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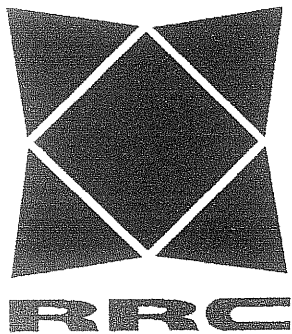
**A REVIEW STUDY:
Commissioned by the

CRIME PREVENTION
RESEARCH RESOURCES CENTRE**

on

***VIOLENCE AGAINST WOMEN IN SOUTH AFRICA:
RAPE AND SEXUAL COERCION***

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EXECUTIVE SUMMARY

Introduction

Over the last 12 months the issue of rape in South Africa, and in particular the magnitude of the problem, has been hotly debated. The purpose of this report is to draw together, summarise and synthesise the findings of research to provide an overview of the problem of rape of women in South Africa. The objectives of the report are to describe the epidemiology of sexual coercion, to discuss causal and contributory factors, to present an overview of the findings of research into the Criminal Justice System and to make recommendations for areas of further research and focus of intervention

Key findings:

- Rape reported to the police represents the tip of an iceberg of sexual coercion. Whilst police crime statistics indicate that there are 240 incidents of rape and attempted rape per 100 000 women each year, representative community-based surveys have found that in the 17 – 48 age group there are 2 070 such incidents per 100 000 women per year. Non-consensual sex in marriage and dating relationships is more common still and has not been systematically reported in surveys. In addition to this, many women are forced to have sex in a range of coercive circumstances, for example when seeking employment.
- The most important social force behind the problem of rape is the patriarchal nature of society with its prevalent notions of male sexual entitlement. This is reflected in and reinforced by the lack of seriousness with which the crime is treated by some members of the community, police and sections of the Criminal Justice System. Alcohol abuse, poverty, boredom and highly prevalent violence in communities are also important contributing factors.
- Research into the Criminal Justice System shows that women experience substantial secondary victimisation. They report verbal abuse, hostility, lack of interest, lack of information and long delays. The process has been found to be repeatedly undermined by police persuading women not to lay charges or to drop charges, undertaking sloppy investigations and “losing” dockets. District surgeons also display negative attitudes which are manifest in unsympathetic treatment of rape survivors, sloppy medical examination and specimen handling, and reluctance to appear in court. Only a very small proportion of cases ever get to court and among these the conviction rate is low (50% or less). Convicted rapists often are given suspended or non-custodial sentences.

The way forward

- The problem of rape is symptomatic of the low status of women in the country. Building gender equality throughout all corners of society needs to be a priority.
- Rape can only be effectively addressed through a committed partnership between the

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1 INTRODUCTION

In the 1995 Human Rights Watch report on domestic violence and rape, South Africa was dubbed the "rape capital of the world". This served to highlight the huge problem of rape and sexual coercion in the country, and sparked off controversy at the highest levels of Government and in the media since the basis for the claim was hotly debated. Although consensus that there was too much rape in South Africa was readily reached, disagreement about the magnitude of the problem has continued. In fact, there has been a considerable amount of research on violence against women in South Africa in recent years, but the findings often require careful interpretation. The purpose of this report is to draw together, summarise and synthesise the findings to provide an overview of research on rape of women in South Africa. The report is presented in four parts. The first examines the epidemiology of rape and sexual coercion; the second explores causes of the problem; in the third research on rape and the Criminal Justice System is reviewed, and finally, the report concludes with discussion and recommendations.

Sexual coercion represents a fundamental infringement of human rights and an important barrier to national development. It restricts women's access to education and employment and impacts on women's personal development and self-esteem. It also severely undermines women's health. Peter Piot (2000), executive director of UNAIDS, described gender inequality as "a fundamental driving force in the AIDS epidemic". Gender power inequality is manifested in rape and sexual coercion, which prevent women from being able to protect themselves against HIV and increases their vulnerability to HIV transmission through abrasions caused by forced penetration and exposure to additional male partners. Unwanted pregnancy is also an important consequence of rape, especially for young women. Furthermore, forced sexual initiation reinforces the message that women's sexuality is controlled by men and women who experience it are 14 times more likely to have a subsequent teenage pregnancy than those who do not (Jewkes et al., *forthcoming*). In addition, rape has an important impact on women's mental health, being associated with depression, suicide, and post-traumatic stress disorder (Astbury, 2000).

2. EPIDEMIOLOGY OF RAPE AND SEXUAL COERCION

2.1 Theoretical framework

2.1.1 What is rape?

In terms of common law, rape is committed by a man having intentional and unlawful sexual intercourse with a woman without her consent (SA Law Commission, 1999). Although the new sexual offences legislation has not been drafted, it will almost definitely include a declaration

that sexual penetration is unlawful if it occurs in coercive circumstances, which include the application of force, threats, abuse of power or authority, the use of drugs, etc., and will widen the circumstances in which rape is said to have occurred beyond penile penetration of a vagina to include a range of actions involving different body parts, objects and orifices.

Whilst the law is formed around clear definitions, in the discourse of the general public the question of what constitutes rape is much less clear. A given incident of non-consensual sex will be interpreted differently depending on the relationship of the victim to the perpetrator, the ages of those involved, prevalent social notions of gender roles in decision-making around sexual matters, the circumstances in which it occurred, including whether the woman was deemed compliant with an idea of 'modest' behaviour and thus questions of blame. The question of whether a set of actions constitute 'rape' will also depend on who is discussing the incident with whom, where, when and in what circumstances. Discourse in communities is heavily dominated by the idea that rape is a crime of violence and commonly informants in research indicate that people often confine the word 'rape' to use in describing acts of strangers, particularly violent acts or gang rape (Wood et al., 1998, Wood & Jewkes, 1998), although privately women may perceive themselves to have been severely violated in a range of other circumstances.

2.1.2 The iceberg of sexual coercion

The differences between legal and popular notions of rape are much more than just semantic. They have important implications for women who have experienced particular sexual experiences, for how they interpret these themselves and to others, and clearly have important implications for attempts to gain an understanding of the magnitude of the problem of non-consensual sex. Most women will only try to report incidents which fall within popular notions of 'rape' (Stanton, 1993) to the police. They will probably also only report these to interviewers in surveys, although this method of data collection will also capture incidents which are not pursued with the police. Some rape experiences which fit with popular definitions will still not get reported in surveys (WHO, 1999). Women may be unwilling to recall and discuss with an interviewer experiences which were unpleasant and humiliating and may be associated with shame, guilt, fear of blame or self-blame. Because of this, survey estimates of rape prevalence are likely to be underestimates.

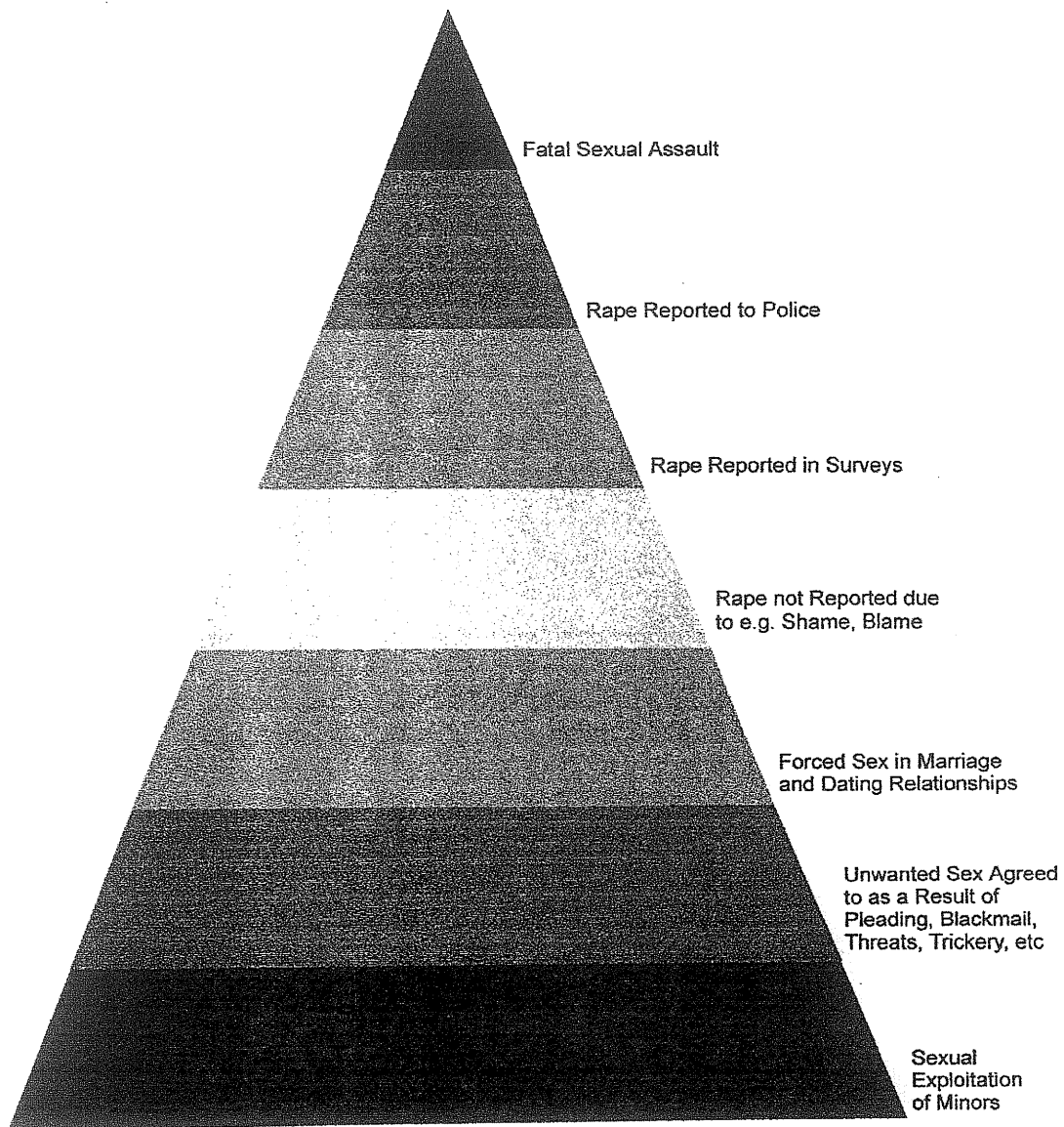
The most common forms of sexual coercion seem to go unreported in surveys and to the police. These occur within marriages, dating relationships, families, or where sex is agreed to after blackmail, threats, trickery or persistent pleading. No single study has so far been able to describe the magnitude of these forms of coercion but insights are provided through a multitude of qualitative studies, surveys and particularly research among adolescents. The difficulty in getting these actions recorded in surveys of adult women seems to suggest that most women have such low expectations of genuine sexual negotiation in relationships, that

