

Tracking Justice:

The Attrition of Rape Cases through the Criminal Justice System in Gauteng

Lisa Vetten, Rachel Jewkes, Romi Sigsworth, Nicola Christofides, Lize Loots, Olivia Dunseith



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TSHWARANANG
LEGAL ADVOCACY CENTRE
TO END VIOLENCE AGAINST WOMEN

Tshwaranang Legal Advocacy Centre to End Violence Against Women (TLAC)

Tel: +27 (11) 403-8230/4267, Fax: +27 (11) 403-4275

www.tlac.org.za



South African Medical Research Council (MRC)

Gender & Health Research Unit

Tel: +27 (12) 339-8526, Fax +27 (12) 339-8582

www.mrc.ac.za



CSVr
The Centre for the Study of
Violence and Reconciliation

Centre for the Study of Violence and Reconciliation (CSVr)

Tel: +27 (11) 403-5650, Fax: +27 (11) 339-6785

www.csvr.org.za

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Ellen Papciak-Rose (Soweto Spaza cc), www.ellenpapciakrose.com

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Lisa Vetten, TLAC
Rachel Jewkes, MRC
Romi Sigsworth, CSVR
Nicola Christofides, MRC
Lizle Loots, MRC
Olivia Dunseith, TLAC

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abbreviations

AIDS Acquired Immune Deficiency Syndrome
AOR adjusted odds ratio
CAS Crime Administration System
CIAC SAPS Crime Information and Analysis Centre
CMS Court Management System
CPA Criminal Procedure Act
DoJCD National Department of Justice and Constitutional Development
FCS Family Violence, Child Protection and Sexual Offences
FSL Forensic Science Laboratory

GBH grievous bodily harm
HIV Human Immunodeficiency Virus
IDMT Interdepartmental Management Team
NDPP National Directorate of Public Prosecutions
NPA National Prosecuting Authority
OSF Open Society Foundation
SAECK Sexual Assault Evidence Collection Kit
SALC South African Law Commission
SAPS South African Police Service
STR short tandem repeat
TCC Thuthuzela Care Centre

police stations

Gauteng police stations included in the study



East Rand	Johannesburg	North Rand	Pretoria	Soweto	Vaal Rand	West Rand
Alberton	Alexandra	Actonville	Akasia	Diepkloof	The Barrage	Carletonville
Brakpan	Booyens	Benoni	Atteridgeville	Dobsonville	Boipatong	Honeydew
Dawn Park	Bramley	Daveyton	Cullinan	Eldorado Park	De Deur	Kagiso
Elsburg	Brixton	Etwatwa	Erasmia	Jabulani	Evaton	Krugersdorp
Germiston	Cleveland	Ivory Park	Mamelodi	Kliptown	Lenasia South	Randfontein
Heidelberg	Hillbrow	Midrand	Pretoria Central	Meadowlands	Orange Farm	Roodeport
Katlehong	Jeppie	Norkempark	Rietgat	Moroka	Sebokeng	Westonaria
Kwa-Thema	Johannesburg Central	Sebenza	Silverton	Naledi	Sharpeville	
Nigel	Langlaate	Tembisa	Soshanguve	Orlando	Vanderbijlpark	
Primrose	Sophia Town			Protea Glen	Vereeniging	
Reigerpark	Yeoville					
Tokoza						
Tsakane						
Vosloorus						

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executive summary

An exploration of how the criminal justice system processes complaints of rape is essential for at least two reasons. Firstly, it establishes the measure of justice afforded rape complainants and thus enables South African society to hold criminal justice system personnel to account. Secondly, it provides insight into how and why justice may be eroded and the criminal justice system's consequent ability to deter sexual violence weakened. In pursuit of these objectives we undertook a study in Gauteng Province to describe the processing of rape complaints, as well as their outcome, from the time such complaints were reported in 2003, to the point at which they were disposed of by either the police or courts. The research also describes the characteristics of reported rape in the province.

