phones and they would not necessarily have access to PCs or tablets as means to complete and submit the questionnaires. The surveys were online from 20/11/2020 – 18/12/2020.

The method for distribution of the KVP questionnaire (via KVP organisations to their members and/or individuals on their databases; returned via link to Enza) ensured anonymity. The online distribution of the questionnaire via a second party, however, presented a logistical and ethical challenge for seeking informed consent and a respondent's provision of it via a signed form. The distributed questionnaire included a short statement on the study, its purpose and form, and the address details of an appropriate AFSA manager and an official at the University of Pretoria Research office. This was followed by text emphasizing that participation was voluntary, that neither the research team nor the person from the KVP organisation who distributed the questionnaire would know who specifically participated, that respondents could choose to answer all or some of the questions and submission via the link to Enza, would

¹² Paralegal workers were trained on Human Rights and HIV as a component of the Human Rights Strategy funded by AFSA, managed by ProBono.org and facilitated by ENZA

be testimony of voluntary consent to participate. In the case of the online survey with paralegal workers, Enza distributed the questionnaire to all who participated in the Enza human rights online training, as well as through NGOs but anonymity of respondents was assured by submission of completed questionnaires via a link. Voluntary consent to participate was sought in the same way as for the KVP survey.

3.3.1 Key Informant Interviews (KII)

Each of the 12 KIIs, lasting approximately 45-60 minutes, were carried out in English and took place between November and December 2020. Prior to the KII, participants were requested to fill out a consent form electronically and where this was not possible, or consent forms were not received (prior to or after the interview), permission to interview was obtained verbally from the informant.

The interviewers were women, all are experienced researchers in the field of KVPs, and they were sensitive to the potential difficulties for informants when discussing accounts or personal experiences of violence and injustice. The primary platform used for KIIs was GoToMeeting an online software tool which allows recordings and automated transcripts. Due to technical challenges (connectivity) not all interviews were recorded, and some interviews were conducted via cell phones and the interviewer made written notes during the interview. One stakeholder was hesitant to answer questions and dropped out of the interview. No reasons were given. Subsequently, the interviewer was not able to reach the individual to discuss and address any concerns that the individual might have had with the interview. Despite extensive efforts, we were unable to confirm and conduct an interview with a representative of persons with disabilities.

3.3.4 Focus group Discussion (FGD)

As has been mentioned, organising and conducting FGDs proved to be particularly challenging, partly due to the time of the year but largely due to the logistics involved in organizing virtual meetings. In some instances, despite the assistance of several KVP organizations, we were unable to recruit a group of individuals who could participate at the same time in a FGD. In other instances, participants requested financial assistance to cover the online data costs of participating in a FGD. We facilitated participation by providing individuals with payments of approximately R95.00/ 1GB to download the GoToMeeting application and to participate in the FGD.

Verbal consent was sought at the beginning of each FGD. Discussions were held in English, IsiXhosa and IsiZulu interchangeably. When necessary, translations were provided either by the co-facilitator or a representative of the assisting organization.

Conducting these FGDs via smart phones (many FGD members had access only to phones and not computers or tablets) was a difficult exercise. In particular, background noise and connection breaks were disruptive. In the case of the AGYW FGD, two of the original 3 number of participants participated for the full hour of the discussion. Another constraint was that the medium of smart phones and lack of visual contact made it difficult for the facilitators to ensure the active engagement of all the participants. The MSM FGD proved particularly challenging as only some participants were vocal while others were hesitant to speak, and it was a dynamic difficult to change. However, in the sex worker FGD, the participants were initially hesitant to speak but, once asked about "reporting any clients/ violent incidents experiences", the majority began to participate actively.

There was poor participant turnout for the AGYW FGD as many of the young women contacted did not have smart phones and were unable to participate. One member of the group had connectivity issues and was thus included via WhatsApp with questions being posed to her and her sending back WhatsApp voice notes to the interviewer.

3.4 Data Management and Analysis

Data from the KIs and FGDs was managed in the following way:

- Interview/group discussion was recorded when possible
- Interview /group discussion was auto-transcribed,
- The auto-transcription was checked against the recording by the interviewer/discussion facilitator
- The data was then categorised into themes through a thematic and content analysis and inserted into Word template .

The data from both surveys were subjected to thematic and content analysis. The process comprised of four steps, namely: transcription/capture, checking and editing, analysis and interpretation, and verification:

- The data was captured into an Excel database.
- The data was randomly validated against the online responses. Data was randomly validated to check the accuracy and quality of the data and formed part of the data cleansing process to ensure clarity while performing the analysis. For example, 'No Null Values' were verified for each column to prepare the data. Also, 'consistent expressions' were verified to ensure that column values lie under same category as number or string. This resulted in the accurate representation of the data.
- The data was cleaned, and inconsistencies evaluated.
- The data included frequencies of the responses as the options for some questions were True/False or a Likert type scale with prescribed choice (Strongly Agree, Agree, Disagree, and Strongly Disagree).

All data is stored in a Google drive that is accessible to the research team only to ensure confidentiality and security. This will be kept for 15 years as per University of Pretoria ethics committee regulations.

3.5 Data Analysis

3.5.1 Online Surveys

The surveys questions provided scope for respondents to write brief comments which could be captured and analysed. Responses in some questions contained qualitative data (words and observations) and a content analysis was undertaken to study the qualitative data. The data was reviewed to extract key observations, themes and trends. Microsoft Excel was used to code, organize and manipulate the data. After coding, the most common responses for the questions were identified and patterns were studied to establish the themes.

Some questions were measured on a nominal scale where participants were asked to select one amongst a set of options. The percentage frequency method was used to list the percentage of observations that existed for each data point. This was done to predict the frequency of each value to assess the reliability of the prediction. The various data filtering capabilities of Excel were also applied to selectively access data. A pivot table was used as a statistical tool to summarize the data. This allowed for the sorting of data into a useful crosstab format or in a grid; both in horizontal and vertical columns.

Pie charts and bar charts have been used to visually demonstrate how much each category represents as a proportion of the whole. Because it is defined as a percentage of the total, it makes it easy to compare different categories in a single chart.

3.5.2 Key Informant Interviews

The analysis, conducted iteratively, involved:

- a) Issues that were raised directly or indirectly on numerous occasions in the informants' narratives. For example, abuse of KVPs by police was a common feature of their narratives as was the lack of privacy at police stations for complainants;

b) Identifying particular terms which:

- Were voiced on four or more occasions in the transcripts as a whole, irrespective of the focus of an individual's statements on a designated topic or KVP group;
- Intimated underlying qualities of KVPs' experiences with, and perceptions of police and health workers (as described by the informants). For example, 'religion' and 'faith' were such terms that were used by three different informants to explain or to illustrate societal norms and values as a (perceived) foundation of the prejudice and discrimination commonly experienced by KVP from people generally and police officers and health workers in particular. In a different vein, 'fear' was a term used by four informants to describe a common feeling amongst KVPs in their interactions with police officers (and intimated in another informant's explanations of police not attending to complaints of domestic violence);

c) Identifying subsequently sections of transcripts, sometimes several sentences, which referred to previously identified qualities but did not specifically name them. For example, two informants referred overtly, but four did so indirectly, to the notion of 'intersectionality' in the sense of how the nature and extent of an individual's vulnerability or, indeed, risk of being harmed, is determined not only by being, for example, a sex worker or drug user but also by other aspects of their public identity, social status and/or social circumstances, such as their 'race', gender, being homelessness if they have no formal home, age and level of education.¹³

d) Issues that were rarely mentioned but which referred to potentially significant issues in the experiences of KVPs that are not well known or often omitted in discussions on KVP experiences with LEAs and health workers. For example, there was one reference to abusive behaviour by guards of a private security company towards sex workers in a suburb but South Africa has a very large the private security industry (security patrols are a common sight in many urban suburbs and rural areas where there are private farms).

3.5.3 Focus group discussions

Content analysis was the principal focus of the data from the FGDs because the interviews focused on learning about their perceptions of police personnel KAPs, their experiences in interactions with police officers, and what has and has not changed for the participants in those interactions.

3.6 Research Ethics

The study was designed to provide anonymity and confidentiality for the participants, and to ensure voluntary participation. The protocol was submitted to the Ethics Review Board on 15th October and permission for the study was granted 5th November 2020.

3.7 Limitations

The principal limitations are:

- The inability to complete the KIs and questionnaire surveys and conduct a preliminary analysis of the data in time to refine the discussion schedule for the FGDs. This meant that the study could not use the FGDs as a means of verification of the KI and survey data.
- The inability to conduct 10 FGD as planned. This meant that the study could not address the experiences and perceptions of KVPs in the designated districts which were to be a focus of the primary research.

¹³ 'Race' refers here to popular interpretation of South Africa's formal categorisation of the country's citizens into 'designated' [i.e. different] 'population groups': Black African, White, Coloured, and Asian; these being abbreviations of apartheid era categorisations.

4. SITUATIONAL ASSESSMENT

4.1 Introduction

This baseline study draws upon interventions, ranging from changes to policies and legislation, to advocacy reports by civil society organisations, which have occurred largely in the last 10-11 years, to research and to practical LEA sensitization programmes, which have been conducted within the last 5 years. The former developments outweigh the latter. As we outline shortly, there have been numerous policy, legal and advocacy initiatives. In contrast, a few studies have been carried out on the knowledge, attitudes, perceptions and behaviour of the SAPS; for example, the Redpeg study in 2014 on KAP around sexual violence and the Sexual Offences Act, the COC study in 2015 on the Dignity, Diversity and Policing Project (DDP) and the Centre for Augmentative and Alternative Communication (CAAC), University of Pretoria, 2015-2018 project on challenges for people with disabilities in reporting crime to police. Key lessons from the COC study included guidelines for working with law enforcement agents and the importance of training for police officers to improve their job performance. The need for training was echoed in the Redpeg study. Other studies have looked at access to justice for specific key populations; for example, sex workers and LGBTI populations.¹⁴ Education programmes and sensitisation initiatives with LEAs include ENZA, COC, AidsFonds, and the CAAC's training oriented research with LEAs and judiciary personnel.¹⁵

In this chapter, we highlight two key themes within all these developments; namely, the intention to enable KVPs to realise their rights of access to justice and to health and welfare services. We also highlight four sets of issues which emerged from the situational assessment and which define the current South African context for LEA sensitization. These issues, stated in summary form, are: 'HIV and GBV in South Africa', 'Legal, Policy and Institutional Interventions', 'LEA Sensitization Programming in South Africa', 'The law enforcement agencies', and 'LEAs as barriers to Human Rights'.

4.2 Access to Justice and Access to Services

South Africa's National Strategic Plan for HIV, TB and STIs (2017-2022) (NSP) is a foundation of the intention to enable realisation of individuals' right of access to justice and services. The NSP refers specifically to Key Populations (KP) and Vulnerable Populations (VP) (see Table 6), as populations which are disproportionately affected by HIV, and have higher morbidity and mortality rates than the general population. The rationale is that in South Africa, inadequate coverage and poor quality of services for key and vulnerable populations continue to undermine the management of the HIV epidemic.