Government and institutions of the State, non-governmental organisations, other organs of civil society and the community. There needs to be a visible commitment from Government of resources, capacity and a sustained focus, as a prerequisite for genuine partnership.

- Strategies to address rape must include efforts at a primary preventive level to change prevailing gender norms and other causal and contributory factors and create a climate of zero tolerance for sexual coercion in communities.
- Strategies focusing on improving police responses to rape survivors, improving investigations, improving medico-legal aspects of cases and strengthening the role of the courts are of the utmost importance. Models of good practice and successful pilot projects need to be identified, described and resources committed to enable roll-out nationwide.
- The strategy needs to be underpinned by research and this must be resourced. Further knowledge is needed of the magnitude of the problem and causal and contributory factors. All interventions need to be informed by research and evaluated to ensure effectiveness. Detailed study of the operations of the Criminal Justice System and medico-legal services is needed to scientifically identify areas for improvement, develop and test interventions and to disseminate success.
- Further development of services for rape survivors is needed. Research is needed into factors which influence the recovery of survivors after rape, as well as appropriate and accessible ways of reducing HIV infection through rape.

being forced to have sex when men (husbands, boyfriends or often would-be lovers) want it, or provide it as a unit of exchange, is seen as "normal". Rape and sexual coercion have often been said to occur on a continuum. In understanding its magnitude it is helpful to think of the problem as an iceberg. The parts which become visible and more readily quantifiable are almost certainly a small proportion of the real problem. The iceberg of rape and sexual coercion is depicted in Figure 1.

Figure 1: Iceberg of sexual coercion



2.2 Epidemiology

2.2.1 The epidemiology of reporting of rape to the police

Magnitude of the problem

Police statistics are the most readily available source of information about the prevalence of rape. A summary of the statistics between 1996 – 1999 is presented in Table 1. In 1996 there were 44 222 cases of completed rape, which is equivalent to 210 incidents per 100 000 women (CIAC, 2000). By comparison in the US in 1990 there were 102 555 reported rape cases with an annual rape rate of 80 per 100 000 females (Ramin et al., 1992). In 1998, 6 259 incidents of attempted rape were reported to the police. The table shows a very slight rise between 1996 and 1997 and then a substantial reduction in the number of reported cases. Data are only available for the first 6 months of 1999, but these suggest that a further decline will be seen. This would tend to confirm that the year on year increase in rape reporting, which has been seen over the decade, has ended. It is extremely difficult to know to what extent the increase in reported rape cases reflected a genuine increase in the crime or was a product of changed help-seeking practices as a result of increasing confidence in the police.

Table 1: Police statistics for rape and attempted rape

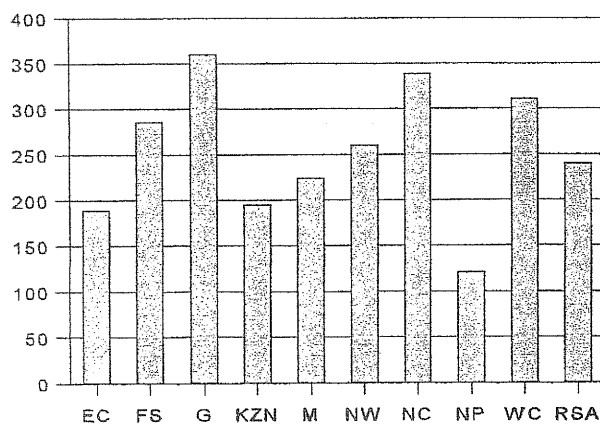
(Source: CIAC)

| | Jan - Dec 1996 | Jan - Dec 1997 | Jan - Dec 1998 | Jan-June 1999 |
|--|-------------------|-------------------|-------------------|------------------|
| Rape & attempted rape | 50 481 | 52 159 | 49 280 | 23 900 |
| Rape | 44 222 | 45 377 | 43 021 | 20 768 |
| Rape & attempted rape per 100 000 women | 240 | 244 | 226 | - |
| Rape per 100 000 women | 210 | 212 | 197 | - |

Who is raped and by whom?

For the crime of rape and attempted rape, 40% of reported cases were among survivors under the age of 18. This is roughly the same as the proportion of this age group in the population. A detailed breakdown by age is not available, but it is likely from the Demographic and Health Survey (Department of Health, *forthcoming*) that most of the rapes are of girls over the age of 9. If this is the case, teenagers are at much higher risk of rape than the population as a whole. There are marked interprovincial differences in rape and attempted rape reporting. The data for 1996, the Census year, are shown in Figure 2. Five provinces, Gauteng, the Northern Cape, the Western Cape, the Free State and the North-West are above average for the country as a whole. Reporting in the Northern Province, Eastern Cape and Kwazulu-Natal was much lower.

Figure 2: The rate of rapes and attempted rapes per 100 000 women, by province in 1996
 (Sources: CIAC & Statistics South Africa)



Further information about rapes reported to medico-legal clinics in Johannesburg is available from a complete case series of rape from the Hillbrow medico-legal clinic in 1992. This covers Johannesburg and Johannesburg North and was described by Martin (1999). A less complete surveillance project was based in Hillbrow, Lenasia South and Chris Hani Baragwanath medico-legal clinics from 1996 —1998 (Swart et al., 1999).

Martin calculated that in 1992, the incidence of rape was 165 per 100 000 women in Johannesburg and Johannesburg North. This excluded women who required urgent medical attention for bodily injuries. The great majority of rape survivors were young women, 12,2% were 16 years and younger, 75,4% were between 17 – 35 years, 12,4% were over 35 years. This suggests that the age of rape survivors in Johannesburg is on average higher than that of the rest of the country, 71,2% of rape survivors were African, 16,1% white, 11,1% coloured and 1,6% Indian (Martin, 1999). This distribution was influenced by the population in the area of Johannesburg covered by the clinic. The surveillance study found that 80% of survivors were African, 10% coloured, 8% white and 2 % Indian (Swart et al., 1999). Both studies showed that the great majority of women were raped by a man of the same racial group as them. Eighty per cent of attacks were by strangers in the 1992 series (Martin, 1999), 55% in the surveillance series were complete strangers but a further 22% were just known by sight (Swart et al., 1999). Rapes committed on girls of 16 and less were more often perpetrated by men known to them than rapes of older women. Gang rapes feature prominently in both case series. Martin (1999) found that in one third of cases there was more than one perpetrator, and (Swart et al., 1999) found this in 27% of cases. Since there is only a loose relationship between the occurrence of rape and reports to the police (see below) great caution is needed in making assumptions about who is most at risk of rape from the characteristics of rape survivors reported in case series of this nature. It is likely that incidents involving strangers and children are very much more likely to be reported to the police than other rapes. Similarly, for historical

reasons whites are more likely to report crime to the police than other racial groups and this may substantially explain why in all the data sets, in all age groups, a disproportionate number of reported rapes are among white women.