Our study was undertaken in Gauteng Province where, in 2003, a total of 11 926 rapes were reported at the 128 police stations in Gauteng Province. A sample was drawn for the study using a two stage procedure. The first stage drew a sample of 70 police stations using probability proportional to size, where size was based on the number of rape cases reported to the police in 2003. Within each police station all the closed rape cases for the year were identified by their CAS numbers and a random sample of 30 dockets was selected (or all cases if fewer than 30 cases were reported in that year to the sampled police station). The dockets were then located either at the police station or at the specialist Family Violence Child Protection and Sexual Offences (FCS) Units and data abstracted. There was no replacement of dockets that were unavailable. This procedure provided a sample of 2 068 cases for the study. Records for those cases that went to court were obtained from both High Courts in the province, as well as all 30 magistrates' courts.

Key findings

Age significantly affects many characteristics of reported rape in Gauteng. Almost two-thirds of rapes (60.2%) reported in Gauteng in 2003 involved adult victims. Teenage girls (defined as girls between the ages of 12 – 17) comprised one in four victims (25.2%) and girls aged between 0 – 11 years one in seven (14.6%) victims.

The rape of women 18 years and older

- * Adults were three times more likely to be raped by strangers than were girls (48.1% vs 14.6%). Almost one in five women (18.8%) was raped by a current or former intimate male partner. Adults were twice as likely as young girls to be the victims of gang rape (20.0% vs 8.2%).
- * Half (49.5%) of the rapes perpetrated against adults involved an abduction where the perpetrator encountered the woman in one place and then forcibly took her elsewhere. Adult women were the group most likely to be attacked outdoors with more than one in four rapes occurring in an open space (24.9%) and a further (7.8%) occurring in an alleyway or by a road. A sizeable proportion of women were also attacked opportunistically in the course of their routine daily activities such as walking (51.9%), or while simply being at home (19.7%).
- * Rapes directed against adult women were the most likely to involve weapons, force, threat and injury. Perpetrators were ten times more likely to be armed with some sort of weapon when they raped adult women (40.9% of rapes) than when they raped girls (4.7%). In one in five cases (19.3%) this weapon was a gun. Some form of bodily force was used against 70.1% of adult women and more than one in three (38.3%) was threatened with death or injury. Injuries to the body were 20 times more likely in women as in young girls and found in 39% of adult survivors. One in two adults sustained some form of genital injury.
- * Adult women fared worst at the hands of the criminal justice system relative to girls and teenagers. Less than half of their cases (46.8%) resulted in arrests, with a trial commencing in about one in seven (14.7%) matters. By contrast one in five girls and teenagers' cases resulted in a trial. Those who raped young girls were twice as likely to be convicted (10.1%) as those who raped adults (4.7%).

The rape of adolescent girls (12 – 17 years)

Reflecting their state of transition between childhood and adulthood, the rape of adolescent girls displayed features of both child and adult rape.

- * Friends/acquaintances and neighbours accounted for 43.4% of those who raped adolescents. Just over one in four (28.6%) teenage girls was raped by a stranger.
- * Almost half of the rapes of teenage girls were preceded by abductions (44.6%).
- * Repeat abuse was also evident amongst teenage girls, of whom 12.5% had been raped before by the suspect.
- * Teenage girls were the group most likely to be raped in the perpetrator's home (39.6%).
- * Like adult women, one in three adolescents (35.5%) was threatened with either death or injury. They were twice as likely as younger girls to be threatened in this way (18.6%). They were seven times more likely than girls to sustain injuries to their bodies.
- * As was the case with young girls (55.0%), a suspect was arrested in more than half of cases involving teenage girls (56.7%). One in five teenagers' matters went to trial (21.2%) and a conviction was secured in 7.6% of their cases. However, those who attacked teenage girls were more likely to be convicted of having sex with an underage girl (46.2%) than to be convicted of rape (38.5%).

Friends/acquaintances and neighbours accounted for 43.4% of those who raped adolescents.

The rape of young girls (0 – 11 years)

- * In 2003 some very young children were raped. We found 0.2% of victims were aged a year or less, another 0.9% were two years old while three year olds accounted for 1.7% of the sample. In total, victims aged three years and younger accounted for 2.8% of all victims in our study where an age could be determined.
- * One in six young girls (16.4%) was the victim of repeat or chronic abuse.
- * Girls were twice as likely to be raped by friends/acquaintances and neighbours than were adult women (52.1% versus 24.8%). Relatives also accounted for nearly one in three (31.8%) of those raping young girls.