Table 6: Key populations and Vulnerable Populations recorded in the NSP

Key populations for HIV and STIs	Vulnerable populations for HIV and STIs	Key populations for TB
<ul style="list-style-type: none"> Sex workers Men who have sex with men (MSM) Transgender people People who use drugs Inmates (prisoners) 	<ul style="list-style-type: none"> Adolescent girls and young women Children including orphans and vulnerable children People living in informal settlements Mobile populations, Migrants and undocumented foreigners People with disabilities Other lesbian, gay, bisexual, transgender and intersex (LGBTQI) persons 	<ul style="list-style-type: none"> People living with HIV Household contacts of TB index patients Health care workers Inmates Pregnant women Children < 5 years old Diabetics People living in informal settlements Mine workers and peri-mining communities

¹⁴ DOH and SANAC 2015; Jewkes et al. 2012; Redpeg 2014

¹⁵ CAAC 2015; Hoosain 2018

The NSP distinguishes KPs from VPs.¹⁶ KPs are groups of people who are most at risk of getting and passing on HIV, STIs and TB whilst VPs are at high risk in specific settings when it comes to HIV, STIs and TB. For example, adolescent girls and young women (AGYW) are not usually considered to be a key population. In South Africa, they are defined as a vulnerable population in view of evidence related to 'specific settings'; for example, the high rates of teen pregnancies amongst girls in school as well as those who are not at school, and the high incident rates of SGBV and concurrent partnerships within the AGYW population.

The foundation for categorising some populations as KPs and VPs is the Global Fund's (nd, circa 2013) recognition of differential risks of disease and access to health and welfare services across and within different populations. There are three criteria that define a KP. Briefly stated, a KP is a sub-population within a general population for which there is evidence that its constituents have a higher risk of disease infection, less access to services, and "frequent human rights violations". VP refers to a sub-population whose health and welfare is threatened by particular political, economic and social circumstances. The definitions serve to distinguish sub-populations which are known to be generally 'high risk' sub-populations irrespective of context (KPs) from those which require particular interventions in particular contexts (VPs) and which, therefore, can differ from country to country. Vulnerable populations include groups of people who are most likely to contract HIV infection in certain situations or contexts. Social, cultural, political, legal and economic factors, such as unemployment make a person more at risk of HIV infection and developing AIDS. Some of the most vulnerable sub-populations are also "criminalised" (sex workers, people who use drugs) and this impacts significantly on how they are viewed and treated by law enforcement agencies. KVPs often face stigma, discrimination and abuse and, unfortunately, such prejudice is perpetuated by police officers.¹⁷

The links between human rights and HIV are well recognised at a global and national level, with evidence indicating that effective management of HIV, STIs and TB needs to have human rights at the core of all interventions and programmes. It is critical that everyone should be able to realise all their human rights and freedoms. Goal 5 of South Africa's National Strategic Plan (NSP) for HIV, TB and STIs, 2017-2022 seeks to ensure that the national response to HIV, TB and STIs is grounded in human rights principles and approaches, with an aim to reduce stigma and discrimination, ensure equal treatment for all, and increase access to justice. Goal 5 includes three key objectives to address human rights related barriers and gender inequality which affects the extent to which people can access services:

- Reducing stigma and discrimination amongst people living with HIV or TB
- Facilitating access to justice and redress for people living with, and vulnerable to, HIV and TB
- Promoting an environment that enables and protects human and legal rights and prevents stigma and discrimination.

With regard to human rights and the achievement of Goal 5, the NSP is further supported by the National Human Rights Plan, a 3-year implementation plan, with a specific focus on addressing human rights and gender-related barriers to access to healthcare. There is a clear link between the NSP and access to justice for KVP's including a programme area focused on sensitization of law enforcement agents.

The current NSP is, of course, a product of multiple previous interventions to address South Africa's societal challenges. For the purpose of this study, we outline below the four sets of issues, noted earlier, that are pertinent for understanding the context for LEA sensitization in this country.

¹⁶ SANAC 2017b

¹⁷ Positive Policing Practices and Sex Workers. PPP Roundtable 2019

4.3 HIV and Sexual and Gender Based Violence and Femicide (SGBVF) in South Africa

HIV and SGBVF are recognised as major and intrinsically linked societal challenges in South Africa. The estimated overall HIV prevalence rate in South Africa is 13,5% of the population. The total number of people living with HIV (PLHIV) was estimated to be approximately 7,97 million in 2019. For adults aged 15–49 years, an estimated 19,07% of the population are living with HIV.¹⁸ South Africa's HIV epidemic is generalized among the population, but several sub-populations have a high risk of HIV infection and transmission.¹⁹

Individuals who experience SGBV face a high risk of contracting HIV as a result of the many circumstantial and societal factors associated with the high rates of SGBV in South Africa.²⁰ SGBV survivors may report the crime to the police before or after seeking medical help. If they do report the matter to the police prior to seeking medical help, how the police officers define the crime and how they assist the individual affects his/her probability of contracting HIV or other STI. A quick response by police officers, following the correct protocols for referral of an individual to the public health services, enables her/him to receive post-exposure prophylaxis in time to reduce the probability of being infected by the HI virus.²¹

GBV can be physical, sexual, emotional, financial or structural, and can be perpetrated by intimate partners, acquaintances, strangers and institutions. Literature on marginalised populations who face high levels of violence, highlights that law enforcement officers are often the perpetrators.²² SGBV is disproportionately directed against women and girls. However, it is possible for people of all genders to be subject to GBV. For example, GBV is often experienced by people who are seen as not conforming to their assigned gender roles/identity or sexual identify such as lesbian, gay, bisexual, transgender and/or intersex persons. IPV is the most common form of GBV and includes physical, sexual, and emotional abuse and controlling behaviours by a current or former intimate partner or spouse, and occurs in heterosexual and same-sex couples.²³

GBV remains largely undocumented, underreported and unaccounted for in the national statistics. Although accurate statistics are difficult to obtain for many reasons (including the fact that most incidents of GBV are not reported), it is evident South Africa has particularly high rates of GBV, including violence against women and girls (VAWG), violence against LGBT people, and femicide. In 2017, Statistics South Africa provide a crude estimate that the rape rate was 138 per 100 000 women, using the 2016/17 South African Police Service statistics, in which 80% of the reported sexual offences were rape, and its own estimate that 68,5% of the sexual offences victims were women. This figure is among the highest in the world.²⁴ Whilst all women are affected by gender-based violence, it disproportionately affects women living in poverty, and women who are marginalized in other ways within society such as young women, lesbian women, trans women, intersex women, 'Black African' (a designated population group) women, migrant women, disabled women and others.²⁵

4.4 Legal, Policy and Institutional Interventions

South Africa has a record of progressively enabling the human-rights premises of the country's Constitution. Within this process, are the relatively recent interventions to remove barriers to judicial, health and welfare services that take form of ignorance as well as prejudicial views

¹⁸ <https://www.statssa.gov.za/publications/P0302/P03022019.pdf>

¹⁹ https://www.cdc.gov/globalhealth/countries/southafrica/what/at_risk.htm

²⁰ ISC 2019:28.

²¹ Redpeg 2014

²² Rangasami et al 2016

²³ Tallis et al. 2020

²⁴ Statistics South Africa. (2017).

²⁵ NSP GBV (2019) Draft

and actions amongst LEAs in their dealings with particular sub-populations. The foundation for LEA sensitization training is the UNAIDS' creation, and the Global Fund's promotion of seven 'Programme Areas' within global HIV and TB strategies that address people's rights to health: "(1) Stigma and discrimination reduction, (2) HIV-related legal services, (3) Monitoring and reforming laws, regulations and policies relating to HIV, (4) Legal Literacy ("know your rights"), (5) Sensitization of law-makers and law enforcement agents, (6) Training for health care providers on human rights and medical ethics related to HIV, and (7) Reducing discrimination against women in the context of HIV.²⁶ These areas are represented in the NSP; notably, in Goal 3 ("Reach all key and vulnerable populations with customised and targeted interventions"), and in Goal 5 "Ground the response to HIV, TB and STIs in human rights principles") which includes an objective to "Invest in expanding training and sensitisation programmes to reduce stigma".²⁷ In short, core foci of these initiatives are the societal stigma and discrimination against KVPs.

There is a relatively large body of human-rights oriented laws which provide a legal framework for application of the UNAIDS and GF's initiatives. With regard to stigma and discrimination generally, key legislation is the *Promotion of Equality and Prevention of Unfair Discrimination Act 2000* which refers overtly to discrimination on the basis of disability, gender and racism. Associated laws include the *Alteration of Sex Description Act 2003*, which allows individuals to change their gender identity, and the *Civil Union Act 2006* which formally endorsed same-sex marriages and couples' right to adopt children. Furthermore, the *Domestic Violence Act 1998* defines marital rape as a crime and prohibits individuals from abusing their partners. The *Sexual Offences and Related Matters Amendment Act 2007* defines behaviour that constitutes an offence but also provides a gender-neutral definition of sexual violence, specifies 16 years as the minimum age for sexual consent irrespective of sexual orientation, and includes a provision for victims/survivors of SGBV to be afforded access to appropriate health and welfare services and, in reference to HIV, to post-exposure prophylaxis.

That legislation, alongside civil society advocacy, has informed the creation of government policies and plans designed to challenge societal prejudices, stigma and discrimination as well as to ensure specifically the inclusion of KVPs in public judicial, health and welfare services. Examples include the Department of Correctional Services *Policy to reduce sexual abuse of inmates in DCS facilities* (2011), the *National Intervention Strategy for the LGBTI Sector 2014-2017* compiled by the Department of Justice and Constitutional Development (DOJCD, 2014), the *South African National Sex Worker HIV Plan: 2016-2019*²⁸, the Department of Health's *National Adolescent and Youth Health Policy 2017*²⁹, the *South African National LGBTI HIV Plan 2017-2022*³⁰ and, most recently, completion of a draft *Gender Based Violence and Femicide National Strategic Plan (2020-2030)*.³¹ There are also government-sanctioned institutions which have particular tasks to ensure realisation of people's rights; for example, the Commission for Gender Equality, the Human Rights Commission, the Judicial Inspectorate of Prisons, Legal Aid South Africa, the South African Law Reform Commission, the Sexual Offences Courts, the Equality Courts, and the Thuthuzela Care Centres (the latter being supported jointly by the National Prosecuting Authority (NPA), the Department of Health, the Department of Social Development, the DOJCD, and the SAPS). Furthermore, the SAPS includes Family Violence, Child Protection and Sexual Offences (FCS) units. In 2014, there were 176 FCS units located amongst the 1,135 police stations across the country, 809 stations that had 'victim friendly rooms', and 2,304 FCS members - largely detectives who had received training for FCS work.³² The 2019/20 SAPS Annual Report states the existence of 1090 victim-friendly rooms.³³

²⁶ UNAIDS, 2012; cf: Global Fund, 2019; Global Fund, 2020.

²⁷ SANAC 2017

²⁸ SANAC 2016a

²⁹ DoH, 2017

³⁰ SANAC 2016b

³¹ ISC 2020

³² Wakefield 2014

³³ SAPS 2020: 98. The report does not provide information on the current number of units and staff

In sum, there is a comprehensive framework of legislation, policies, plans and government institutions that inform the protocols for LEA interactions with KVPs. We have simply outlined this framework above; Addendum 1 provides further description of this framework.

4.5 LEA Sensitisation Programming in South Africa

A particular feature of the South African context is the extensive role of civil society organisations (CSO) in promoting progress towards realising rights for all the country's inhabitants and the health and welfare rights of KVPs. National-level and long-established CSOs include NACOSA, the Treatment Action Campaign (TAC)³⁴, Section 27³⁵, the Sex Workers Education and Advocacy Task Force (SWEAT), Sisonke and Sonke Gender Justice. With regard to LEAs specifically, there are a number of CSO-led programmes which work to improve the knowledge, attitudes, perceptions and behaviour of LEAs in their interactions with KVPs. CSO-led programmes that have involved LEA sensitization training, include the Hands Off programme that involved LEA sensitization and production of a training manual³⁶; Enza/Redpeg work with SAPS around SOGI and GBV, the NACOSA's Step Up project and the National Sex Worker Programme³⁷, the Hate Crimes Working Group³⁸, and OUT Right LGBT Well-Being. The Centre for Augmentive and Alternative Communication at the University of Pretoria has also run sensitization training for judiciary officials. In sum, there have been sensitization initiatives for several years and, therefore, the study needs to accommodate the possibility of changes in the experiences of KVPs prior to AFSA sensitization training as well as after it.