Swart et al., (1999) showed that rapes were much more likely to occur between Friday and Monday, with a quarter of all rapes happening on Saturdays. One third of rapes occurred between 6pm and 10pm. Rapes most commonly were perpetrated in open spaces, such as fields (31%), in the rapist's home (29%) or in the rape survivor's home (14%). In 55% of cases a weapon was used, most often a knife (51%) but also firearms (35%). A large proportion of rapes in Martin's series (1999) were committed on women travelling to and from work, with abduction forming part of the *modus operandi*, often at gunpoint.

2.2.2 Rape homicide

Magnitude of the problem

Within the group of rape cases which come to the attention of the police are those which are known as fatal sexual assaults or rape homicides. In the Greater Cape Metropole the epidemiology of rape homicide was described by Martin (1999), based on a review of all cases admitted to the Salt River Medico-legal Laboratory from 1 July 1996 – 31 December 1998. The incidence of rape homicide was 7,2 per 100 000 women, representing a fatal sexual assault rate of 1,2% (i.e. 1,2 fatalities per 100 rapes reported to SAPS). This rape fatality rate is twelve times higher than that for the USA in 1983 (Marchbanks et al., 1990). In a country where 10% of the population is HIV positive, the true fatality rate associated with rape is likely to be very substantially higher than what is currently defined as rape homicide.

Who are the victims?

Seventy per cent of the victims were coloured women, which partially reflects the population of Cape Town. The majority was aged 17 – 45 years, with children of 16 and under and women over 45 years both constituting 13,6% of cases. The perpetrator was identified in 93% of cases, of these in only 23% was the person a stranger to the woman.

2.2.3 Prevalence of reporting to the police

Representative studies of women in communities have provided opportunities to explore characteristics which influence reporting of rape to the police. The most detailed information comes from the South African Demographic and Health Survey (SADHS) (Department of Health, *forthcoming*) which had the largest number of women reporting rape. The results are shown in Table 2.

Table 2: Percentage of women reporting having ever experienced rape or coerced sex and proportion who reported this to the police according to background characteristics, South Africa 1998

| Background characteristics | Ever forced or persuaded to have sex against will | Ever physically forced to have sex | Ever physically forced and sought help from the police | Total number of women |
|----------------------------|---|------------------------------------|--|-----------------------|
| Age | | | | |
| 15-19 | 9,7 | 4,9 | 13,2 | 2 249 |
| 20-24 | 8,1 | 4,9 | 18,8 | 2 075 |
| 25-29 | 7,4 | 5,1 | 17,2 | 1 857 |
| 30-34 | 7,8 | 5,3 | 12,4 | 1 654 |
| 35-39 | 5,4 | 3,6 | 16,4 | 1 636 |
| 40-44 | 5,3 | 2,8 | 15,2 | 1 294 |
| 45-49 | 5,2 | 3,2 | 9,6 | 970 |
| Residence | | | | |
| Urban | 8,2 | 5,0 | 14,5 | 7 095 |
| Non-urban | 5,4 | 3,6 | 16,8 | 4 640 |
| Province | | | | |
| Western Cape | 12,4 | 6,5 | 13,3 | 1 193 |
| Eastern Cape | 4,4 | 2,9 | 14,3 | 1 566 |
| Northern Cape | 4,7 | 3,8 | 17,2 | 253 |
| Free State | 4,1 | 2,6 | 12,1 | 763 |
| Kwazulu-Natal | 6,4 | 3,3 | 12,5 | 2 364 |
| North-West | 2,8 | 2,3 | 13,7 | 909 |
| Gauteng | 9,6 | 6,5 | 15,7 | 2 552 |
| Mpumalanga | 10,5 | 7,1 | 25,2 | 819 |
| Northern | 3,9 | 3,3 | 10,9 | 1 316 |
| Education | | | | |
| No education | 3,8 | 2,6 | 3,1 | 804 |
| Sub A-Std 3 | 6,1 | 3,8 | 11,5 | 1 291 |
| Std 4-Std 5 | 6,8 | 4,0 | 15,5 | 1 625 |
| Std 6-Std 9 | 7,5 | 4,9 | 15,5 | 5 181 |
| Std 10 | 7,0 | 4,1 | 14,4 | 1 922 |
| 11+ | 9,6 | 5,5 | 23,3 | 912 |
| Ethnicity | | | | |
| African | 6,0 | 3,8 | 14,6 | 9 147 |
| African urban | 6,9 | 4,4 | 14,5 | 4 873 |
| African non-urban | 4,9 | 3,2 | 14,3 | 4 274 |
| Coloured | 12,0 | 6,5 | 15,5 | 1 201 |
| White | 13,0 | 8,7 | 18,9 | 916 |
| Asian | 3,8 | 2,3 | 10,1 | 406 |
| Total | 7,0 | 4,4 | 15,2 | 11 735 |

In the SADHS, overall, only 15% of women said they had reported an incident where physical force was used to make them have sex against their will to the police. Older women and urban women were less likely to report incidents than younger women and those in rural areas, but there was not great variation with age and area of residence. Women in Mpumalanga, Northern Cape and Gauteng were more likely to report. There were very marked educational differences, having no education was a major barrier to contacting the police and women with post-school education were 8 times more likely to report than uneducated women. White women were most likely to report and Asian women were nearly half as likely. This data suggest that certain groups in the population have considerably less access to police services after this extreme

form of rape. The reasons for this very substantial inequity need further investigation and strategies need to be developed to improve access for all women. Some caution is needed in interpreting the findings, however, as the data describe lifetime experiences of rape, which means that in some cases the incidents may have occurred 30 years ago and so reporting would be influenced by factors pertaining at that time. It is important to remember that these data describe attempts at getting help from the police and do not reflect 'dockets opened', this figure should be expected to be lower.

The Medical Research Council study of violence against women in 3 provinces (Three Provinces Study, Jewkes et al., 1999) also asked about reporting to the police. Overall, 25% of women raped in the previous year had reported it to the police and 11% of women who experienced an attempted rape.

2.2.4 Rape reported in representative household surveys

Magnitude of the problem

There have been 3 major household surveys of representative samples of women in South Africa which have asked about experiences of rape. The methods and findings are summarised in Table 3. The incidence figure from the Three Province Study (Jewkes et al., 1999) suggests that there is one completed rape every 5 minutes in South Africa among women aged 17 – 48.

Table 3: Methodology and findings of community-based rape studies

| | Sample & sites | Proportion of women who ever experienced non-consensual sex | Proportion of women raped or experiencing attempted rape in last year (95% C.I.) | Rapes per 100 000 women per year aged 17- 48 |
|---|--|---|---|---|
| Three Province study of violence against women (Jewkes et al., 1999) | Random sample of 1306 women in Northern Province, Eastern Cape & Mpumalanga | Completed rape: Eastern Cape 4,5% Mpumalanga 7,2% Northern Prov 4,8% Completed rape and attempted: Eastern Cape 6,7% Mpumalanga 11,9% Northern Prov 6,3% | Overall: 2,07% (1,25-2,88) Eastern Cape 2,0% (0,86-3,87) Mpumalanga 3,3% (1,80-5,43) Northern Prov. 2,1% (0,34-2,44) | Completed rape: 1300 Completed and attempted: 2070 |
| South African Demographic & Health Survey (Department of Health 1999) | Random sample of 11735 women aged 15-49 years in all provinces | National figure for completed rape: 7% Provincial estimates ranged from 3-12% | | - |
| National Victims of Crime Survey (Statistics South Africa, 1999) | Random sample of 4000 people over 16 years (approx. 2000 women) in all provinces | - | | 390* |

* per 100 000 women aged 16 and over.

The studies produced different estimates of prevalence and incidence, which are most likely to be explained by differences in question wording and study methodology. Researchers working with the World Health Organisation on violence against women research argue that levels of reporting can be very substantially influenced by such factors and have made recommendations for ways of ensuring a more accurate reporting as part of a general approach to undertaking ethical research on violence against women (WHO, 1999). These include ensuring that there is a comfortable, non-judgmental atmosphere in the interview and questioning is sensitively approached. Also, giving special training to fieldworkers to familiarise them with issues and with how to deal with the emotional distress in respondents which often follows disclosure. In the Three Province Study, the SADHS and the study of men in Cape Town (Abrahams et al., 1999) these guidelines were followed and this will have influenced the level of reporting. In recognition of the differences in interpretation of the term 'rape', this word was also not used in the question wording of these three surveys. The reported prevalence may have been higher if the household surveys of women had been designed as rape surveys. The Three Province Study came the nearest to this as it was solely a study of violence against women, but the rape questions came towards the end of a rather long questionnaire. The SADHS questionnaire was even longer and covered a wide variety of general and reproductive health issues. The questions on rape again came towards the end of this. Likewise, the National Victims of Crime Survey focused on experiences of all types of crime. A dedicated rape study designed in accordance with the WHO guidelines (WHO, 1999) may be able to generate an estimate of the prevalence and incidence of rape which is substantially different from these figures and more closely reflects the complexities of definition.

Who are the victims?