- * Girls were more likely to be raped in their own homes (28.5%) than either adolescent girls (17.1%) or adult women (19.6%).
- * Weapons were very rarely used in cases involving young girls (4.7%) and those used were most commonly a knife or panga. Coercion based on adult perpetrators' abuse of their authority and power was most likely to be employed against young girls.
- * Any injury to the genitals or anus was recorded in two out of three girls (65.3%) and teenagers' (66.2%) cases. Where injuries to the anus were recorded, they were most likely to be found in girls (8.4%).
- * Young girls were the group most likely to be told not to tell others about what had happened and in one in three cases did not do so. Rather, the rape was recognised either from changes in their behaviour or because they reported symptoms indicative of sexual assault.
- * More than half of girls' reports resulted in an arrest (55.0%) and over one in five went to trial (22.1%). One in ten reports made to the police resulted in a conviction (10.1%).

Perpetrators

Information was available for a total of 1 090 suspects.

- * The youngest perpetrator in our sample was 6 years old and the oldest 76 years of age. Suspects were older than survivors and there was no difference in the median perpetrator ages by the different survivor age groups.
- * One in eight (13.1%) were juvenile offenders aged 17 years and younger. More than four out of five (81.2%) juvenile offenders fell between the ages of 12 – 17. Pre-teenage child perpetrators all acted against young girls.
- * Most suspects were first-time offenders. However, almost one in five (17.8%) of those arrested had previously been found guilty of other crimes, with one-third of these previous convictions (6% in total) being for rape.
- * Just fewer than one in five rapes (17.4%) involved two or more perpetrators, with the maximum number of perpetrators involved in a gang rape being 17. In another 13.9% of cases others colluded in the planning and commission of the crime, even though they did not participate in the actual rape. The collusion of others was most likely in cases involving teenagers.

Rape and disability

Approximately 1.9% of victims had some form of disability. A disability was recoded in 1.1% of adult victims, 1.3% of girls and 3.4% of teenagers. These figures fall below the prevalence of disability in Gauteng. Our figures suggest three possibilities: under-recording of disability on the J88s and dockets; under-reporting of rape of disabled victims; or a lower vulnerability to rape amongst disabled people. The last explanation seems unlikely, given research internationally.

Rape and injury

Penetration may actually be more forceful in rape in South Africa, with 57.5% of cases resulting in an ano-genital injury. This is a higher proportion of such injury than has been found in studies conducted in the developed world. Nonetheless, a key finding of our study is that in a high proportion of rapes there were no injuries to either the genitals or other parts of the body. This confirms findings from other countries which vigorously argue that absence of injuries should not be interpreted as indicating that no rape took place.

The attrition of rape cases through the criminal justice system

Summarised below are the outcomes of the 2 064 cases in our study:

- * Half of cases resulted in arrests (50.5%) but only 42.8% of perpetrators were charged in court.
- * Trials commenced in less than one in five cases (17.3%).
- * A conviction for any crime resulted in just over 1 in 20 (6.2%) cases. However, some of these convictions were for lesser charges so overall only 4.1% of cases reported as rape resulted in convictions for rape.
- * 15.6% of rape convictions received less than the mandated 10 years minimum sentence. The other prescribed sentence for rape, life imprisonment, was very rarely observed. Thirty-four (or 41%) of men convicted of rape were eligible for life imprisonment. This was handed down in only three cases.

Trials commenced in less than one in five cases (17.3%).

The majority of rape cases (55%) in our sample were disposed of by the courts, rather than the police (45%).

- * More than half of the cases closed by the police were closed because the perpetrator could not be identified or located (52.3%). Notably, descriptions of the perpetrator were absent from more than three-quarters of victims' statements (78.4%). In more than half the dockets (52.7%), an instruction to arrest the suspect had to be issued twice or more before the investigating officer complied with it. In 30.2% of the cases where an instruction was issued on two or more occasions to arrest the suspect, he had disappeared. These particular examples of inadequate policing point to where attrition could potentially be reduced.
- * Courts disposed of cases in three ways: *nolle prosequi* decisions (16.1%), the withdrawal of matters (20.1%) and the striking of matters from the court roll (2.2%). The greatest proportion of cases were nollied on the basis that there was too little evidence to warrant a prosecution (25.7%) while the greatest proportion of cases were withdrawn due to the victim becoming untraceable (33.5%).
- * One in three (36.4%) accused was granted bail. On average, bail was set at R2 000. Only six accused skipped bail and disappeared.