4.6 The Law Enforcement Agencies

For the purpose of this research, three LEA agencies in South Africa are considered: the South African Police Service (SAPS), Metro Police services, and Community Policing Forums.

4.6.1 The South African Police Service (SAPS)

The SAPS policing objectives, in accordance with the provisions of Section 205 of the Constitution are to:

- Prevent, combat and investigate crime
- Maintain public order
- Protect and secure the inhabitants of the Republic and their property
- Uphold and enforce the law.

The most recent iteration of the process to transform the SAPs (begun in 1995) was initiated in 2016 with a view to turn it into a professional, public service-oriented organisation.³⁹ The current vision of the SAPs is to create a safe and secure environment for all people in South Africa. These core responsibilities are directly linked to the National Development Plan (NDP), the Constitution and the SAPS Code of Conduct, in that: 'All people in South Africa are and feel safe'. 'Feel safe' refers directly to citizens' perceptions of safety and security, while 'are safe' relates to the levels of particularly serious crime in the country. The implementation of the country's Vision for 2030 (NDP) is captured in government's planning.⁴⁰ It is clearly stated that the police must respect human dignity, uphold and protect human rights. The Code of Ethics

³⁴ Geffin 2011

³⁵ Heywood 2017

³⁶ AIDS Fonds 2016; COC, 2018; PSTM, 2016'; see also Manoek et al, 2014

³⁷ NACOSA, 2015; 2018; Stacey et al. 2016

³⁸ Mitchell and Nel, 2017

³⁹ CSPS, 2018; SAPS Transformation Task Team, 2016; Van der Merwe et al., 2013

⁴⁰ <https://www.saps.gov.za/newsroom/msspeechdetail.php?nid=10716>

highlights respect for diversity asserting that “Employees of the SAPS acknowledge the diversity of the people of our country and treat every person with equal respect”.⁴¹

4.6.2 Metro Police

The South African Police Service Amendment Act of 1998 allows municipalities to establish municipal police forces whose roles are specifically crime prevention (but not investigation), road traffic policing, and by-law enforcement.⁴² Municipal police services, commonly known as Metro police, operate in the country's major cities: Ethekekini (Durban), Cape Town, Johannesburg, Ekurhuleni (Greater East Rand) and Tshwane (Pretoria).

KVPs state that the principal interactions with Metro police revolve around their enforcement of municipal bylaws that directly affect some KVPs. For example sex workers are directly affected by municipal bye laws which ban sex work such as a Cape Town bylaw in regard to “Streets, Public Places and Prevention of Nuisance”³, which states: “no person shall in a public place, perform any sexual act” and “no person shall in a public place, solicit or importune any person for the purposes of prostitution or immorality”.⁴³ The indigent, the homeless, PWUD and sex workers are frequently the target of Metro police enforcing bylaws which, in some form, address ‘loitering’ ‘control of public behaviour’ and ‘sleeping in public places’,⁴⁴

4.6.3 Community Policing Forum

A Community Policing Forum (CPF) is a legal community structure established in terms of the South African Police Service (SAPS) Act⁴⁵ and its main functions are to promote accountability of the local police to the community and co-operation of the community with the local police. A CPF is mandated to facilitate community–police relations within a specific police station precinct (police station boundary) and serves as the mouthpiece of the community with the police and vice versa on policing matters and other relevant safety issues. Members of a CPF are elected during formal election processes and get its mandate from the community to execute the legal powers and functions.⁴⁶ Community representatives can be local residents, civil society organisations (e.g. CBOs, Business groups, FBOs, youth organizations, women organizations, and school governing boards [SGBs]), other relevant stakeholders (provincial government, local government, traditional authority and parastatals) who meet with police to discuss local crime prevention initiatives.⁴⁷

4.7 LEAs as barriers to realisation of KVPs' human rights

There is a large body of research and civil advocacy which supports LEA sensitization training to facilitate inclusion of KPs and VPs in HIV and TB programmes. The reason for such training is that LEAs influence, directly and indirectly and either positively or negatively, individuals' access to judicial, health and welfare services.

LEAs are directly influential when they assist or fail to assist individuals who report crimes on their person, such as sexual and physical assault, and who need medical and other assistance. There is ample evidence of LEAs failing to assist KVPs (notably, MSM, LGBTQI people, women, and victims of SGBV) who report crimes of sexual and physical assault.⁴⁸ LEAs are indirectly and positively influential when they interact with individuals in ways that disavow societal and their own prejudices about those individuals' identities, social status, and behaviour; for example,

⁴¹ <https://www.saps.gov.za/about/ethics.php>

⁴² Rauch et al., 2001

⁴³ <http://resources.lrc.org.za/the-right-to-work-in-peace-recognising-sex-worker-rights-as-human-rights-in-south-africa/>

⁴⁴ Kilander 2019

⁴⁵ CPFs are established in terms of section 19(1) of the S.A.P. S. Act, Act 68 of 1995.

⁴⁶ <https://cvwa.org.za/community-police-forum/>

⁴⁷ <https://cvwa.org.za/community-police-forum/>

⁴⁸ DOH and SANAC, 2015; Jewkes et al, 2012; Redpeg, 2014

in their dealings with sex workers and people who use drugs. There is evidence of the positive effects of interventions that improve the nature of interactions between LEAs and sex workers.⁴⁹ LEAs are negatively influential when they interact with individuals in ways that perpetuate societal prejudices by abusing their power; for example, by denigrating or assaulting individuals. There is evidence over many years of KPs and VPs, notably sex workers and people who use drugs, frequently being verbally, physically and sexually abused by LEAs.⁵⁰ In this instance, and when LEAs fail to assist, for example victims of SGBVF, their influence is also indirect by perpetuating societal stigma which is known to entrench self-stigma amongst the victims that, in turn, discourages the latter from accessing judicial, health and welfare services. There is ample evidence that self-stigma (and prejudicial treatment by health care workers) is a reason for individuals' failure to access health services (which can be extrapolated to KVPs accessing justice services)⁵¹

There have been initiatives by police which recognise that the South African population, including KVPs, are not homogeneous. In moving towards better policing of diverse communities, the SAPS have looked at different approaches including creating positive partnerships with civil society organisations to enhance the quality of police services. For example, the Dignity, Diversity, Policing project (DDP) aims to improve police attitudes to KVPs. The objectives are to ensure that:⁵² SAPS members provide a quality service that is non-marginalising to, and non-judgemental of, key populations; KVP's who are victims, or are in conflict with the law, are treated with dignity and respect; and that SAPS members are well informed of what is expected of them when dealing with key populations. Whilst this report does not evaluate the impact of this programme, it does interrogate whether shifts have occurred generally. In particular, the different KVPs have different experiences with LEAs; a phenomenon that was very evident in the data from the primary research. However, this phenomenon has been highlighted previously. Addendum 1b illustrates this point with references to documented experiences of LGBTQ (Including MSM), sex workers, people with disabilities, adolescents, people who use or inject drugs, and victims/survivors of violence.

⁴⁹ Scheibe et al., 2016a; Rangasami and Konstant, 2016

⁵⁰ Aids Fond, 2016; Fick, 2006; Health-e News, 2nd March, 2016; Richter and Chakvinga, 2012; Scorgie et al., 2011; TB/HIV Association, 2016; Women's Legal Centre, 2012

⁵¹ Adolescents, particularly girls, and young women (Abdool Karim and Baxter, 2016; Anies, 2015; Collier et al. 2013; Flisher et al., 2012; Harper et al., 2014; Jewkes et al., 2008; 2012; SANAC, 2015; Strauss et al., 2015; Wood et al, 2008); People who use drugs (Scheibe et al, 2016b); People with disabilities (Hanass-Hancock et al. 2009; 2015; Human Rights Watch, nd); Sex Workers (UCFS et al., 2015; Jaggernath et al, 2016; Lafort et al., 2017; SWEAT, 2015); Men who have sex with men (Anova, 2013; DoH and SANAC, 2015; Maleke et al. 2017; Rebe et al, 2013); LGBTQI (Muller and Hughes, 2016; Muller and Meer, 2018; OUT LGBT Well-Being, 2014; 2016a; 2016b; 2016c); Victims/survivors of SGBV (DSD,2013; Gender Links, 2014; Mpani and Nsiband, 2015); People living with HIV (Hargreaves et al, 2016)

⁵² Positive Policing Practices and Sex Workers. PPP Roundtable 2019

5. STUDY FINDINGS

This chapter summarises the findings from the primary research. Following presentation of the overall findings, the chapter has two main sections (Effects of policy, legal and practical interventions; LEAs as barriers against access to health and welfare services for KVPs) each with sub-sections, and a third section (Effects of the Covid-19 epidemic). The chapter combines findings from the KIIs, the questionnaire-based surveys with respondents from different KVPs and from the sample of paralegal workers, and the FGDs. The purpose is to convey the results of the data analysis in a way that identifies key themes and issues with regard to LEA KAPs that should inform internal reviews of the LEA sensitization programme and design of the monitoring and evaluation component of the programme in due course.

It should be noted that a detailed presentation of the results is provided in the Addenda 3-6. These addenda not only provide the analysis and detailed results which are the basis for the summary presented here. They also record nuances in the study informants' views on LEA KAPs and their experiences in their interactions with LEAs. Accordingly, as rich documentation of experiential data drawn from a cross-section of the intended, principal beneficiaries of the LEA sensitization programme, the content of these addenda can (and should) inform content of discussions in reviews of the programme and design of the M&E component. It should be noted that the bulk of the information derived from the research related to the behaviour of police officers as this was the principal focus of the study. There were occasional references to the behaviour of health workers in relation to challenges faced by constituents of KVPs when seeking health services.

5.1 Overall Findings

Overall, the results of this study could be read as indicating that little has changed in the behavior, generally, of police personnel who interact daily with the public and, inevitably, with constituents of KVPs. The tenor of the KVP informants and respondents' narratives (from the KIIs, the KVP questionnaire survey, and the FGDs) reiterates the complaints and hurt that were voiced 8-10 years ago in the advocacy campaigns of KVP activists. Likewise, the survey of paralegal worker yielded predominantly negative views on the behavior of police officers. In short, the police services are still 'barriers' against access to health and welfare services for KVPs.

However, the results also show there have been some positive changes in the intervening years. There was general acknowledgement amongst informants and respondents who were familiar with the legal and policy developments that the changes have assisted KVPs to access services and, notably, for KVP activists and organisations, to pursue realisation of individuals' rights to justice. Likewise, those familiar with the LEA sensitization programme included reports of positive changes in the behavior of police officers in some locations where courses had been conducted.⁵³

In sum, informants and respondents were equivocal about what has and has not changed for KVPs in their interactions with LEAs. There are two discernable reasons for this:

- 1) The variety of personal experiences and those of others mentioned by informant KIIs and FGD participants, which range from subliminal to overt discrimination (and from 'normal' to surreal), to violent abuse at the hands of police officers;
- 2) The variable occurrence, for individuals and for a KVP as a group, of one or another form of stigma and discrimination in their interactions with police officers, ranging from rarely, to occasional, to frequent (for individuals and for a KVP as a group).

⁵³ There were no direct references to effects of the courses held in the districts via the AFSA programme because we were unable to interview directly KVPs in those districts.