The findings of the Demographic and Health Survey, shown in Table 2 indicate that rape was much more commonly reported among young women. The youngest age group, 15 – 19 year olds, were twice as likely to report as the oldest, 45 – 49 year olds. The extent to which this represents a real increase in rape or age-related differences in reporting patterns is not known. Rape was much more common in the Western Cape, Mpumalanga and Gauteng. There are substantial differences between interprovincial ranking of the proportion of women interviewed in each province who reported having been raped in this survey and the police crime statistics. It is not possible to know without further research whether this reflects changes over time in provincial rape risk or particular serious problems in some provinces, notably Mpumalanga, with police discouraging women from pursuing rape charges. Rape was much more commonly reported in urban than rural areas, among whites and coloured women and among women with more education. It is likely that there are differences between population groups in the likelihood of reporting rape to an interviewer in a survey and so some caution is needed in interpreting the interracial and educational differences.

The Three Province Study generated information about perpetrators of rape, shown in Figures 3 and 4 below. These indicate that women are more likely to report rape perpetrated by people known to them in surveys, than to the police. In this study the mean age at which rape occurred

for the first time was 20 years and range from 1– 38 years. For those raped in the year prior to the study, the mean age was 28 and range 18 – 49 (i.e. the same as the age range for the study).

Figure 3: Perpetrators of rape and attempted rape the first time it occurred
(Source: Three Province Study)

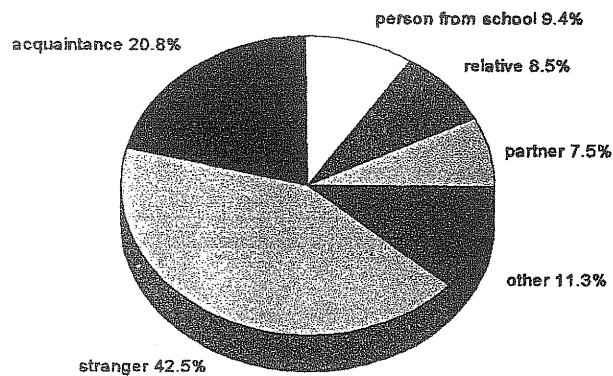
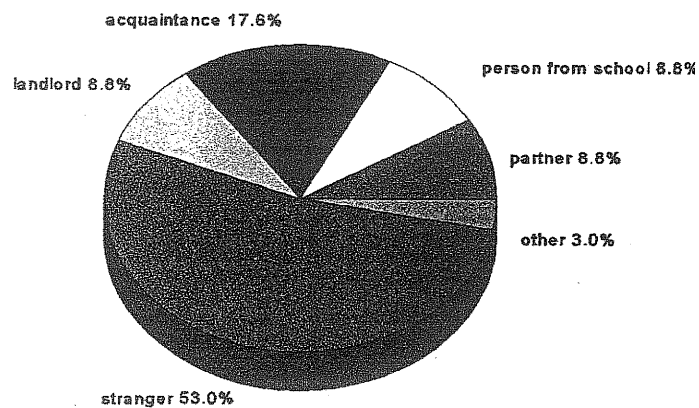


Figure 4: Perpetrators of rape and attempted rape in previous year
(Source: Three Province Study)



2.2.5 Girl child rape

Magnitude of the problem

The sexual abuse of children is often regarded as an entirely different crime from the rape of older women, its causation is attributed to perversion and the gender element neglected. Data on its epidemiology have been collected in order to particularly highlight the crime but we subscribe to the United Nations' position that this should be regarded as a crime of gender (Economic and Social Council, 1992). In order to gain an estimate of its prevalence the 1998 South Africa Demographic and Health Survey (Department of Health, *forthcoming*), included a series of questions for women on incidents before the age of 15 (chosen as it was the entry age for the study). It asked about 'forced' sexual intercourse or being 'persuaded' to have sex when it was unwanted (both constitute statutory rape in under 16s), experiences of having been 'touched against your will in a sexual way including touching, kissing, grabbing or fondling' ('fondling') and 'forced to touch a man's private parts against your will'. Women who reported rape were not asked the other questions.

Sexual abuse was reported by 5% of women: 1,4% reported having been raped, 3,3% unwanted fondling and 1% had been made to touch a man's genitals. The proportion of women reporting assault in each age group is shown in Figure 5. This indicates that a doubling of child rape has occurred recently, a trend not seen in other forms of child sexual assault. The trend is statistically significant. The Three Province findings were very similar, with 1,15% reporting having been raped before the age of 15 years (Jewkes R, personal communication).

Who is raped and by whom?

The majority of assaults first occurred between the ages of 10 and 14 years (85,4% of rape, 80,5% of fondling and 75,6% of touching a man). The perpetrators of rape and unwanted sexual touching are shown in Figures 6 and 7, these indicate most markedly the role of school teachers in child rape. Twenty-one women reported having been raped by gangs of between 3 and 10 men. The perpetrators of fondling and forced genital touching were very similar.

Figure 5: The proportion of women in each age group reporting sexual abuse as a child (Source: Department of Health, *forthcoming*)

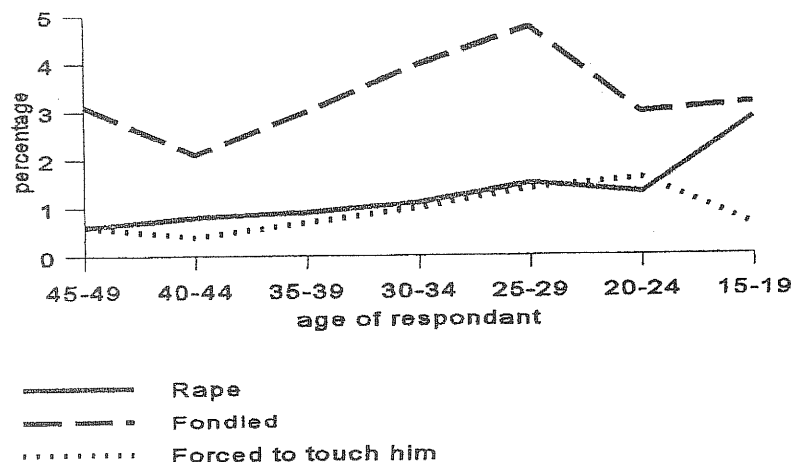


Figure 6: Perpetrators of child rape
 (Source: Department of Health, *forthcoming*)

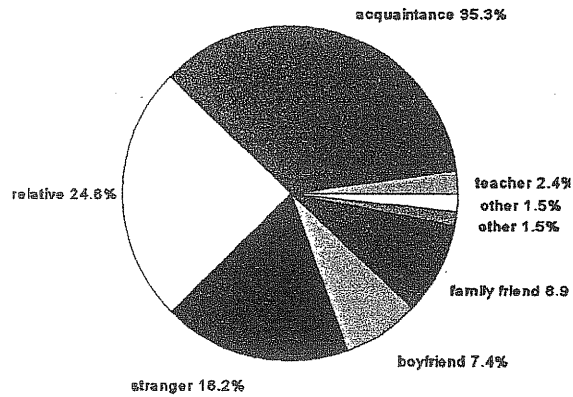
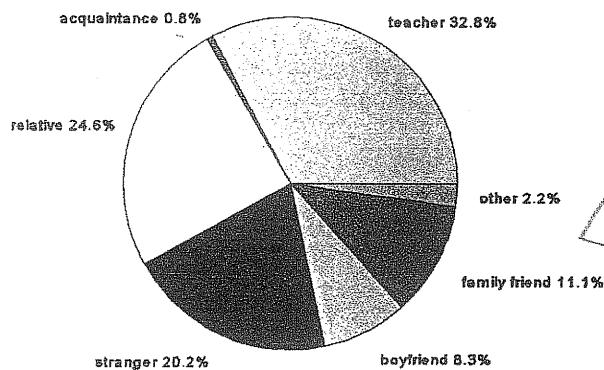


Figure 7: Perpetrators of founding of children under 15 years
 (Source: Department of Health, *forthcoming*)



2.2.6 Sexual coercion

Magnitude of the problem

Studies of adolescents are an important source of data on sexual coercion. They strongly suggest that both household studies and police statistics substantially underestimate the degree of sexual coercion in society. Surveys of adolescent sexuality have found consistently that a high proportion of young women describe “forced” sexual initiation. This was reported by 28% of a sample of Transkei school students (Bugu et al., 1996) and 28% of a random sample of young women from Khayelitsha, Umlazi and Soweto (Richter, 1996). A case control study of teenage pregnancy in Khayelitsha found that 30% of pregnant teenagers reported forced sexual initiation and 18% of the controls (Jewkes et al., *forthcoming*).