Medico-legal evidence

The J88 was available for our scrutiny in 77% of cases. According to the dockets:

- * In 67% of cases a Sexual Assault Evidence Collection Kit (SAECK) was completed and in 51% of cases sent to the police's forensic laboratory. A report from the laboratory containing the results of DNA testing was available in 2% of dockets. Worryingly, in only 16.4% of cases where a suspect was arrested was his blood taken. Collecting DNA evidence from the victim is a meaningless exercise if it cannot be tested against a suspect's DNA.
- * 39% of young children had a kit completed as compared to 61% of teenagers and 77% of adults. The SAECKs of girls were significantly more likely to be analysed and a report made available after being sent to the FSL, than adults.
- * The presence of injuries, severe or otherwise, made no difference to the likelihood of a suspect being arrested. Following an arrest, cases

involving children were twice as likely to go to trial if there was a genital injury with a skin or mucosal tear.

- * A conviction for a sexual offence in adults was three times more likely if there was a bodily injury and more than four times more likely if there was a genital injury. The availability of a report on DNA made no difference to the likelihood of conviction (although DNA reports were available in very few cases).

Survivors' engagement with the criminal justice system

A sizeable proportion of victims (37%) opted out of criminal justice system processes, with two-thirds (67.2%) doing so during the course of the police investigation. Overall, 14% of victims withdrew their cases for various reasons while over one in five victims (22.9%) became untraceable. The disappearance of victims is another major point of attrition and may also disguise corruption as we cannot assume that every victim who became untraceable chose to become uncontactable.

- * The victim's residential address was not recorded in the docket in 2.5% of cases and a work address not captured in three-quarters (75.2%) of the dockets. In only 17.8% of cases were the details of a contact person in addition to the victim captured.
- * The median number of attempts made to contact untraceable victims was three, ranging from no effort whatsoever, to a maximum number of 15 attempts. In 25% of cases where the victim disappeared, as few as four days had passed between the investigating officer's first and last attempt to trace her.

The disappearance of victims is another major point of attrition and may also disguise corruption as we cannot assume that every victim who became untraceable chose to become uncontactable.

Recommendations

1. Changing social norms on rape: ending the culture of entitlement and impunity

Rape is a sexualised act of humiliation and punishment. Rape is also perpetrated by men acting on a sense of sexual entitlement, one indication of which is the finding that more rapes took place in the perpetrator's home than the victim's home, with some perpetrators even falling asleep afterwards. Such men clearly saw no need to conceal themselves. Even if they did understand the wrongfulness of their actions, then it suggests that such men feel empowered to act with a sense of apparent impunity. The fact that others acted to assist the perpetrator in committing abduction and rape, rather than preventing its occurrence, highlights the extent to which sexual violence is socially tolerated and supported. Taken together, these various behaviours show the importance of changing social constructions of masculinity predicated on the control of women. The criminal justice system needs to improve the investigation and prosecution of sexual crimes so that men and boys realise that they cannot rape with impunity.

2. Protecting young children: childcare arrangements

The study findings confirm the vulnerability of some children to rape by family members and those they know. In preventing child rape the quality and safety of childcare arrangements must be emphasised. This may include developing a greater understanding amongst parents and other caregivers of the degree of supervision required to protect children in our violent society. The government needs to raise awareness of childcare as an important aspect of child protection and to work with the private sector and non-profit organisations to provide safe, accessible and affordable childcare.

3. Protecting adult women: safe environments and transport

The findings show that many adult women live in unsafe environments that allow for opportunistic attacks by strangers, both in their homes and in public spaces. It seems likely that attention to a variety of components of urban safety could play a role in reducing some of the risks that women face. Aspects of environmental design that need attention include providing good street lighting; avoiding the location of transport nodes in deserted areas or spaces that are not peopled for parts of the day or night; avoiding the creation of

places where women may be easily trapped such as tunnels and alleyways; and designing parks and public spaces that are open to surveillance and do not provide hiding places for attackers. The government should consider economic measures that enable low income women and families to afford effective security for their homes.