For example, amidst the acknowledgement of incidents of professional behavior by police officers when seeking the assistance of police services, such experiences were also expressed overtly in terms of being 'unusual' and, for LGBTQI individuals, to being possible (even though the experience could be "a bit bizarre" as one individual reported) if individuals presented a normative sex and gender conforming persona (i.e. male/masculine; female/feminine). In a different vein, while MSM informants reported largely experiences of verbal abuse, such as police officers deliberately seeking to humiliate them publicly at a police station when they reported crimes against themselves, sex worker and PWUD informants reported frequent physical abuse by police officers because sex work and illicit drug use is a criminal offence in South Africa. A variation on that theme were reports of how Metro-Police officers physically abuse individuals who are homeless on the grounds that municipal bye-laws prohibit loitering and living 'on the streets' rather than on the grounds of sex workers and PWUDs' 'criminal' activities. Likewise, a report from a transgender activist referred to a SAPS police officer in East London who frequently harassed a transwoman sex worker amongst other sex workers, on the basis of prejudice against trans-sexual persons rather than because the individual was a sex worker.

The purpose of these brief illustrations (see Addenda 3-6 for further details) is to support a key finding; namely, the varied experiences reported by informants and respondents and the variability of KVP experiences in their interactions with police officers are indicators of the 'intersectionality' of KVPs vulnerability and risk of harm.⁵⁴ This finding reflects four themes that emerged from the KII data in particular and, in broad terms, from data in the questionnaire surveys. First, the many illustrations of experiences included references, sometimes explicitly, to the intersection of prejudicial social norms and values that KVPs experience in family and public life and in their interactions with police personnel. In these instances, the illustrations refer to common experiences across all KVPs. Secondly, the experiences of diverse forms of stigma and discrimination indicated forms that are common amongst one KVP but not in another (e.g. police patrols harassing sex workers and PWUD, including women who use drugs but not women living with HIV or adolescent girls and young women). Thirdly, the illustrations included those that are determined by the situational circumstances of an individual which can occur amongst all KVPs, irrespective of their designated identity (e.g. police patrols harassing a homeless individual; police interviews with a woman who has been sexually assaulted, that include questions about the clothes she was wearing; police officers not assisting, according to stipulate protocols, SGBVF and GBV survivors reporting incidents of domestic violence). Fourthly, the narratives include illustrations of experiences that are situationally determined and stem from their designated identity, such as the case mentioned above of a police officer harassing a trans-woman sex worker for her non-conforming gender identity.

5.2 Effects of Policy, Legal and Practical Interventions

As the text above indicates, the research revealed countervailing evidence with regard to 'what has and has not changed' for KVPs. In this section, we summarise the study informants and respondents perceived and experienced effects of the interventions to improve KVPs' rights of access to services and to justice and illustrate the overall key findings.

5.2.1 Legislation, Policies, Plans and Government Institutions that inform the Protocols for LEA Interactions with KVPs

The situational assessment shows that there is a comprehensive framework of legislation, policies, plans and government institutions that inform the protocols for LEA interactions with KVPs. This framework was one focus of the KIIs. All except one informant acknowledged the value of government policies to promote realisation of KVPs' Constitutional right to appropriate

⁵⁴ To reiterate, we use this term to mean how the nature and extent of an individual's vulnerability or, indeed, risk of being harmed, is determined not only by being, for example, a sex worker or drug user but also by other aspects of their public identity, social status and/or social circumstances, such as their 'race', gender, being homelessness, age and level of education.

health services and their human right to justice in their interaction with LEAs, the judiciary, and society at large. That acknowledgement was expressed in different ways but the general pattern being reference to legislation or clauses in the Constitution as well as policies that served the KVP category of which the informant is a representative. Nonetheless, overall, informants' responses were equivocal; a common perception being limited application of the relevant policies alongside unequal application of policies across all KVPs. For example, the PWUD representatives from the SANPUD referred to the current National Drug Master Plan (NDMP) as a key relevant protocol. However, this was in terms of the plan being one focus of SANPUD advocacy in the absence of a constructive government policy on PWUD (in contrast to other KVPs), to establish a foundation for legislative change (e.g. decriminalisation of opioid use) and policy change (e.g. adoption of a therapeutic and supportive ethos with regard to drug users).⁵⁵

Criticism of the limited and unequal application of legislation, policies, and protocols was explained in terms of their inadequate, practical implementation. The tenor of these explanations was that they are challenges for KVPs in particular, rather than for the national population in general. However, that argument obscures what is particular about the challenges endured by KVPs.

First, inadequate implementation of the human rights-oriented legislation and policies negatively affects the majority of the country's inhabitants (e.g. popular complaints about the disjunction between legal and policy stipulations and service protocols, and the quality of services) but there is more likelihood for KVPs that individuals will experience that disjunction in the form of stigma and discrimination if they self-identify or are identified as a constituent of a KVP when they seek to access police, judicial, and health services.

We refer here to the frequent reference in the KIs, supported by results in the paralegal worker survey, to the crimes of GBV, domestic violence, sexual assault and physical assault, which are known, substantive, society-wide challenges in South Africa. In other words, our informants and respondents referred to society-wide challenges that lead them, like 'non-KVP' individuals, to seek the assistance of the police, judicial and health services; that is, the high crime rates in many localities, the high rates of GBV and sexual assault and, in particular, the occurrence of GBV largely within family and intimate partner relationships including those of KVP individuals. These crimes were alluded to, in some instances mentioned explicitly, by key informants in relation to the likelihood of "secondary victimisation" via prejudicial behaviour of police, health workers and judicial officials when KVP individuals report a crime on their person.

Secondly, constituents of different KVPs do not experience the 'additional harm' in this context in the same ways. At root, the issue here is the variety and variability of individuals experience of their vulnerability and risk of harm. For example, women are the principal victims of the crimes noted above and this was highlighted in informants' descriptions of incidents in which police, in particular, failed to follow protocols for assisting victims of domestic violence and sexual assault. Illustrations ranged from inappropriate questions by police officers, to not following up complaints. These illustrations refer to women's particular vulnerability and risk of harm from crime. That vulnerability and risk is extreme for women sex workers who, generally, are more likely than women constituents of other KVPs, according to the accounts of informants, to suffer crimes of physical and sexual assault perpetrated by police officers.

Thirdly, there is much data in the KIs, both surveys, and the FGDs which addresses a consequence of the disjunction between principle and practice in the human-rights oriented legal and policy environment; namely, the popular tendency to doubt the utility of reporting a crime or seeking judicial and health services and, in particular, the fear amongst KVPs of doing so. The obscured issue here is why KVP individuals, in particular, fear and distrust,

⁵⁵ 'Constructive' refers to a human rights affirming policy that includes decriminalisation of opioid addiction; health department support of needle exchange and methadone replacement therapy. Retail and use of narcotics is illegal in South Africa, excluding private, home cultivation and use of *dagga* [marijuana; *cannabis sativa*]).

primarily, the police services. While past and shared experiences within KVPs is a common reason, there are broader reasons, notably the lack of accountability of police officers and the structural factors that allow this.

We draw on the research results to illustrate these three sets of issues below. It should be noted that we defer discussion of the issue of accountability and structural reasons for it (primarily within the SAPs) to the section on LEAs as barriers against access to health and welfare services for KVPs.

The KVP and paralegal worker surveys revealed the societal-wide crime challenges in South Africa. Notably, four of the six types of crimes that the majority of paralegal worker respondents recorded as being 'frequently' part of their caseloads were domestic violence, sexual assault, harassment by police, and unlawful detention/arrest. However, the results of the KVP survey also drew attention to the third issue outlined above. Few KVP respondents reported that they had sought assistance from police for these crimes, nor for 'rights-violations' crimes which are specific for KVPs (e.g. workplace discrimination), nor for crimes which, arguably, they are more likely to experience than other populations in the country (e.g. hate crimes; unlawful detention/arrest; harassment by police; access to health services). We defer explanation of the reasons for this to the section on LEAs as barriers against access to health and welfare services for KVPs.

Two striking illustrations of inadequate implementation of relevant legislation and policies were comments by key informants with regard to the protocols and actual operation of the SAPS Violence/ Family Violence, Child Protection and Sexual Offences (FCS) units and the sexual offences courts. The FCS units, as we outlined briefly in the Situational Assessment, include the demarcation of 'victim friendly' rooms in police stations and detectives with special training. The purpose of these units is to improve the experience of people reporting crimes of assault and sexual assault at police stations and, ultimately, conviction rates for these crimes. However, while key informants familiar with these units acknowledged their value, they also pointed out three substantive limitations. First, these units are not permanent facilities. The informants explained that the FCS units are prone to being disbanded or funded inadequately when the Police Ministry is required to make budget cuts.⁵⁶ Second, the 'victim-friendly' rooms are not used consistently for private interviews with individuals who have been traumatised by a crime on their person. A common, reported, experience is the practice of police officers to follow standard procedures in taking statements from complainants in the public area of a police station, despite the discomfort of complainants who are traumatised (e.g. sexual assault victims) and/or who fear public disclosure of details of the crime or their gender identity (e.g. LGBTQI, AGYW complainants) and, consequently, the prejudicial gaze or comments from other laypersons in the area. Third, the informants mentioned there were a limited number of units.

These criticisms reflect what seems to be a history of deterioration in police management of these units. The FCS arm of the SAPS was restructured in 2006. Management of the entity was centralized within the SAPS which, it has been argued, adversely its operations (e.g. service delivery; staff morale) and led to the virtual collapse of partnerships with external stakeholders.^{57,58} The SAPS 2019/2020 Annual Report reflects current mismanagement, ironically via the positive tone of statements, and indicates why the key informants noted there were a limited number of units. The report records that the unit were prioritized for the 2020/21 year and with an additional budget of R15 million in the light of the scale of SGBV and GBV rates, and "in 2019/2020 a total number of 1 153 from a total of 1 154 police stations rendered

⁵⁶ A co-author of this report found out that the FCS unit which was functioning effectively at a police station in a nearby town, in 2015, no longer existed in 2020.

⁵⁷ Van Graan and Ukpere 2015

⁵⁸ The unstated structural issue in this article that centralizing the management of the units contradicts longstanding premises of social interventions to improve people's health and welfare; namely, 'community-oriented/based' service structures and involvement of affected 'communities' in the planning and delivery of services; hence, the 'the virtual collapse of partnerships with external stakeholders'.

a victim-friendly service to victims of rape, sexual offences, domestic violence and abuse".⁵⁹ However, the report also notes that the FCS component of the service has 732 vacant posts and, it seems, the reference to "victim-friendly service" is based largely on the existence of 1090 "victim-friendly rooms" at police stations across the country.⁶⁰

With regard to the sexual offences courts, a remarkable characterisation of them as "ghetto courts" by a judge and a comment by the country's Chief Justice, cited by one informant, also alludes to the gap between principle and practice. The comments cited by the informant were:

"I attended this dialogue of women judges. It was a 3 day meeting. They were talking about the challenges they have in administering the law and all of that. So, they were saying the police are a major problem. But what is also a problem is that gender based violence has been assigned to particular courts...they were saying that those courts are "ghetto courts" because the worst magistrate will be assigned to that court. The worst administrator will be assigned to that court.....you (in reference to the comments of the three women judges) open the docket and you realize that there is no information here. The information that you are given is not substantive. It's just headings you can see that the person who was documenting this information was not even listening to the woman. I mean that he was just writing the points that he knows that if a woman is violated, this is what happens. Then it becomes difficult to then prosecute. And one magistrate was even saying that: I postpone those cases and take it upon myself that I get a good administrator to basically record the case from the onset and make it a point that case is allocated to me and that's not always possible. And then, the most shocking for me was that they were saying that these 'ghetto' courts are not part of the broad justice system. So, they are projects that are externally funded. So basically, they don't form part of the justice system. And this was confirmed by the interview I heard of Justice Mogoeng Mogoeng when he was talking about GBV and he was saying that he wishes that his office, the office of the Chief Justice was consulted when they were formulating these courts, the GBV courts. And that basically brought to my attention to say; Okay there is the problem because they're not part of the justice system so they're not going to be resourced and accountability is going to be limited and all of that."