A study of adolescents in Cape Town demonstrated marked differences in perception of ‘rape’

and unwanted dating sex. At the time of interview (mean age 16,5 years) 11% of cases and 9% of controls said they had been "raped" and 72% of cases and 60% of controls reported being forced to have sex against their wishes (including at initiation of sexual activity). These data suggest that experiences of non-consensual, sexual intercourse could be very common indeed. Further data to support a high prevalence of marital or dating sexual coercion come from Abrahams et al.'s study (1999) of a random sample of 1 394 male workers in municipalities in Cape Town. Fifteen per cent of men reported having raped or attempted to rape a wife or girlfriend on one or more occasions during the 10 years prior to the study. It is noteworthy that in the Three Province Study of violence against women, in 2 provinces 60% of women reported that they did not believe that a married woman could refuse to have sex with her husband (Jewkes et al., 1999).

Qualitative research on adolescent sexual relationships indicates that sexual coercion takes a number of different forms. Often it does not involve force but other tactics which result in unwanted sexual intercourse. Wood et al., (1998) highlighted the importance of verbal persuasion tactics, of begging and pleading, which often are deployed with an underlying threat of violence if acquiescence is not forthcoming. Other tactics include, for example, inviting a woman into the man's room, locking the door and refusing to open it until she agrees to sex, which will happen as evening approaches because she fears being raped by other men if she has to go home in the dark or being beaten by her mother for being out late (Wood K, personal communication). Sometimes blackmail is used. Women in the Nkomazi district of Mpumalanga described in focus groups being forced to have sex with indunas if they wanted to get work on farms (Jewkes R, personal communication). Similarly, some schoolgirls report being told that if they do not agree to sex with their teacher they will fail the school year (Wood & Jewkes, 1998). In the Three Province Study, 3% of women who had tried to get paid employment reported that a man had insisted that they have sex with him before he would give them work. Of those who had worked, 2% had been told they would lose their jobs or their work suffer if they did not have sex with their bosses. Of those who had been to school, 2% had been told they could fail exams or get bad marks if they refused to have sex with their teachers.

2.2.7 Sexual exploitation of minors

Coercion can take many forms and offering economic reward is one. This is seen in the practice of older men having girlfriends who are very much younger than them, a 'sugar daddy'. Although young women may readily consent to these relationships in exchange for presents or money, which would otherwise be beyond their reach, it is also a form of exploitation and coercion. It places the women who are involved in such relationships at considerable risk of HIV, STDs and pregnancy, with subsequent abandonment. Data on the prevalence of this are not available.

3 CAUSAL AND CONTRIBUTORY FACTORS IN SEXUAL COERCION

3.1 Introduction

This discussion of causal and contributory factors is written from a socio-cultural perspective, one which views rape primarily as a social problem rather than a product of individual psychopathology. Whilst recognising that in a small proportion of cases personality disorders and mental illness may be factors in the perpetration of rape, these individualistic explanations are inadequate for understanding a phenomenon which is experienced by a very high proportion of South African women. Research on causal and contributory factors in rape is somewhat limited and fragmented. Most of the work has been based on rape in the relationships of youth, rather than on stranger rape, rape of children or of older women. One particularly important study based on very long-term fieldwork among young people is in progress in Umtata but will not report for a year or two (Wood K, personal communication). The causation of rape is a difficult area to study. Rape survivors are very much more accessible than rape perpetrators, yet it is this latter group who are of most interest. There has been very little research on rapists who have been convicted, but even this group represents a very small proportion of the overall group of offenders. There is a need for considerably more research into causal and contributory factors in sexual coercion. Not every form of sexual coercion is the same and some causal factors may be more important in certain types than in others. A number of key themes have emerged from existing research and these are discussed here. These include gender power inequalities, male peer-group status and the climate of male sexual entitlement; rape as one manifestation of a very violent society; poverty; alcohol and drug-use; marriage and male sexual entitlement, and the general climate of tolerance.

3.2 Gender power inequalities and sexual violence

The problem of rape in South Africa has to be understood within the context of the very substantial gender power inequalities which pervade society. Rape, like domestic violence, is both a manifestation of male dominance over women and a reinforcement of that position. This is not to argue that men are 'naturally' aggressive, but to assert that the control of women and notions of male sexual entitlement feature strongly in the dominant social constructions of masculinity in South Africa. Both sexual and physical violence against women form part of a repertoire of strategies of control.

Ethnographic research on relationships of young people has highlighted an overwhelming preoccupation among young men with ensuring the sexual availability of women, with the evident use of violence to enforce this (Wood & Jewkes, *forthcoming*). Research has shown that young women are subject to assault (ranging from slapping to beating with objects and stabbing) and sexual coercion by partners and others. For the most part these are deployed to ensure sexual availability, to discourage or punish infidelity, to assert control over the commencement and ending of sexual relationships and discourage attempts to undermine the

boyfriends' sexual success with other women (Wood & Jewkes, *forthcoming*, Wood & Jewkes, 1998, Varga & Makubalo, 1996, Varga, 1997). Whilst acknowledging that there are multiple and context-dependant notions of masculinity, the ability to control women in such ways has been described as essential (in the hegemonic masculinity) to attainment of the status of being a 'successful' or 'real' man. This is important for positioning among same-gender peers (Wood & Jewkes, *forthcoming*). The arena in which peer-group status, respect and self-esteem can be won or lost is one in which the central action is control of women. Thus the coercion of women is a manifestation of male dominance over women, an assertion of such dominance and an instrument in the establishment of dominant positions among other men.

Whilst 'normal' sexual coercion is part of everyday life for many young people, there are extreme illustrations of this. These forms include the recent ritualised abduction, gang rape and murder of young women as part of Cape Town gang initiation and the common practice of gang rape, sometimes known as 'jack-rolling' (Mokwena, 1991). The focus here is often not on the victim but the rapists themselves in watching and taking turns. The women are merely the vehicle for the interaction among the men (Holstrom & Burgess, 1980). Although gang rape is also used as punishment of women for sexual infidelity or unavailability (Wood et al., 1998).

3.3 Rape and generally high levels of violence

Rape and sexual coercion form one part of the broader problem of gender-based violence, which in turn is heavily influenced by a general culture of violence which pervades society. Research on domestic violence has found that between a quarter and a third of women has been beaten by an intimate partner (Jewkes et al., 1999). One of the consequences of decades of State-sponsored violence of apartheid and colonialism (with armed resistance) is that physical violence has become for many people a first-line strategy to resolve conflict (Simpson, 1991) or gain ascendancy. It is used in a variety of settings, including between neighbours (Department of Health, *forthcoming*), nurses and patients or their relatives (Jewkes et al., 1998), teachers and pupils, by colleagues in the workplace (Abrahams et al., 1999) and in same-sex relationships. Not surprisingly, injury is the major cause of death among youth, and in the age group 14 – 34, 58% injury deaths are due to homicide (Peden, 2000). In a violent society, the use of sexual force to gain ascendancy becomes unremarkable.

3.4 Rape and poverty

The connections between rape and poverty are complex and mediated through both rapist and rape survivor. The role of control of women and rape in male peer-group positioning must be understood within the context of the limited number of other recreational opportunities available to poor township and rural youth. Competition over women is one of the few available and affordable opportunities for entertainment and arenas where success may be achieved and self-esteem gained. Strategies to develop education, employment prospects and recreational facilities for young people are essential for success in tackling the problem of rape.

Poverty influences the ability of women to protect themselves from risk of rape in multiple ways. In a parallel with the men, female peer status also revolves around acquiring and keeping the right male partners in a contest of 'beauty'. This is also one of the few affordable avenues for entertainment and self-esteem. This may prevent women from being able to protect themselves from sexual exploitation and the application of ostracism against abusive men. Poverty also drives some women into relationships with wealthier older men in which the giving of presents is a central feature. Here both age differences and obligations arising from the exchange add further dimensions to unequal power relationships. In cases where these relationships occur between very young girls and older men, in themselves they constitute a form of sexual coercion and statutory rape. Poverty, furthermore, is a driving force behind open prostitution, here rape is a major occupational hazard. Poverty also forces women to carry out a range of daily practices in ways which place them at risk. In rural areas, lack of piped water, easy sources of fuel and electricity, place women at daily risk of rape during the processes of collecting resources for daily living. In urban areas, difficulties with transport create situations of risk. Furthermore, desperation in the search for employment leads many women to accept that sex may be the price of a job.

3.5 Rape, drugs and alcohol

Data on the links between alcohol-use and rape are rather fragmented. Drinking alcohol certainly increases the risk of women being raped, probably because it reduces their ability to interpret and act on warning signs and to effectively defend themselves. The relationship with rape perpetration is not well established, but seems likely, particularly as many incidents of domestic violence occur when men are drunk (Department of Health, *forthcoming*). Sexual violence and physical violence in domestic situations are very closely related. The recent 3-Metro's Arrestee Study (Parry et al., 2000) found that 44% of men arrested for rape and attempted rape tested positive on urine analysis for dagga or mandrax. It is likely that the explanation for this is that drug-use is part of the sub-cultures from which rapes, which get reported to the police are more likely to be perpetrated.