4. Strengthening protection of children

Evidence from the dockets suggests that police officers are failing to grasp their role in child protection and, in particular, their responsibility to prevent children's repeat victimisation and intimidation. Police officers need to be trained to ensure that when children are sexually assaulted, their primary caregiver is established and documented. The Department of Social Development and child protection agencies designated by the Children's Act (32 of 2005) must be involved in assessing children who have been raped. The police should never close cases of child sexual abuse without having received an assessment report from such child protection services first. To remind the police of their duties in this regard, a child safety checklist could be developed and included within the docket.

5. Strengthening protection of disabled women and girls

Prosecutors, police officers and health professionals need to be trained to identify disability and make appropriate referrals when disabled people are sexually violated. Both the police dockets and J88 should record whether or not a complainant is disabled, as well as the particular form the disability takes. To increase awareness of sexual violence against people with disabilities, this information should be incorporated into the regular reporting of crime statistics. When adults with learning disabilities are raped, a referral should be made to the Department of Social Development for an assessment of the home circumstances to ensure that efforts can be made to reduce future vulnerability.

6. Keeping victims involved: enhancing record keeping in dockets and information to victims

While some of the attrition documented by the study may be unavoidable, there is also evidence of avoidable attrition. Victims and other witnesses' contact details should be verified when cases are reported and contact details obtained for others (such as family and friends) who could help make contact with victims. Workplace addresses or, in the case of children school addresses, should also

be recorded. When victims are taken home by the police after reporting the case they should be taken to the front door of their homes so that the address can be confirmed and notes made of how to find the residence again.

Further research is also required to understand why some survivors disengage from the criminal justice system and what steps could be taken to make the system more responsive to their needs. Information brochures explaining criminal justice system processes to victims and reminding them to inform the police of any change in their details could be helpful in this regard (the new Department of Health booklet for rape survivors could also be distributed through police stations, for example).

The police should develop guidelines for tracing victims and suspects to establish the minimum effort to be expended in this regard.

7. Police record-keeping

Record-keeping by the police was often poor, with the quality of statements falling well below that set out in SAPS National Instruction 22/1998. We suggest that the police develop a pro forma statement for use in rape cases similar to that used to record details of road traffic accidents. The use of tape-recorded statements should also be investigated. Overall, our findings point to the need to strengthen training, motivation and supervision related to statement-taking and record-keeping, as well as investigation of cases.

8. Ensuring arrests

The study highlighted a number of cases where it was most surprising that the accused could not have been located and arrested, given that he was a close relative or friend of the victim. The docket analysis suggested that victims were often not asked for all the information they may have had about suspects. Efforts need to be strengthened to ensure that police officers can and do arrest suspects promptly, rather than waiting to be ordered to do so by their commanding officers.

9. Medico-legal findings: need for training of health professionals and criminal justice system personnel on interpretation of injuries

Medico-legal findings, and the documentation of injuries in particular, can significantly affect the progression of rape cases through the criminal justice system. Yet the quality of J88 completion is often poor. Inappropriate conclusions drawn by the examining health professional may lead the police officer or prosecutor to draw equally inappropriate

conclusions from the J88. As a result cases are prematurely withdrawn from the system. Training health professionals to document their findings and complete the J88 correctly is essential. Furthermore health professionals and all criminal justice system personnel need to be better informed about how to interpret the presence or absence of injuries and other medical findings.