The comments are remarkable for the being direct counterpoints to the "the very first Presidential Summit Declaration against Gender-based Violence and Femicide" in March 2020, which followed formulation of the government's "GBVF Emergency Response Action Plan (ERAP)" in October 2019 with a budget of R1.6 billion for uses that include revitalisation of the sexual offences courts.⁶¹ We have not had time to assess the comments fully. However, it seems they refer tacitly to a recent history of mismanagement of judicial services' policies and interventions with regard to GBVF-related crimes. GBVF crimes were recognised as a substantive problem in South Africa years ago; the first sexual offences court was established in 1993.⁶² The considerable resources required for them to be effective were provided and the number of courts increased until 2007 when a moratorium was put in place and, while not disbanded totally, resources for their functioning were curtailed.⁶³ The need for them was re-acknowledged in 2013 but seemingly, there was little renewed investment.⁶⁴ The reported comment of the Chief Justice, therefore, seems to reflect concern about the financial sustainability of the ERAP much like informants' critiques of the SAPS FCS units. The ERAP's R1.6 billion budget (and the SORMA 2019/20 Annual Report's self-congratulatory documentation of the considerable human and technical resources invested in the courts recently) counts for little if there is no correlated budget funding for the Justice Ministry in the years ahead to maintain those courts. In other words, there may soon be a moratorium on investment in these courts.

5.2.2 Effects of LEA sensitization initiatives in changing LEA behaviour towards KVPs

Four of the thirteen key informants know about the programme: one being a LEA sensitization trainer, two individuals who have been involved in training courses, and one who is familiar

⁵⁹ SAPS 2020: 23; 13

⁶⁰ SAPS 2020: 89; 13

⁶¹ DJCD Annual Report 2019/20: 9

⁶² Kruger and Reyneke, 2008

⁶³ Davis, 2013

⁶⁴ Shukumisa, 2018

with the training agenda and outcomes. Three informants were equivocal in their assessments of the programme (the exception being the LEA sensitization trainer). On the one hand, the three informants stated that the programme was a positive development, citing illustrations of police officers' interest in participating in the course (also stated by the LEA sensitization trainer), adherence to protocols in interactions with KVPs in localities where training has been conducted, and the establishment of the positive Policing Partnership in 2017.⁶⁵ On the other hand, the informants voiced three criticisms:

- 1) The limited evidence of substantive, positive, change in the behaviour of police officers generally towards KVP in contrast to the reams of evidence of police abuse of KVPs;
- 2) The limited reach and implementation of training courses;
- 3) Doubts about the model of the training courses.

The Situational Assessment and the Addenda in this report support the first criticism. The second criticism refers to perceptions and experience of limited and continuous positive changes in police behaviour in a locality following a sensitization course and, more broadly to the lack of repetition of training courses in localities and limited scale of the programme. The third criticism was voiced in different ways in different parts of interviews with the key informants. At root, the notion of intersectionality informed expressed doubts about training course model and, more broadly, criticism of state and donor-funded, KVP-oriented, health and welfare interventions. There were four components to the third critique. One, is that health, specifically the HIV focus in the definition of KVPs, leads to interventions which do not give equal, if not more weight to consideration of the many factors encapsulated in the notion of intersectionality that threaten the welfare of individuals and, in turn, their health. Secondly, the health/HIV focus of the interventions incorporates the human rights ethos, but the emphasis inevitably is on realising rights of access to health services at the cost of addressing the challenges and means to ensure realisation of rights to human dignity. Thirdly, the KVP categories do not support differentiation of vulnerabilities and risks of harm within and between each KVP population. Fourthly, there is an absence of the type of research to properly identify the particular vulnerabilities and risks within and between KVPs and, hence, to inform modification of interventions as necessary.

We are not in a position to evaluate fully the merits of each component of this critique, but we recognise that the critique is valuable for discussions on developing the LEA sensitization programme. Notably, it implicitly questions the conceptual foundations of the definitions of KPs and VPs and the tendency of practical interventions to conflate the distinctions. While the critique does not acknowledge that the definitions incorporate social, economic, legal and political considerations, it does discern that these factors are secondary in the KP definition. We refer here to the fact that the definition emphasises KPs as high HIV risk populations based on statistical evidence and irrespective of contextual influences, and that the agenda is to curtail HIV risk which can be experienced as being at the cost addressing equally human rights to dignity. The critique also discerns the contradiction in the primacy given to contextual factors in the definition of VPs which thus leads to the questioning why relevant factors, expressed in terms of intersectionality, do not adequately inform practical interventions.

Presented schematically, the informants' critique is that:

- a) Contributing to curbing the HIV epidemic and improving access to ART are core foci of the LEA sensitization programme in South Africa and that it necessarily aims to reduce human rights-related 'barriers to health';
- b) This programme views KPs and VPs as distinct groups in relation to the HIV foci but as overlapping groups in relation to the human rights agenda, particularly rights to justice;
- c) The KP and VP definitions emphasise a focus on access to health, specifically HIV, services whereas the sensitization programme, in practise, focuses primarily on people's welfare in terms of how their rights to justice (and dignity) are curtailed by the prejudicial behaviour of police and health service personnel;

⁶⁵ Skukumisa 2018; Evans et al. 2019. The Positive Policing Partnership is designed to monitor and improve interactions between police and sex workers. It includes senior representative of the SAPs and CSOs and sex workers.

- d) There is a contradiction between a focus on KPs, as a 'high HIV-risk' group, for the purpose of identifying which sub-populations are included on the one hand and, on the other, the focus of the programme in practice on the welfare of groups in terms of their vulnerability to stigma and discrimination;
- e) The strategic frameworks do not formally recognise intersectionality which determines the relative vulnerability and risk of harm of individuals within one or other population and between the populations.

Likewise, the recommendations suggested by key informants intimate a potentially useful consideration in discussions to development the programme. Recommendations pertinent to this issue included:

- Sensitization training should be conducted during the training of police at police academies;
- Create a national sensitization training programme
- Promote more use of the range of government, police and civil society structures that now exist to support KVP interventions, curtail police abuse, and improve interactions between civil society and the police services;
- Develop a social and/or eco-justice framework to inform review and re-design of the training programme and the broader KVP support agenda;
- Establish a monitoring mechanism to enable review and development of the training programme
- Encourage a community-based approach to designing KVP interventions
- Address inequalities in funding of interventions towards different KVPs and occasional shifts in funding priorities that contribute to these inequalities
- Support research that can provide the type of evidence necessary to inform the design of extensive interventions

Viewed together, these recommendations suggest the need for a more systematic approach to improve both KVP and LEA interactions and the form and content of KVP health and welfare programmes. Furthermore, the recommendations infer the need for the programme to evolve, in order to serve effectively both the health rights, specifically access to HIV services, and rights to justice and dignity. More specifically, the recommendations suggest need for development of an integrated approach to enable development of inter-related KVP, LEA and health service interventions, as well as associated agendas such as co-ordination of different agencies activities and mandates, creation of partnerships, context-sensitive intervention designs, and effective monitoring mechanisms. In sum, these recommendations allude to the need for KVP-oriented interventions to embody what is now a standard ethos and also standard models for health system strengthening and revitalising primary health care. Arguably, this is the tacit agenda behind the sensitization training programme.

However, to our knowledge there are no reviews of progress with implementation of KP and VP-oriented strategies which address these issues.⁶⁶ There is documentation on the use of intersectionality (stemming from, and having strong roots in feminist theory) as a concept in health research.⁶⁷ That literature is based on the social determinants of health framework.⁶⁸ We contend that, implicitly, the informants' critiques suggest use of this framework to address the (perceived) limitations of the LEA sensitization programme. There are three key points in the framework. First, inequities experienced in access to health and welfare services are not simply a function of social determinants of health but of the social processes through which those determinants have greater negative effects on some sections of a population than others. Secondly, interventions must address the structural determinants.⁶⁹ Thirdly, the logic of

⁶⁶ The GF (2019) and WHO (2018) reviews have a specific remit: the progress of different countries with regard to application of the strategic frameworks and incorporation of KPs in their national strategic HIV/AIDS plans. There are tangential references to the issues raised above (e.g. "Overlap among key populations..."; "...diversity within key populations..." [WHO, 2018: 5.7]; diversity within each KP [GF, 2019: 23]).

⁶⁷ Eg Mcollum, et al., 2019

⁶⁸ WHO 2010

⁶⁹ WHO, 2010:65

the framework, stated very briefly, is that the health and welfare of individuals is determined by a multiplicity of structural and environmental factors, that individual behaviour is just one component amongst many, and that the relative vulnerability and risk of harm of individuals and groups can be addressed through systemic consideration of these factors.

5.3 LEAs as barriers to health and welfare services for KVPs

In this section, we summarise the research results to describe how LEAs, specifically police personnel, still constitute barriers to health and welfare services for KVPs.

5.3.1 General findings

Collectively, the views of the key informants, KVP and the paralegal worker respondents and participants in the FGDs were very negative with regard to KAPs of police officers. Prejudice is the general characteristic of police officers' KAPs. Their knowledge of KVPs is limited. Their attitudes reflect societal norms and values; notably, those that disparage drug use and non-conforming sex and gender identities and religious tenets which stigmatise homosexuality and sex work. Their perceptions of KVPs are guided by these norms and tenets and, in the case of PWUD and sex workers, the legislation that prohibits sex work and drug use. Consequently, the general perspective of the study informants and respondents is that police prejudice is pervasive because, collectively, KVPs experience diverse forms of stigma and discrimination in their interactions with police officers. A further consequence is that constituents generally distrust and fear police, though as we outline shortly, the study results did include positive perceptions of police personnel.

In sum, perceptions of the pervasiveness, and experiences of diverse forms, of police prejudice, were attributed to three, interlinked forms of prejudice:

1. Abusive behaviour by police officers;
2. Prejudicial Societal norms;
3. Self-stigma in the sense of internalisation of societal prejudices amongst KVPs in ways that compound their vulnerability and risk of harm in interactions with police officers;

In addition, the KII data included references to the lack of accountability of police officers as a reason for police abuse of KVPs. These references, like the informants' criticisms of the FCS units, intimated operational and structural weaknesses in the police services that lead to inadequate implementation of police protocols for interactions with KVPs. Further investigation of the issue of accountability in relation to the SAPS revealed substantive operational and structural weaknesses in that organisation.

Illustrations of the negative perceptions of, and experiences in interactions with police officers include:

- Multiple descriptions of incidents and illustrations of why KVPs distrust and fear police in the KII results;
- The vast majority of respondents in the KVP survey recording negative views with regard to the attitude and behaviour of police (253/307 respondents; 82.41% response rate to three questions on these aspects of police KAPs). Collectively, just over 20% of the respondents expressed positive perceptions in terms ranging from police officers being "friendly", to being "OK", to "some are OK";
- The vast majority of KVP respondents reporting "no change" in questions of whether they had any positive or negative changes generally during the previous 23 months (January 2019 to December 2020) and during the period of national 'lockdown' regulations from March to September 2020;

- Only 4.62% of the respondents in the paralegal worker survey recorded in a positive change in the police officers' attitudes;
- The majority of the paralegal worker respondents (n= 128; 65.64%) reported negative perceptions via comments about police officers such as "unfriendly", "unprofessional" or "lazy". A minority (n=33;16.92%) viewed them as "friendly", "professional", "helpful" or "supportive";
- The results of the FGDs amplified aspects of the results summarised above. For example, the sex worker FGD results illustrate the pervasiveness of police (and private security companies) abuse of sex workers, on the streets by police patrols and in police stations. However, the results also indicate positive developments, albeit of variable effect and scattered amongst different localities, through the interventions of NGOs and as a result of the police sensitization programme and, seemingly, activists and NGOs on occasion delivering their own courses in some instances. The MSM/LGBTQI FGD results indicate that gender-based abuse by police patrols is still a threat for individuals, despite legalisation of same sex relationships. The AGYW FGD results highlight how diverse factors, in addition to the behaviour of police officers, contribute to popular distrust of police.

