

**UNDERESTIMATING INSTITUTIONS: A CRITIQUE OF THE SOUTH  
AFRICAN LAW COMMISSION'S RECOMMENDATIONS FOR IMPROVING  
POLICE RESPONSES TO RAPE COMPLAINANTS**

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## ABSTRACT

Against a backdrop of alarmingly high rates of sexual violence and inadequate criminal justice responses to this problem, the South African Law Commission (SALC) embarked on what would become a six year project to formulate recommendations for the reform of South Africa's rape laws. This paper argues that insofar as these recommendations pertain to the police they are inadequate. At the most fundamental level the SALC has failed to grasp the nature of police discretion and the institutional context in which it is exercised. Because of this its recommendations are superficial and oriented towards individual actors within the system, rather than being directed at effecting institutional change. One of the most important reasons for the SALC's failure to adequately address police discretion is that it has failed to consider available social science research that should have informed its debates and which would have provided it with the empirical support necessary to convince Parliament to accept the SALC's recommendations. The research presented in this paper suggests that without addressing police responses at an institutional level there is little chance that attrition rates will drop and prosecutions for rape increase. As such the current recommendations of the SALC will, in all likelihood, have little deterrent value.

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