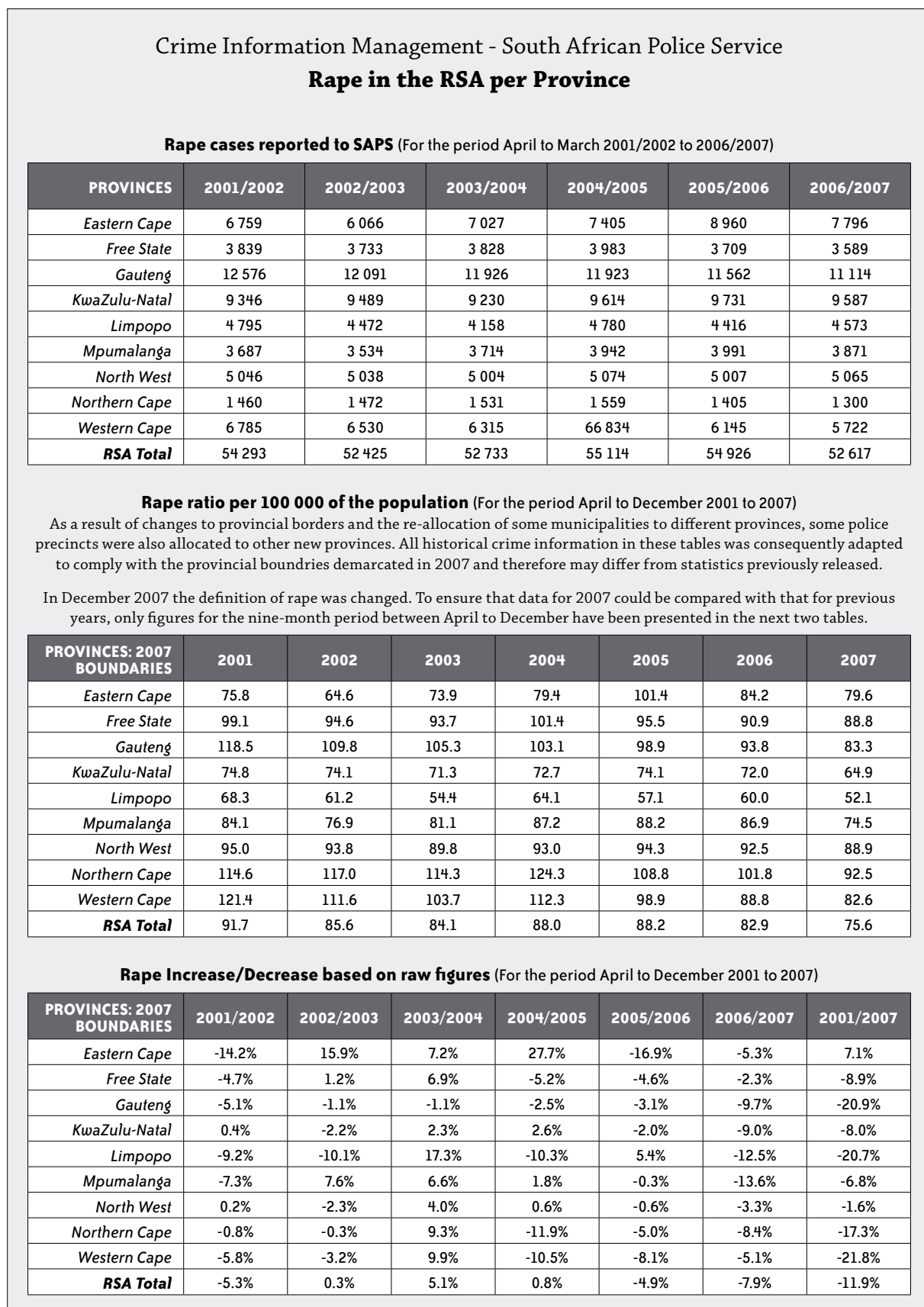
10. Enhancing the use of DNA evidence in trials: streamlining DNA collection from the accused

South Africa is one of the few developing countries equipped with Forensic Science Laboratories capable of providing DNA reports for rape trials. Yet we have shown DNA analysis to contribute very little to court proceedings. The police need to increase the proportion of cases for which SAECKs are completed and ensure that the specimens collected are actually sent to the laboratory. New systems should be introduced to remove the barrier to processing caused by delays in obtaining samples from suspects. Specimens could be collected in the form of buccal (mouth) swabs at the point of arrest by the investigating officer. Alternatively, blood specimens could be obtained at the same time blood is taken from suspects for HIV testing.

11. Understanding the nature of rape: implications for interpretation of events and findings by police and the courts

The findings challenge many of the assumptions about rape that influence police investigations and the interpretation of evidence by the courts. Particularly important in this regard are the findings relating to the use of force, the extent of resistance by victims and their likelihood of sustaining injuries. While the rape of adult women was often quite violent, we also found a high proportion of cases in which no violence was used, injuries were not sustained and victims did not offer strenuous resistance. As the new Sexual Offences Act recognises, victims can be compelled to submit to unwanted sex under a variety of coercive circumstances which do not require the use of physical force and will therefore not result in injury. We recommend that all stakeholders in the criminal justice system deepen their understanding of the wide range of circumstances in which rape occurs, including how victims and perpetrators behave before, during and after a sexual assault. A more nuanced and informed approach to the interpretation of the medico-legal evidence is also required. This is essential for extending access to justice for rape survivors.