The following sub-sections provide further elaboration of these findings.

5.3.2 LEAs inhibition of KVPs' access to judicial, health and welfare services

We summarise findings on this issue in terms of the framework used in the Situational Assessment to describe how LEAs constitute 'barriers to realisation of KVPs' human rights'. To reiterate:

- The reason for LEA sensitization training is that LEAs influence, directly and indirectly and either positively or negatively, individuals' access to judicial, health and welfare services.
- LEAs are directly influential when they assist or fail to assist individuals who report crimes on their person, such as sexual and physical assault, and who need medical and other assistance;
- LEAs are indirectly and positively influential when they interact with individuals in ways that disavow societal and their own prejudices about those individuals' identities, social status, and behaviour;
- LEAS are negatively influential when they interact with individuals in ways that perpetuate societal prejudices by abusing their power.

Generally, the KII results are the most informative on the above points because the interviews drew out nuanced perspectives on KAPS of police officers. Two comments by different informants illustrate the direct influence of police officers when they assist or fail to assist individuals who report a crime on their person:

"But also I don't think all of the police stations are the same. I will make an example with the case, which happened in O.R Tambo, I think it was 5 years ago. Where a woman, a female identifying as a lesbian woman was raped by a family member. The rape was because she was homosexual or she identified as a lesbian..... So her experience, that she shared with me, and also by the support, that I saw the police station giving to her was, it was very good service, because she also, was very happy with how they treated her. Of how they humanized her, how they went out of their way in assisting her with the case. The case was quite quick and wrapped very fast and the sentence was also great. I think the sentence will be because of the police and of course it will be because of the evidence that the police would have gathered. So I would then say to that, yes, they are prejudiced but to a certain extent, and it's depending on also on the police station and people's experience."

"...I was speaking to her and she was saying that she was recently assaulted, and she visited the local police station and the police officers, it was secondary victimization, again, asking horrible leading questions and also, what she got from the conversation is that the cops knew of the perpetrators and when they were driving her around and they were saying that; yeah he lives here and stuff. And it was very casual and cavalier, as if like it's like, it's a normal day practice and there's no sense of accountability."

A common refrain in the results of the KIs and the surveys was failure of police officers to assist individuals due to lack of knowledge of the relevant laws and protocols or, as is intimated in the second comment above, not adhering to them. For example, 50.51% of the paralegal worker respondents reported "frequently" having to remind police officers about the appropriate course of action required in a case and 19.39% stated they had to do this "occasionally". In contrast, 23.98% of the respondents said they "never" had to remind police officers whilst 6.12% stated they had to "rarely".⁷⁰

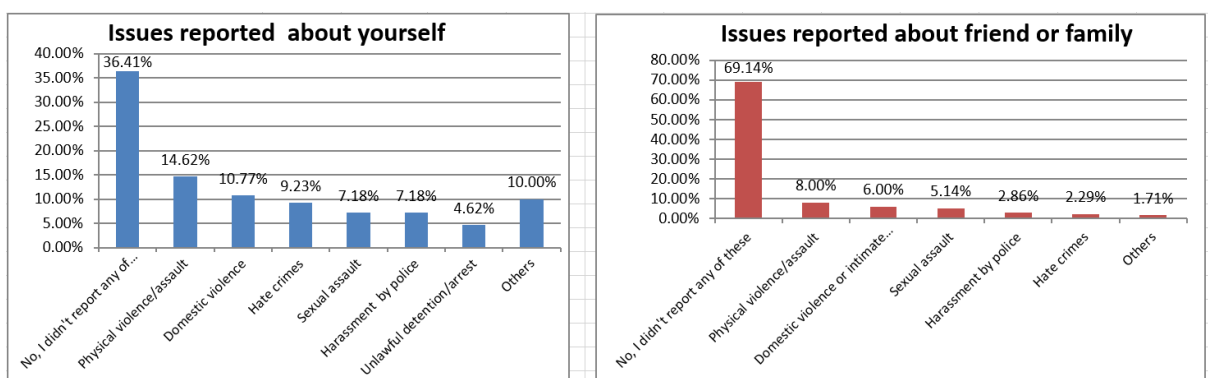
Amongst the KVP survey respondents who have laid complaints with the police about crimes against their person (63.59% of the sample), 57.2% recorded that that the police officer(s) did not assist them. 72.6% of the respondents who reported a crime against a family member or friend, reported that the police did not assist them. A minority indicated that the police officers(s) had assisted them appropriately to the extent of documenting the case and/or referring the individual to another officer or official who could assist. We have qualified the extent of that assistance as the results suggest, albeit not definitively, that police officers in the experience of these KVPs did not follow additional protocols in case of domestic violence and sexual assault. Very few respondents recorded such additional assistance and, moreover, no respondent, recorded that a police officer had contacted them at a later date to provide further assistance or to get more details for a case.

Our qualification about the extent of police assistance is based on (and is illustrated in the Figures below):

- the crimes of physical assault, domestic violence and sexual assault, collectively constituting a substantive proportion of the reported crimes;
- the very limited reporting of the additional assistance required in such cases (particularly given the likelihood of physical injury and psychological trauma).

Figure 4: Types of crimes against self-reported by KVP Respondents to the Police

Figure 5: Types of crimes against friends or family reported by KVP respondents to the Police

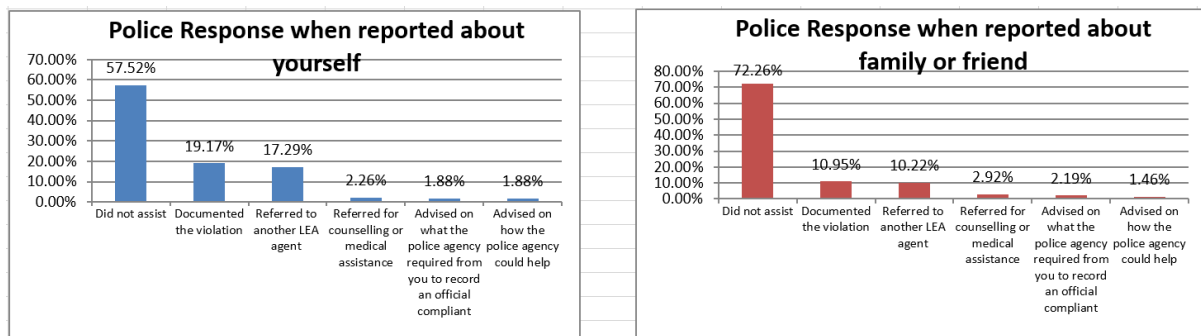


⁷⁰ These are overall results; disaggregation of the results showed revealed variations across different districts. For example, the ratios of the responses of respondents in Cape Town were: 22.73% 'frequently', 45.54% 'occasionally', 22.27% 'never' and 4.55% 'rarely'.

- 'Others': This category refer to unlawful detention/arrest, bribery, thrown out of their homes, confiscation of needles/condoms, access to health care, workplace discrimination, breaches of confidentiality and issues not related to their (sexual or gender) identity which, individually, were rarely reported

Figure 6: Police Assistance to KVP who reported a crime against themselves

Figure 7: Police Assistance to KVP Respondents who reported a crime against family member or friend



Disaggregation of the data, to identify experiences of women in particular (those who were 25 years and older; 30.9% of the KVP sample), produced similar results. 57% of these women reported not being assisted when they reported a crime against their person. 71% of these women reported that the police officers did not assist them when they reported cases involving family members or friends. Likewise, with regard to respondents living with HIV (11.32% of the sample), 44.74% of those who have reported crimes against their person stated that the police officers did not assist. 75% of the individuals who reported crimes against family members or friends stated that the police officers did not assist them.

The research did not record many illustrations of the how police officers can be indirectly and positively influential when they interact with individuals in ways that disavow societal and their own prejudices about those individuals' identities, social status, and behaviour. However, they are intimidated in the results of the KVP and paralegal worker surveys. The results, as outlined above, reveal predominantly negative experiences but clearly there are KVP individuals who do secure appropriate assistance and, amongst paralegal workers, experience of professional behaviour by police. The comment of one key informant activist who actively engages with police officers regularly, to assist KVP individuals, illustrates the issue. The comment below refers to police officers in terms of "people" and "they" and their actions when they have detained KVP individuals:

"I would not say, like, it's a systemic problem and maybe it is..... but let me tell you, I've also had pretty good interactions with people because, like, there were times when people were locked up and then they call me like a three in the morning. I mean, even at three in the morning, they would entertain me, like just finding out it is okay, whether they (detained KVP individuals) ate, whether they have access to medication, things like that. So, as much as I met a lot of people who were pretty awful at doing their job, I also met people who are really, really great."

Behaviour of police officers in ways that perpetuate societal prejudices when they abuse their power is a thread that runs throughout the research results. Specific consequences are harm of KVP individuals, including exacerbation of self-stigma within individuals, and entrenchment of popular fear and distrust of the police services. Indicators of the frequency of police abuse of their power is contained in the results of the paralegal worker survey. Over 50% of the respondents reported that harassment by police and of unlawful detention/arrest are amongst the six types crime cases that they are frequently involved in. Frequent events in the course of

their work include confronting police officers' inappropriate attitudes and prejudicial statements. 18.8% of the respondents reported that they frequently had cases involving confiscation of clean needles or condoms. Key informants reported that confiscation of clean needles were common experiences for PWUD, in particular homeless PWUD, and that confiscation of condoms was one form of police harassment of sex workers.

References to 'religion' were one way in which key informants explained how police perpetuate societal prejudices. In the first instance, the references were to societal norms and values within which religious injunctions against social deviance, in terms that include 'prostitution' and 'homosexuality', are one component. Secondly, the key informants who were familiar with the LEA sensitization programme reported that these religious injunctions were frequently voiced by LEAs in the courses; in the words of the trainer informant: "...for 92-93% of trainers, this rears its head." Another informant conveyed the challenge in the following terms:

"In one of the trainings that I was part of, one of the law enforcement members were standing up and speaking, they use God as a form of device. It's against religion.....whether same sex or men who have sex with men....or sex workers. Those sorts of things. So it was almost to me as if they were trying to, um, trying to justify the certain bias through religious ways because the Bible says this is not allowed. When we were discussing reasons why there is, with regards to police brutality, and the way that the way people (who) are key populations get treated by the law enforcement, those (were) one of the things that they raised..... just to show us what they think, and the way they see things...."

As is intimated in the above statement, in the reference to "police brutality", such societal prejudices contribute to police abuse of KVPs and, thereby, is one indicator of the 'intersectionality' of KVPs vulnerability and risk of harm. The text on the overall findings at the beginning of this chapter alludes to the role of prejudicial societal norms; in how the study results indicate the variable risk of harm within and between different KVPs and variety of the forms of harm experienced by KVP individuals. What was not addressed there is the vulnerability of KVP individuals. The vulnerability of KVP individuals is expressed in the research results which show that prejudicial social norms entrench self-stigma within KVP individuals. Here, first, we use these two indices (Vulnerability and Risk) to record how informants explained the diverse ways in which intersectionality manifests itself in the experiences of KVPs. Secondly, we present the ways in which intersectionality informs KVP organisations' critiques of the current KVP-oriented policies and strategies, and the LEA sensitization programme.