3.6 Rape and the HIV epidemic

Rape as a mode of transmission of HIV has been touched on above, but HIV as a cause of rape is a separate issue which deserves further attention. The belief that having sex with a virgin can cleanse a man of HIV is one which has wide currency in Sub-Saharan Africa. In sexual health promotion workshops in South Africa a third of participants indicated that they believed this to be true at the pre-workshop questionnaire (Jewkes et al., 2000). The extent to which this idea is acted upon, and thus a cause of rape, is unknown. Probably a more prevalent problem is that fear of HIV drives some men towards seeking very young partners in the belief that they will be free of the virus. In some cases this involves rape. All aspects of the relationship between rape and HIV are in urgent need of further research.

3.7 Marriage and male sexual entitlement

The acts of gang rape and forcing by strangers are extreme manifestations of a general culture of male sexual entitlement which is most commonly seen in marriage and dating relationships. The meanings of lobola to women in the general public, particularly rural women in the Eastern Cape, Mpumalanga and Northern Province, were canvassed in a recent survey (Jewkes et al., 1999). Seventy-nine per cent said that they understood that in their culture if a man paid lobola for his wife it meant he owned her. Three quarters of women (74%) said they understood that in their culture if a man paid lobola for his wife it meant she had to have sex whenever he wanted it. Women were then asked if they agreed with this interpretation themselves and 62% responded that they agreed he would own her and 45% that she would not be able to refuse sex with him. In this survey women perceived marriage and the practice of lobola to entrench the dominance of the husband in the relationship. Women's perceptions of their inability to refuse sex also may reflect their position of dependence within the relationship and fear of abandonment or loss of economic support if they are not available sexually whenever their husbands want it.

Promoting ideas about women's rights to consent or withhold consent to sex in marriage and dating relationships must be part of an overall strategy for tackling rape.

3.8 Rape and the climate of tolerance

Whilst rape is a major problem for women who are raped and those whose lives are constrained by fear of rape, it is impossible to escape the conclusion that the very high prevalence of rape largely reflects a high level of social tolerance of the crime. This is expressed in the trivial way in which complaints are treated by the police, particularly, if they involve date rape; the lenient sentences handed down by judges and magistrates in the small proportion of cases that ever get to court; the hostile attitude of district surgeons towards rape survivors and the careless way in which examinations are performed; the small price for which a docket can be 'lost'; and the efforts of friends and relatives of rape survivors who often discourage women from laying charges, particularly if the rapist is known to them. Whilst many families try to protect their daughters from rape, or to mitigate the consequences of the inevitable through putting young girls on contraception (Wood et al., 1997), there is very little social pressure or control applied to the men involved or potentially involved. Young men are not taught either at home or at school to respect women's right to withhold consent from sex. Furthermore, there is no evidence that involvement in non-consensual sex carries any social stigma for the perpetrator although rape may be stigmatising for the victim. Establishing a climate of intolerance of rape and non-consensual sex must form a key part of any intervention strategy.

4 RAPE RESEARCH WITHIN THE CRIMINAL JUSTICE SYSTEM

4.1 Introduction

Research on rape and the Criminal Justice System has been extremely limited. The main focus has been on women's experiences of the Criminal Justice System and studies have been mostly on a small scale and based on qualitative methods. The main limitations are that only loose generalisations can be taken from the findings and in some cases the study populations have been so small (for example, a study of 15 women) that great caution is needed in interpretation of the data. Research has been undertaken in Cape Town (Stanton et al., 1997; Francis, 2000; Bollen et al., 1999), Gauteng (CIET International, 1998; Bollen et al., 1999; Swart et al., 1999) and Mdantsane (Masimanyane Women's Support Centre, 1999), with one study conducted in the rural parts of the Southern Cape (Artz, 1999). Anecdotal evidence suggests that similar problems are to be found in the rest of the country, but there are substantial differences between service providers, even within a given area (CIET International, 1998) and there are likely to be additional and accentuated problems in more rural and deprived areas. The general message from research is that women and children who have been raped experience substantial secondary victimisation at the hands of the Criminal Justice System.

4.2 The police service

4.2.1 Barriers to reporting the rape

Reporting sexual violence is a very difficult decision for a woman. Stanton (1993) reviewed the case records of 887 women attending Rape Crisis and found that fear of not being believed by the Criminal Justice System was the main reason why women did not report the rape to the police. Sexual violence was most likely to be reported if the perpetrator was a stranger and if weapons were used, presumably because these are key parts of the popular idea of what constitutes 'real' rape.

The study in the rural areas of the Southern Cape, physical barriers to access to the police were important (Artz, 1999). These included long distances to police stations and problems finding a working telephone. The police also reported physical barriers to effective case investigation, including lack of vehicles or personnel to go to the scene. These barriers might have been overcome were it not for the fact that violence against women was not regarded as "real crime".

Fear of the perpetrator and fear of the legal processes, were also important barriers cited by Johannesburg police to reporting rape or pursuing the cases (CIET International, 1998).

4.2.2 General experiences with police

Women's low expectations of the police were often born out in practice. In Artz's study in the Southern Cape (1999), women who did report rape to the police described being faced with a barrage of questions and comments, which were accusatory: "Why did you go with him?", "You

should not walk in that area alone, *"You know what happens at the shebeens, you shouldn't have been there"*, *"Are you sure that he raped you?"*; and hostile: *"You're wasting my time ... come back when you get your story straight"*, *"What do you want us to do about it?"*. They also experienced a general lack of co-operation: *"Find him and then come back to us"*, *"Our hands are tied, we can't just arrest someone because you accused him of rape ... we need more evidence than just your story"*. Similar findings were reported by Francis (2000) in Cape Town. Stanton (1997) reported surprise from women attending the Wynberg Court when they met police who were sensitive.

Many women found other aspects of giving statements to be distressing. These included a lack of privacy, not being taken to a private room, having to repeat the statement on numerous occasions, police officers being impatient, having to speak to a male officer, being interrupted often, very detailed questioning, lack of familiarity with the process and not being able to give the statement in her own language (Stanton, 1997; Masimanyane Women's Support Centre, 1999; Artz, 1999; Francis 2000; Bollen et al., 1999). At the Wynberg Sexual Offences Court women complained that their statements were not accurate and often police officers changed parts to fit their own interpretation of what happened. Very few women received a copy of the statement and they only did so if they repeatedly asked for it. Although in Wynberg statements are given in private, some women complained that this made them feel even more vulnerable when faced with an abusive police officer (Stanton et al., 1997).

The majority of the women indicated that they would have preferred a female police officer since it was generally believed that a female officer would be more empathetic, easier to speak to and more believing (Stanton, 1997; Francis, 2000; Masimanyane Women's Support Centre, 1999). Other women believed that the gender of the officer did not matter as long as the officer was sensitive and non-judgmental, examples of insensitive treatment by female officers have been reported (Francis, 2000).

A range of other problems with the police have been found in research. These include not offering transport to take the woman to the district surgeon and not taking photos, which is important as part of the investigative process (Bollen et al., 1999). Women also complain about not being given information on their rights by the police, and not being told that they could make a supplementary statement later, have a companion present or that they could have a medical examination before giving the statement (Bollen et al., 1999). Incorrect information was also a problem, in one case a woman was told that since she attended the hospital first – she could not proceed with the case (Stanton et al., 1997). In the Mdantsane study, women reported that the most difficult aspect of reporting the incident was the problem of not knowing the process, e.g. having to first report to police before attending the hospital. Women were distressed, shunted around and spent a lot of time looking for transport between the police and the district surgeon (Masimanyane Women's Support Centre, 1999).

A study of the rape in Johannesburg (Swart et al., 1999), found women were more likely to report rape to a police station if it was attached to a medico-legal clinic and also if it was known that support services were available at the station. The majority of women, however, were not referred for counselling to NGOs or other services. The authors questioned where this was due to "ignorance which still exists about the psychological trauma of rape".

4.2.3 Gatekeeping: legitimate and illegitimate

From the time women try to report rape to the police they encounter a range of illegitimate gatekeepers who try by various means to dissuade them from doing so (Artz, 1999; Masimanyane Women's Support Centre, 1999; CIET International, 1998; Stanton et al., 1997). These range from police telling the woman she is lying and therefore do not record the case to the investigating officer encouraging the woman to drop the charge, to the prosecutor deciding that the woman has poor evidence. These were all reported in the most recently completed study by the Bureau of Justice Assistance (Francis, 2000).

CIET-Africa undertook surveillance of the police service in the Johannesburg's Southern Metropolitan Local Council using interviews with Criminal Justice System staff, data from the Centre Information Management Centre (CIMC) and SAPS records (CIET International, 1998). They described a process of filtering occurring in stages after an episode of serious sexual violence has occurred through to the point of conviction of a perpetrator. They estimated that only 1 in 16 women who went to a police station in their study area (Johannesburg's Southern Metropole) to report an incident of serious sexual violence entered the police data system as a "case" of rape. In some cases a docket was opened for a different crime, particularly indecent assault or domestic violence, but other women were persuaded to drop the case or decided to do so themselves after their experiences in the station. In interviews, police explained that they perceived many women to file "false reports", reflecting their general scepticism about women's ability to tell the truth. Similar problems were reported in research from Mdantsane and Cape Town (Masimanyane Women's Support Centre, 1999; Francis, 2000). The most common situations where women were advised to drop the case seem to be where rapes were committed by boyfriends (Francis, 2000).

Whilst the research highlights significant problems with the police, very clear gaps are visible in a perspective which is based mainly on that of rape survivors. In particular there needs to be a recognition that some 'gatekeeping' is legitimate. For example, under current legislation a serious sexual violence complaint cannot be taken up as a case of 'rape' if it does not fit within the legal definition of rape. It is probably entirely reasonable for certain cases to be pursued with less vigour than others, for example in a case of stranger rape with no forensic evidence and where the woman cannot describe her attacker there really is no chance of a conviction. Crude filtration figures do not give information on legitimate gatekeeping. Research is needed to provide a more detailed analysis of pathways of cases from police station to the courts to get

an understanding of the relative importance of different barriers to the conviction of rape perpetrators and develop interventions around the most important.

Figure 8: Rape survivor's needs

- to be treated with respect and taken seriously:
 - for the attack to be treated as "real crime"
 - for statements to be given in private without interruptions
 - for the investigating officer to be patient and attentive
 - for a female officer, or a particularly sensitive and empathetic male
 - not to have to repeat the account many times

- for explanations of and information on:
 - her rights
 - the facility to make a supplementary statement
 - the need for very intimate details in the statement
 - procedures of medical examination
 - findings of the medical examination
 - HIV, STDs and pregnancy prevention
 - sources of counselling
 - progress of the case
 - the court date and procedures
 - release of perpetrator on bail
 - reasons for trial delays or the case being dropped
 - the outcome of the case

- to give the statement in the language of choice
- to have a copy of the statement
- transport to the examining doctor
- to be allowed to have a companion present
- for the medical examination to be performed with some urgency
- to feel safe from retaliation by the perpetrator

4.3 Clinical forensic medicine

Medical evidence is critical in the investigation and the prosecution of rapists. In 1997 Human Rights' Watch (Human Rights Watch, 1997) reported on the role of the Medical-legal System in violence against women in South Africa. The report reviewed existing data on the medical legal system and concluded that it is "deeply flawed with problems of inaccessibility, prejudice and lack of training at all levels". The studies reviewed in this report bear this out.

In most studies women describe medical examinations after rape as traumatic (Stanton et al., 1987; Masimanyane Women's Support Centre, 1999; Artz, 1999; Francis, 2000). District surgeons' attitudes were described as judgmental, insensitive, not objective, often hurried, blaming or just disinterested (Masimanyane Women's Support Centre, 1999; Stanton et al., 1997; Artz, 1999). Women were given very little information about the medical examination,

particularly about procedures and how they relate the court process, about pregnancy, HIV/AIDS and the reasons for medication given (Stanton et al., 1997; Francis, 2000). Women expected the district surgeon to tell them the findings of the examination (Stanton et al., 1997) but found most often he or she spoke to police officer rather than to them (Stanton et al., 1997; Francis, 2000). In general, there was a skimpy examination and poor collection of evidence.

Artz (1999) notes that one of the "most disturbing" findings in her study was the lack of professional health services available to women in the Southern Cape. Few district surgeons were available immediately and women had to wait long periods before being examined. In Johannesburg similar problems have also been reported, with more than 45% of the women waiting for more than 3 hours and nearly 11% waited for longer than 7 hours.

During the 2 interviews with district surgeons in East London their reluctance to appear in court was mentioned. One of the reason why general practitioners hesitate to deal with rape cases was said to be because of loss of revenue from work while attending court. This was aggravated by delays in court which are common occurrences. The lack of laboratory services in the East London area was also raised as a problem. The practice of sending the samples to the Cape Town laboratory resulted in the loss or mix-up of samples because packaging of the samples was inadequate, resulting in loss of evidence (Masimanyane Women's Support Centre, 1999).

In the Southern Cape, community members described the consequences of rape, including pregnancy and HIV/STDs as major concerns in their communities (Artz, 1999). There is very little data on practices of district surgeons with respect to pregnancy prevention, STD treatment or HIV testing and post-exposure prophylaxis after rape. Other research has found women not being given information on HIV/AIDS or offered the test (Stanton et al., 1997), or alternatively given a referral letter for a general practitioner or a day hospital for an HIV test (Francis, 2000). *Uniform National Health Guidelines for Dealing with Survivors of Rape and Other Sexual Offences* has been published by the Department of Health in Pretoria. It outlines how a rape survivor should be managed and emphasises the need for STD prophylaxis, post-coital contraception and HIV counselling. The guidelines, however, do not outline medical procedures in detail. In an attempt to fill this gap, Dr Lorna Martin of the Department of Forensic Medicine of the University of Cape Town has developed a detailed protocol for the medical and forensic examination of raped women (Martin L, personal communication). It has been developed and tested over a period of 2 years and has recently been adopted by the Western Cape Department of Health for use in the province. It is hoped that this will be adopted as a national protocol. The 2 main objectives of this protocol are, to prevent secondary victimisation and to improve conviction rates by ensuring the proper collection of forensic evidence. The diffusion of these protocols and adherence to their guidelines need further evaluation.

4.4 Investigation process

One of the main reasons for under-reporting of rape is the small number of cases which reach court and the low conviction rate among these cases. Research confirms that these are both important problems. In Johannesburg's Southern Metropole, there were marked differences in the proportion of cases that proceeded to court and the rate of conviction. In Soweto police stations 50% of all rape cases were referred to court, compared to only 5% in a police station in Orange Farm (CIET International, 1998). Management within police stations has been shown to be important as some of the best resourced police stations in the Southern Metropole of Johannesburg had some of the worst rates of referral of cases to court and conviction. Well-managed but resource-poor Soweto police stations, particularly Orlando and Moroka, performed much better. Differences have also been reported in the Eastern Cape. A sample of a 100 court cases for the courts in East London and Mdantsane were traced. Only 5% of cases were struck off the role in East London compared to 40% in Mdantsane. The differences were attributed to differences in the resources, training and the application of the law between the 2 courts (Masimanyane Women's Support Centre, 1999).

The problems appear to be largely due to ineffectiveness of SAPS investigations and poor medical evidence. In Johannesburg's Southern Metropole, the main barriers to police completing a case were identified as inability to find the suspect, lack of police training, heavy case loads, lack of resources, such as transport, women not wanting to talk in detail about the incident at the time of reporting, women not wanting to make a case and women withdrawing the charge (CIET International, 1998). During interviews with Criminal Justice System staff, it was apparent that there was confusion about who was ultimately responsible for leading investigations. Some investigating officers thought there was shared responsibility with the prosecutors whereas others perceived it to be solely their responsibility to complete an investigation. The overwhelming majority of both prosecutors and magistrates identified prosecutors as the responsible person.

Women invariably complained about not being given information after reporting a case, for example about the follow-up progress, arrests made, detention of the perpetrator and the bail hearing (Artz, 1999; Masimanyane Women's Support Centre, 1999; Stanton et al., 1997). Many women tried to contact the investigating officer, but were not always successful. Many reported being asked by the investigating officer to find the perpetrator. Those women with whom the investigating officer kept contact said they felt "safe" because of this (Stanton et al., 1997). In Johannesburg, police mentioned that they did not inform women of the outcome of the perpetrator's court hearing for reasons which varied from it not being their duty, to heavy case loads and their own lack of information (CIET International, 1998).

Corruption in the form of perpetrators paying to "lose" dockets is widely acknowledged as a problem in the system. There is a lack of good data on the frequency with which this occurs, but

one in twenty dockets were estimated to be "lost" in a fraudulent manner in Southern Johannesburg (CIET International, 1998). This report also outlined a range of other corrupt practices which were described by police who were interviewed. These included police, prosecutors and other court officials being paid to destroy the case, taking the suspect to the complainant to tell them to accept money and drop the case, having sex with the rape survivor to "check if she was raped", and asking for payment to complete the investigation (CIET International, 1998).

Training in handling sexual offences cases and the development of expertise through repeated involvement in these cases has been identified as a need by police officers, prosecutors and magistrates (CIET International, 1998). At Rhodes University research at the MTN Centre for Crime Prevention Studies has been completed on the development of a pro forma for the use in rape investigation. This gives guidelines for the collection of systematic and accurate information that are essential for the effective investigation of rape cases, but has yet to be evaluated (Netto L, personal communication).

4.5 Prosecutors and courts

Women's experiences with prosecutors were similar to experiences with other personnel. Women reported them to be impatient, indifferent, not forthcoming with information about the court process and having very little or no contact with the women to prepare her for the court process (Masimanyane Women's Support Centre, 1999; Artz, 1999; Stanton et al., 1997). In the Wynberg Sexual Offences Court, the prosecutor was supposed to consult with the rape survivor the day before the case, but the Court's evaluation found this seldom happened (Stanton et al., 1997). When there was contact, it was usually just for an hour immediately before the trial. Women have also complained of having to work with multiple prosecutors and of conflict over prosecutors' roles. Rape survivors often expect them to act as their lawyers, which is not their role. Many women complain of only hearing about an impending trial when they receive the subpoena to appear in court.