We draw upon a comment by a key informant, a PWUD representative, to illustrate how societal norms and values are perceived as prejudicial within KVPs and yet become internalised to the detriment of an individual's welfare:

"If we look at some of the concepts and thought processes that I struggle with, when you're speaking about religion. It may not necessarily just be religion. It's, I've also seen, for example..... it's an abstinence- based program, it's the, the messaging is more around, you're bad, you can't control yourself. You have no control. You have a disease. You have, you know, all these derogatory terms are encouraged as terms of endearment., where in actual fact, all it does is, is shut people down to alternative methods of treatment and support. So, it comes down to morality; it comes down to an idea of morality. What is moral, and, unfortunately, religious backgrounds, and even some cultural beliefs. Some traditional beliefs, and also, opinions pay a huge part in restricting a supportive basis, but rather come out as a form of punishment perspective.....it happens on people who use drugs on multiple levels from your mother: 'you shouldn't be using drugs'; 'you have a disease like cancer.'

In referring to "messaging", the informant alludes to the negative personal judgements received and experienced by individuals. Furthermore, in relating such 'messages' to "morality", "what is moral", "religious backgrounds", "cultural beliefs", "traditional beliefs", and

"opinions", the informant alludes to the many, diverse factors, including parents ("your mother") which, in the course of individuals' upbringing and social interactions, inform their own values and norms of behaviour. Consequently, most individuals are inherently receptive to criticism. In other words, diverse experiences of social prejudice, in this instance as drug users, reiterate albeit negatively much of their own norms and values. The inference of the informant's comment is that, for some individuals, repetition of such experiences can lead to acquiescence to the judgements and, hence, to internalisation of social prejudice. Internalisation of social prejudice and associated psychological effects (e.g. lack of self-esteem) are markers of vulnerability.

Such vulnerability creates risk of harm in the form of increased likelihood of abuse for being viewed as socially 'deviant', being denied or even not seeking health and welfare services according to their rights or, indeed, a combination of these different forms of harm. Two illustrations, drawn from the research results are:

A comment by a key informant:

"...what we've noticed, and especially among transgender women, is that normalization of violence against transgender women, let me make an example. We had a case of a young Trans woman, who was raped while she was waiting for her friend, and then we offer to assist with going to report the case. But she doesn't see that as a violation."

A comment by a young woman during one of the FGDs:

"I think that's also one of my biggest fears (being raped). Because when I think of: What if something bad really happens to me and I'll go out and seek for help, not only from the police system, but even from people who are close to me. One of the most painful things that comes to mind would be that the first thing that I'll be asked would be: "What we were doing there at that time?" That's one of my biggest fears. To ask myself and try to always do the right thing, at the right time, with the right people. Am I dressed appropriately? Because if something happens, the first question, that will be asked will be: "But why did you portray yourself in this way? Why were you going there? What were you doing there? Instead of being supported I will be judged, and I will be blamed for something that happened to me which will be even more painful. So, that's one of the biggest fears. It's one of the questions that I always ask myself; if I'm going to the right place, if I am with the right people, doing the right things."

The diverse ways in which police officers influence individuals' experience of police services informs individuals' and popular perceptions of those services. In this study, those perceptions were voiced predominantly in terms of distrust and fear of police intermixed with doubts about the merits of using the police services. To use one illustration, also from the FGD with young women:

"Most of the time, I feel like, if someone was mugged or if they were exposed to abuse or violence. I feel they're afraid to even go to the police station. Let me speak about getting mugged, so I know a lot of people who have been mugged before. When you ask them if they're going to report, or if they remember the faces of the people who mugged them or anything. They'll just say: "there's no use because even if I go there they won't find those people, they won't do anything." So when someone is already in that kind of situation, be it abuse or being mugged for they were hurt, already they don't have trust in the police system."

There are clearly links between the behaviour of individual police officers, distrust and fear of police, and doubts that lead people not to access police services or to doubt the utility of doing so. However, these inter-relationships do not explain fully why it is still appropriate to characterise police as 'barriers' to access to services and realisation of people's rights to health and justice. A limitation of a focus on interactions between KVPs and LEAs and the

social consequences is the tendency to reduce the problem to one of individual (police) behaviour. Likewise, as much as experiences of abuse and harm at the hands of police officers explains individuals' fears, that does not fully account for popular fear of the police services. The basis for a more complete explanation was raised by some key informants in terms of the lack of accountability of police officers which, as we outlined earlier, allude to operational weaknesses in the protocols and procedures of the police and judicial services and to structural weaknesses in these institutions. Those weaknesses were also alluded to in the earlier references to results on paralegal workers' interactions with police officers (frequently having to remind officers on procedures; challenging officers' attitudes and prejudicial statements).

In the first instance, an indicator that lack of accountability is a substantive problem, is the scale of civil claims against the SAPS. The SAPS 2019/2020 Annual Report states that there were 14,845 new civil claims for a total of R2.03 billion against the SAPS, adding to 49,040 outstanding claims for a total of 6.7 billion.⁷¹ These civil claims include cases such as accidents involving police vehicles. They also include complaints such as 'harassment by police' and of 'unlawful detention/arrest' which, possibly, constitute a large proportion of the claims in view of the findings from the survey with paralegal workers on types of crimes they deal with frequently.

Secondly, the lack of accountability of SAPS officers is a focus in a book published by the Institute for Security Studies (ISS) in 2020, titled: *Police Integrity in South Africa*. We have not been able to access the book but the ISS provided a summary. The book is the result of a survey of SAPS officers. It illustrates the linkages between the operational and structural weakness of the SAPS that create an environment for police officers to be unaccountable for their actions; in the sense that there is little likelihood, in most cases, of being sanctioned substantively (e.g. losing their jobs; being sent to jail for a crime) by their superiors.⁷²

Structural weaknesses include the impermanence of the FCS units and the special courts as we described earlier. However, a core weakness is what is frequently described as the 'militarization' of the SAPS in 2010, involving re-introduction of military-style ranks that were disbanded in the early post-Apartheid era. This change is arguably a minor aspect of a broader set of problems; namely, the long standing but yet to be finalized, Police Ministry-driven process to 'transform' the SAPs into a professional, public service-oriented organisation.⁷³ That process, which has its roots in the need for the police services' policies and practices to be aligned with the country's broader human rights-oriented legal and policy framework, has been contradicted in practice by an ethic of 'war on crime' during the last 5-8 years and, consequently, highlighted by numerous incidents of police brutality against the civilian population.⁷⁴

In other words, the experiences of KVPs in this context reflect the negative experiences of much of South Africa's population; particularly, all who are socially and economically vulnerable such as the residents of informal settlements, the aged, the unemployed and those dependent on government social grants. This has been evident during the Covid-19 epidemic; notably, in the ways in which the SAPS (and the army), following the dictates of the government executive's National Command Council, enforced 'lockdown' regulations between March and September 2020 and, more recently, in early January 2021. Amidst a litany of reports, the press media has recorded the Police Minister's re-extension (following the first lockdown period) of his 'war on crime' ethic to the population at large.⁷⁵ Police behavior

⁷¹ SAPS 2020: 98. The vagueness of the reporting with regard to 'victim-friendly services' is offset by a focus on numbers of investigations and successes in apprehending and securing jail sentences for perpetrators of SGBV and GBV.

⁷² Ivkovic et al 2020

⁷³ CSPS, 2018; SAPS Transformation Task Team, 2016; Van der Merwe et al., 2013

⁷⁴ Burger, 2012; Petrus, 2014; Mertens, 2021

⁷⁵ News24, 13th January 2021

in enforcing the current regulations has ranged from insensitive⁷⁶ to brutal⁷⁷ to surreal.^{78 79} One necessary qualification is that the regulations raised existing 'barriers' to access to health and welfare services for many KVP, which we outline shortly in the section on the effects of the Covid-19 epidemic. Consequently, these barriers have exacerbated the intersectional nature of KVPs' vulnerability and risk of harm. Therefore, arguably, there is a greater probability of KVPs being negatively affected more than the general population. In sum, the LEA sensitization courses necessarily focus on improving the behaviour of individual police officers but the programme as a whole is being conducted in a context of severe constraints despite the comprehensive human rights-oriented legal and policy environment.

5.4 Effects of COVID-19 Epidemic

The study included consideration of the effects of the Covid-19 epidemic on the experiences of KVPs in their interactions with police and in accessing health and welfare services. The results revealed that the epidemic, specifically the 'lockdown' regulations between March and September 2020, compounded the vulnerability and risk of harm for KVPs.

Key informants highlighted four sets of issues, following the implementation of the national lockdown between March and September 2020:

- 1) Police abuse of KVP individuals;⁸⁰
- 2) Increased vulnerability of KVPs who were, or became homeless;
- 3) A marked increase in GBV incidents;
- 4) Limited application of the government's stated commitment to curtailing GBV (e.g. establishment of additional shelters for victims of domestic violence and SGBV survivors; lack of gender sensitive interventions within the government's 'COVID19 response');

Responses in the KVP survey supported the key informants' views. For example, respondents stated that police were "more forceful", "hostile", "harder to communicate with" and "use[d] Covid19 regulations to deny them services and to shut us up".

Results of the paralegal worker survey were equivocal. In responses to a question on whether individuals had noticed an increase in any particular type of cases, 55% of the respondents noted there had been an increase; 45% reported there had been no noticeable increase. Analysis of data on the main type of cases the respondents were involved in, before and since the start of the epidemic, showed there had been little variation.

6. RAMIFICATIONS OF THE STUDY FINDINGS AND RECOMMENDATIONS

6.1 Introduction

The key question in view of the purpose of this study is: What can be drawn from the research to inform design, implementation, monitoring and, in due course, evaluation of the AFSA's LEA sensitization programme? Answering this question guided the compilation of this chapter. Three criteria inform our answer to this question: One, is 'access to justice' which we outlined at the start of this report. It means protection and support by state agencies to enable individuals to realise their rights to health and dignity. The term refers to both the core purpose

⁷⁶ Bester *Politicsweb*, 18th January 2021

⁷⁷ Winde and Fernandez, *Politicsweb*, 18th January 2021; Gontzana, *Daily Maverick*, 20th January 2021

⁷⁸ Jarvis, *Daily Maverick*, 7th January 2021

⁷⁹ The illustrations refer, respectively, to incidents of: Police officers arresting and detaining a man for breaking curfew regulations when, in the very early hours of one morning, he went to a private health sector hospital in Pretoria to obtain formula milk from the pharmacy for his two-day old baby who was not breast feeding well; Police using a water cannon to disperse a large number of indigent people and people with disabilities who were queuing at a South African Social Security Agency office in Cape Town to obtain grant funds; Police throwing stun grenades at surfers at Cape St Francis, Eastern Cape province, to get them out of the sea and for breaking regulations against recreational use of beaches.

⁸⁰ There were multiple reports of police abuse amongst the general population living in informal settlements and townships. Some of the informants' narratives referred to that abuse of the general population. See Burger 2020

of the LEA sensitization programmes within the GFATM and the UNAIDS human rights-oriented, global health agenda and, as this study's findings show, the demands of KVP constituents. The two other criteria are broad measures of the extent to which KVPs have access to justice. These are 'inclusivity' and 'barriers against access to services'. Inclusivity refers to evidence of overt inclusion of KVPs in the interest of equity, in the protocols, procedures and practices for delivering health, welfare, legal and judicial services and for enabling KVPs access to them. We have distinguished two foci for this chapter; namely, implications of the study findings for informing monitoring and evaluation (M&E) the AFSA LEA sensitization programme and implications for reviews of the design of the programme. Likewise, we present recommendations specific for each focus .

6.2 Implications of the Study Findings for Monitoring and Evaluation

The LEA sensitization programme is being implemented in what are, arguably, extraordinary circumstances. On the one hand, the programme is a component of a multitude of institutions and interventions that are the trappings of a liberal, democratic state. On the other hand, it is operating in the face of currents, for want of a better word, in the police services that continually undermine its purpose and those of the policy, legislative, and other supporting interventions. That makes the programme necessary. It also infers the need for clear definition of what the programme, in its present form, can and cannot achieve with regard to promoting 'inclusivity' and dismantling 'barriers against access to services' for KVPs, and within what time frames. An assumption in view of the above is that the circumstances suggest that the positive effects of the programme will be fragmented, confined to dispersed localities, and for variable periods of time.

The study findings suggest that an approach to take in defining what the programme can achieve, for use as a starting point for defining M&E foci and measures, is to work with the countervailing evidence on the many indices of KVP vulnerability and risk of harm. What we mean is an approach which, for example, accepts the co-presence of indicators of the positive and negative perceptions and experiences of KVPs in their interactions with police officers, addresses the variety of forms, and variable occurrence of discrimination and stigma experienced within and between KVPs and, in the case of specific foci such as the lack of accountability of police officers, the interplay between personal and structural factors.

Pursuing this point, there are three findings which require acknowledgement that positive changes have occurred and which can inform construction of foci and measures in the design of the M&E mechanism. First, the narratives of the KVP informants' revealed experiences of positive changes in the behaviour of police officers.

Secondly, the programme can be viewed as one intervention amidst others (e.g. constructive policy and legislative developments and sustained advocacy by CSOs) which have generated confidence amongst, and opportunities for KVP organisations and activists to confront police, sometimes successfully, in different ways. Illustrations in the report include apparent organisation of short, derivative sensitization workshops with police, negotiation with police services in different localities to curtail police harassment of sex workers, and legal interventions via the courts. Furthermore, the extraordinarily large number of civil claims against the police services, which include charges of police harassment and unlawful detention or arrest, indicates not only the scale of the problem. It also indicates widespread challenges to abusive police behaviour. In addition, operations of the FCs units and implementation of the governments GBVF strategy could be incorporated into the M&E foci.

Thirdly, the generally negative views amongst KVPs does not define the totality of their understanding of police KAPs. Their narratives reveal insights into why, in their experience, prejudice is a common characteristic of police officers' KAPs, how police officer's knowledge of KVPs affects individuals' experiences, how individual police officers' attitudes can reflect

their struggle to understand non-conforming gender identities, and why and how societal norms influence interactions between KVP individuals and police officers.

Likewise, there are three bases for defining foci and measures on the negative aspects of KAPs amongst police. We refer here to KVP perceptions of the pervasiveness, and experiences of diverse forms, of police prejudice, being attributable to three, interlinked forms of prejudice:

1. Abusive behaviour by police officers;
2. Prejudicial Societal norms;
3. Self-stigma in the sense of internalisation of societal prejudices amongst KVPs in ways that compound their vulnerability and risk of harm in interactions with police officers;

In addition, there are specific foci suggested by the findings. These are:

- (As we have already mentioned) the lack of accountability of police officers
- Fear and distrust of police amongst KVPs
- 'Religion' in terms of how it is expressed in in prejudicial behaviour of police and as an indicator measuring changing in police officer KAPs (when and if KAP surveys of participants in sensitization courses can be conducted).

6.2.1 Recommendations

Outlined below are recommendations for the design, foci and content of the programme's M&E logic matrices with illustrations. They are not a comprehensive set of recommendations. The purpose is to provide a practical basis for formulating this component of the programme. With regard to the defining the content of the programme's logic matrices, it would be appropriate to distinguish 'health' and 'welfare' and 'vulnerability' and 'risk' of harm as the two core foci for subsequent specification of M&E indicators, targets and activities. The purpose would be to help delineate key variables for assessment and to inform formulation of an operational definition of intersectionality.⁸¹

Important considerations are inclusion of objective indicators to measure the effects of the programme in changing KAPs amongst police officers and, as importantly, interventions by KVPs that are a consequence of sensitization courses, to both challenge abusive police behaviour and to engage constructively with police officers. For example, documenting KVP activities in localities before and after sensitization training courses (as a means of verification) would provide one set of indicators. Another measure is to document changes in the caseloads of paralegal workers that challenge abusive behaviour by police officers in relevant districts. There would, of course, be need for specifications such as locations and progress markers to accommodate the likelihood of variable and fragmented effects of the courses in different localities.

With regard to defining indicators for particular foci such as lack of accountability of police officers, Fear and distrust of police amongst KVPs, and 'religion', again we are not in a position to put forward precise recommendations. However, we discern that indicators for 'accountability' could be derived, for example, partly from documentation of KVP activities and the number and outcomes of paralegal worker cases on police harassment in different localities. With regard to KVPs distrust and fear of police, monitoring of the operation and substance of FCS units would be a means. With regard to 'religion', the fact that it figures so prominently in sensitization courses and in KVPs perceptions that it is a basis of abuse suggests a need for useful and appropriate indicators (i.e. to incorporate assessment of self-stigma phenomenon).

A critical consideration is the need to include assessments of police KAPs, which involve police officers, following sensitization courses and other activities. Bearing in mind the time required

⁸¹ We are not in a position to suggest a definition as this would be practical only in the course of designing the M&E mechanism.

to get permission for research with police personnel, compiling and submitting proposals for such research should begin very early in the course of designing the M&E component.

A useful theoretical foundation for design of the M&E mechanism is the social determinants of health (SDOH) model. For example, one application is to view KVPs' experiences of abusive and insensitive behaviour by police officers and the police behaviour itself as a 'social process'. Viewed from this perspective, 'lack of accountability' is a social determinant of police behaviour towards KVPs (and towards much of the general population) which is underpinned by structural determinants (e.g. the operational and structural weaknesses of the SAPS). In turn, bearing in mind the SDOH imperative that interventions must address the structural determinants, this model provides a foundation for the M&E matrices to include a focus on those determinants (e.g. legal cases and outcomes of cases of police harassment of KVPs in different localities) and, as a counterpoint social process, where and how the programme is generating and has generated confidence amongst, and opportunities for KVP organisations and activists to confront the lack of accountability of police officers. More generally, use of the SDOH framework would help to formulate an operational definition of intersectionality in ways that direct attention to the varied and variable vulnerability and risks of harm within and between KVPs.

6.3 Implications of the Study Findings for Reviews of the LEA Sensitization Programme

KVP informants' criticisms of, and doubts about the model for, LEA sensitization courses provide a platform for reviews of the programme design. There is clearly a need for the programme to evolve. However, a substantive question is how it can do so in view of its purpose being undermined by operational and structural weaknesses within the SAPS. Perseverance may be a necessary agenda but at the risk of being unable to show substantive achievement within short to medium term timeframes. In contrast, the informants' criticisms allude to the need for a complementary strategy.

First, they infer a need to review the theoretical foundations of the programme. We discern that part of the issue here is for the programme to review how its foundations (human rights; integration of services; access to justice) inform the design and implementation of the programme. The appeal for a 'community-based approach' to KVP-oriented interventions is both political (i.e. 'nothing for us without us') and a reminder of the value of context sensitive interventions. Both these agenda, we have suggested, invoke consideration of both a human rights approach and social determinants of health model which addresses, specifically, health and welfare inequities.

Secondly, they infer a need to review the conceptual foundations of the programme; that is, the definitions of KPs and VPs (KVPs). The issue here, we suggest, is not a challenge to the evidence base for the definitions (e.g. the HIV-risk grounds for defining KPs) but to the usefulness of the HIV-orientation of definitions in a programme that includes KVPs with different even if overlapping challenges, addresses health and broader welfare challenges, and promotes rights to health, justice and dignity.

Thirdly, they suggest modifications to the programme that capitalise on existing opportunities such as greater involvement of the range of government, police and civil society structures that now exist to support KVP-focused interventions, curtail police abuse, and improve interactions between civil society and the police services.

Fourthly, they infer the need for more investment on the grounds mentioned above, in the recommendation of a national LEA sensitization programme.

6.3.1 Recommendations

In view of the issues outlined above, we recommend the following:

1. The research highlights huge discrepancies in the quality of service and support from SAPS and other law enforcement agents. This is due to a number of factors. Recommendations include expansion of the scale and reach of the programme via:
 - a) Planning to determine how to generate a 'critical mass' of sensitized LEAs (including clerical and front-line staff) which would include extension of the intervention to Metro-police services and CPFs as well as mapping of the location trained LEAs. It is important to map out where trained LEA's exist and to consider this when transfers are done to ensure that the knowledge and expertise is evenly spread. Current models of face to face sensitization of small groups of LEAs is not sufficient to address the deep seated issues – roll out models of training methodologies, such as online training is needed;
 - b) Ensuring there are course for higher ranking officials, notably commanders at station, district, provincial and national level who should know, but may not appreciate, the plethora of human rights-oriented legislation and policies and who are the persons who can ensure application of them. For example, training those in power in a very hierarchical structure will enable the implementation of specific national instructions and Standard Operating Procedures (for example the LGBTI SOP, Management of GBV; and the recently launched ERAP);
 - c) Engaging at government level and the high command of the police services to advocate for sensitivity training in the police training academies and curricula so as to influence LEAs at the beginning of their career and assist in sustainability of the programme;
 - d) Incorporating 'rights literacy' courses for KVPs in areas where sensitization courses are conducted to promote KVP interventions that challenge abuse by police and foster constructive engagements with police;
 - e) Incorporating training of paralegal workers in areas where the LEA sensitization courses are conducted to institutional capacity of legal institutions to understand and engage with the process of realising the rights of KVPs. Look at ways to strengthen the paralegal programme through systems to enhance their ability to access justice/institutional accountability for clients who experience abusive policing and failure in duty to protect.
2. Review the conceptual and theoretical foundations of the programme, to inform consideration of how the programme can evolve in the South African context. We have promoted consideration of the social determinants of health model and a human rights approach but we recognize it is already within the ambit of GF strategies and programming. Our advocacy here is for more explicit expression of use of the models.
3. Devise a strategy for engaging directly with the government, police and civil society structures such as those responsible for implementation of the ERAP, the Positive Policing Partnership, and CPFs, to identify opportunities for expanding their involvement in promoting accountability of police officers;
4. Review the content of the sensitization courses and revise as necessary, to incorporate issues such as intersectionality, the different yet varied and variable and overlapping vulnerabilities and risks of harm within and between different KVPs, and accountability. The content of the sensitization programme needs to be broad – and cover knowledge of realities of KVPs and existing policy and regulations; address attitudes which were seen as a key barrier to access to justice and ensure that LEA have the skills to practice a more holistic, supportive service to KVPs. The fact that many, if not most of the respondents noted that police were disrespectful, rude and unhelpful points to the fact that basics in communication and good service need to be covered in training. Given that knowledge does not change practice alone, using SBCC approach, which is grounded in theory and

is evidence based could be a starting point for redesigning the curriculum and training method.

5. Review the procedure to conduct a baseline, subsequent interim monitoring, and evaluation studies of the programme, to ensure inclusion of LEA participants of sensitization courses in this process.

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ADDENDUM

- 1 Situational assessment
- 2 KII results ,
- 3 KVP survey results,
- 4 Paralegals survey results
- 5 FGD results
- 6 KII interview schedule
- 7 KVP survey questionnaire
- 8 Paralegal worker questionnaire
- 9 FGD interview schedule