Delays in the legal processes are a major problem. A review of police dockets one year after a rape report in East London found that 62% of the cases were still outstanding, 31% the cases were withdrawn (the majority by the state) and only 18% had reached a final outcome. Of these, 39% of the perpetrators were found guilty (Masimanyane Women's Support Centre, 1999). Most cases in this study were found to take between 2 months to 3 years to be completed, but instances of cases taking up to 5 years were also recorded. Postponements of trials are common and are distressing for rape survivors, particularly if no reasons are given (Stanton et al., 1997). After the trial, rape survivors complain that they are not given information on the outcome and often have to find this themselves. (Stanton et al., 1997).

In certain circumstances there is a mandatory minimum sentencing of life imprisonment for rape. The Criminal Law Amendment Act (Act 105 of 1997) states that the High Court has to impose a minimum sentence of life imprisonment if a) the victim is raped more than once, b) the victim is raped by more than one person, c) the victim is under 16 years of age, d) the rape includes grievous bodily harm. However, the High Court is given the power to impose lesser sentences in "substantive and compelling circumstances". A project of the Community Law Centre of the University of the Western Cape reviewed the use and interpretation of this. It concluded that the lack of guidelines for the interpretation of the "substantive and compelling circumstances" has led to very different sentencing for similar rape incidents (Naylor, 1999).

Trivial sentencing in the small number of cases in which there is a conviction has contributed to women's reluctance to pursue cases. A review of 100 cases in Mdantsane Magistrate's Court found that only 21 of the accused were convicted. Only one third (7) of these were given unsuspended custodial sentences. A similar problem was found in East London Magistrate's Court, where 25 out of 100 were convicted but only 52% (13) were given unsuspended custodial sentences.

Figure 9: Criminal Justice System staff needs

- training for all CJS staff in:
 - understanding rape: its social and criminal contexts
 - special needs of rape survivors
 - conducting rape investigations
 - preparing cases
- experience in rape investigations, medical examinations, prosecutions and trials
- resources to undertake proper investigations, e.g. transport and staff

5 DISCUSSION AND RECOMMENDATIONS

5.1 Understanding rape and rape statistics

This report has sought to present available statistics on rape from crime information systems and the results of studies of rape and sexual coercion which have been conducted in a manner which renders them generalisable. It has taken as its starting point a legal view of rape as coerced and/or non-consensual sexual intercourse and in so doing has adopted a premise that rape complaints made to the police represent the tip of the iceberg of rape and sexual coercion as experienced by women in the country. A reliable numerical reflection of the problem of

sexual coercion is not possible from available data, as many of the forms, such as rape in marriage and date rape, are only visible through fragmentary evidence. These pieces of information, drawn together in this report are sufficient to suggest that the experience of non-consensual or coerced sexual intercourse at some stage in a woman's life is certainly the norm and may be almost universal. The evidence points to a conclusion that women's right to give or withhold consent to sexual intercourse is one of the most commonly violated of all human rights in South Africa.

We recommend:

- that a national survey of rape and sexual coercion should be undertaken to further describe the problem, extend understanding of at-risk groups and provide a baseline against which the effectiveness of national efforts at intervention can be judged. This should build on previous experience and best practice of research into gender violence in South Africa.

5.2 Causal and contributory factors

This report has taken its discussion of causal and contributory factors from a perspective which views rape as a social problem rather than a product of individual psycho-pathology. Whilst recognising that in a small proportion of cases individual factors are of overwhelming importance in the perpetration of rape, individualistic explanations are inadequate for understanding a phenomenon which is experienced by a very high proportion of South African women. Clearly the most important underlying causes of the problem of rape are rooted within the society, and fragmented though the data is, the conclusions firmly point to gender power inequalities and the low status of women. Other factors of importance are poverty, the generally high levels of violence in society, alcohol abuse and a culture of male sexual entitlement which is reinforced through social institutions, including marriage, and the practices of key figures in the Criminal Justice System. Considerably more research is needed in this area. There is a need for more highly contextualised data on the circumstances in which rape and coerced sex occur, the question of which women are vulnerable in which settings, and the most important contributory factors in these contexts. There is a similar need for data on perpetrators, in particular focusing on questions of which men in which circumstances and contexts coerce women into sex and the main contributory factors influencing perpetration. There is also a need for further research into the role of social institutions, for example, families, schools and so forth, in creating a climate of tolerance to rape, or resilience to rape.

We recommend:

- that social research into the contexts of rape and causal and contributory factors be prioritised and the findings used to inform aspects of the developing intervention strategy.

5.3 Developing effective and sustainable strategies: Government and community partnership

The magnitude of the problem of rape is such that it can only be effectively addressed through a committed partnership between the Government and institutions of the State, non-governmental organisations, other organs of civil society and the community. There needs to be a visible commitment from Government of resources, capacity and a sustained focus, as a prerequisite for genuine partnership.

We recommend:

- that Government revisits its commitment to tackling rape and commit resources and capacity to this which is commensurate with the magnitude and importance of the problem
- that Government seeks a genuine partnership with civil society in addressing the problem of rape.

5.4 Preventing the occurrence of rape and sexual coercion

The focus of the majority of intervention efforts have been on improving the management of the small proportion of rape cases which are reported to the police, with the assumption that increasing the risk of apprehension of perpetrators and the application of stiff sentences will be effective deterrence. Whilst this approach is of great importance, it needs to be seen as part of an overall strategic approach to rape. Strategies must, in addition, include interventions to prevent the occurrence of rape which focus on the main causal and contributory factors. In particular this should involve interventions that change prevailing gender norms and create a climate of zero tolerance for sexual coercion in communities. These interventions need to be based on research and evaluated to optimise effectiveness.

We recommend:

- that strategies to address rape include a major focus on prevention of the occurrence of rape through intervention on the main social factors which cause and contribute to the problem. Changing gender norms and create a climate of zero tolerance for sexual coercion in communities should be given high priority.

5.5 Improving the functioning of the Criminal Justice System

Although the proportion of rapes reported to the police is small in comparison to the overall problem of sexual coercion, the management thereof is critically important. In the area of rape,

the Criminal Justice System is the most visible sector of Government and the State. Its performance in response to complaints of rape is a key yardstick against which the seriousness with which the crime is taken by Government is measured. Evidence from research into the operation of this sector indicates that rape has not been considered an important crime. Little wonder that it is so common. There is a need for a much greater understanding of rape within the Criminal Justice System. Detailed research into the operations of the police, prosecutors and the conduct of investigations is needed with the identification of obstacles to case completion which are found at different stages and the development of strategies to overcome these. Where protocols and guidelines have been adopted there is a need for audit of adherence to these and exploration of problems encountered in so doing. An effective complaints system is also needed, supported by a political commitment to take action against officers who abuse rape survivors. Models of good practice need to be documented and resources made available for their replication. Research is needed into aspects of the operation of the medico-legal system, especially at a time of moving away from the use of district surgeons. It is essential that current efforts to improve the accessibility of medical examiners are also coupled with improvements in the effectiveness of medical examination and evidence collection. Protocols for medical examination also need to be widely disseminated and evaluated. The operation of the laboratory system nationwide in handling specimens should also be the subject of audit.

We recommend:

- that strategies for improving the effectiveness of the Criminal Justice System need to focus on all aspects of the system. They should be built on the principles of audit of current practice, provision of training to enhance understanding of rape and levels of technical skills and development of interventions to overcome problems in operations of aspects of the system. The process of improving the Criminal Justice System needs to be underpinned by research.
- priority should be given to identification of models of good practice and tested protocols and training programmes and ensuring that these are replicated and introduced across the country.

5.6 Interventions for rape survivors

The scant attention to the position of rape survivors in this report reflects the dearth of information on their needs and experiences beyond accessing the Criminal Justice System. At present the overwhelming provision of counselling and support for rape survivors is in the NGO sector and accessibility nationwide is very uneven. There is a need for greater support from Government for services for rape survivors, particularly in small towns and rural areas. Research is needed into factors which influence recovery of survivors after rape and which

minimise the long-term impact on their mental health and social functioning. The issue of HIV transmission during rape is rapidly rising in prominence. There is a need for the development of services for voluntary testing and counselling of rape survivors for HIV and effective and affordable prophylaxis. A research agenda needs to be developed focusing on key issues in HIV and rape.

We recommend:

- strategies to address the problem of rape to include expansion of services for counselling rape survivors and research into factors influencing recovery.
- that the question of HIV transmission during rape be addressed through the development of voluntary testing and counselling services for rape survivors and effective and affordable post-exposure prophylaxis. The most appropriate and effective ways of meeting these needs must be developed through research.

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