Figure 1: Rape in South Africa per province*



*Figure 1 is based on annual statistics supplied by the SAPS (www.saps.gov.za)

I. introduction

Once a year, typically amidst a storm of controversy, the police release their annual crime statistics, which include figures for reported rape. What happens thereafter to all those reported rape complaints is unknown but for those so inclined, further trawling through the National Prosecuting Authority (NPA) or the Department of Justice and Constitutional Development's (DoJCD) annual reports to Parliament will yield data on the number of hours court personnel spend in courts, the extent of the court backlog, as well as the overall conviction rate. However, the sum of these very disparate pieces of information fails to provide a comprehensive picture of the performance of individual government departments, or the criminal justice system as a whole in relation to the processing of rape cases.

Such description and evaluation is essential for at least two reasons. Firstly, it establishes the measure of justice afforded rape complainants and thus enables South African society to hold criminal justice system personnel to account. Secondly, it provides insight into how and why justice may be eroded and the criminal justice system's ability to deter sexual violence weakened. Nonetheless, the attrition, or filtering, of rape cases has attracted little research attention in South Africa.

To address this gap, we undertook a study in Gauteng Province to describe the processing of rape complaints, as well as their outcome, from the time such complaints were reported in 2003, to the point at which they were disposed of by either the police or courts. Given that it was carried out prior to the enactment of the Criminal Law (Sexual Offences and Related Matters) Amendment Act (32 of 2007) in December 2007, it also provides a potential baseline against which to measure the impact of the new law addressing sexual violence.

The report begins by detailing in terms of South African law the process that rape cases must follow once they are reported to the police. We review what is known about the attrition of rape cases through the criminal justice system, as well as the administrative and attitudinal factors that contribute to the dropping of cases. This is followed by a description of the research methods applied to obtain the findings presented in sections three and four of the report. Finally, the report concludes with recommendations aimed at assisting the criminal justice system in providing a better measure of justice to rape complainants.

In 2003, the year chosen for our study, the common law definition of rape was still in effect (now replaced by the statutory definition contained in the new Sexual Offences Act of 2007). In terms of the common law definition, only women and girls could lay charges of rape and only men and boys be accused of the crime. Consequently in this report we refer to victims as female and perpetrators as male. We have also used the terms 'victim' and 'survivor' interchangeably. Some writers prefer to term those who have been raped as 'survivors', rather than 'victims', to emphasise the inherent strength needed to recover from rape. Others recommend using both terms but in a manner that differentiates between the stages of recovery from rape, with 'victim' more applicable to someone recently assaulted and 'survivor' more appropriate to someone increasingly able to cope with the effects of rape. We have used both terms to recognise that a violent crime has been inflicted upon someone and to acknowledge the long-term work required to cope with rape (Campbell 2001: 2).

Attrition and conviction rates in South Africa: official data

Attrition refers to the dropping or filtering of cases from the criminal justice system prior to a trial's conclusion. Because attrition may be calculated in different ways, such figures are susceptible to a certain amount of juggling, which does complicate reliance on the little official data that does exist.

For example, cases closed as 'undetected' (meaning no suspect was identified) do not reflect well on police performance. This has led the South African Law Commission (SALC) to note that something of an incentive exists amongst police officers to persuade victims to withdraw charges in those cases where there is little likelihood of identifying a perpetrator. A matter recorded as closed due to a victim withdrawal reflects better on police performance than a matter closed as 'undetected' (2000:11).

The number of case withdrawals recorded by any particular station will also be influenced by whether or not investigating officers decide themselves to withdraw a matter, or refer it to court for a decision around continuing an investigation. If the latter route is followed then such stations will record a low number of police withdrawals and a high number of prosecutorial decisions declining to prosecute particular matters (*nolle prosequi*). Comparatively speaking, their performance will appear better than those stations that take the decision themselves to withdraw matters (Artz and Smythe, 2007).

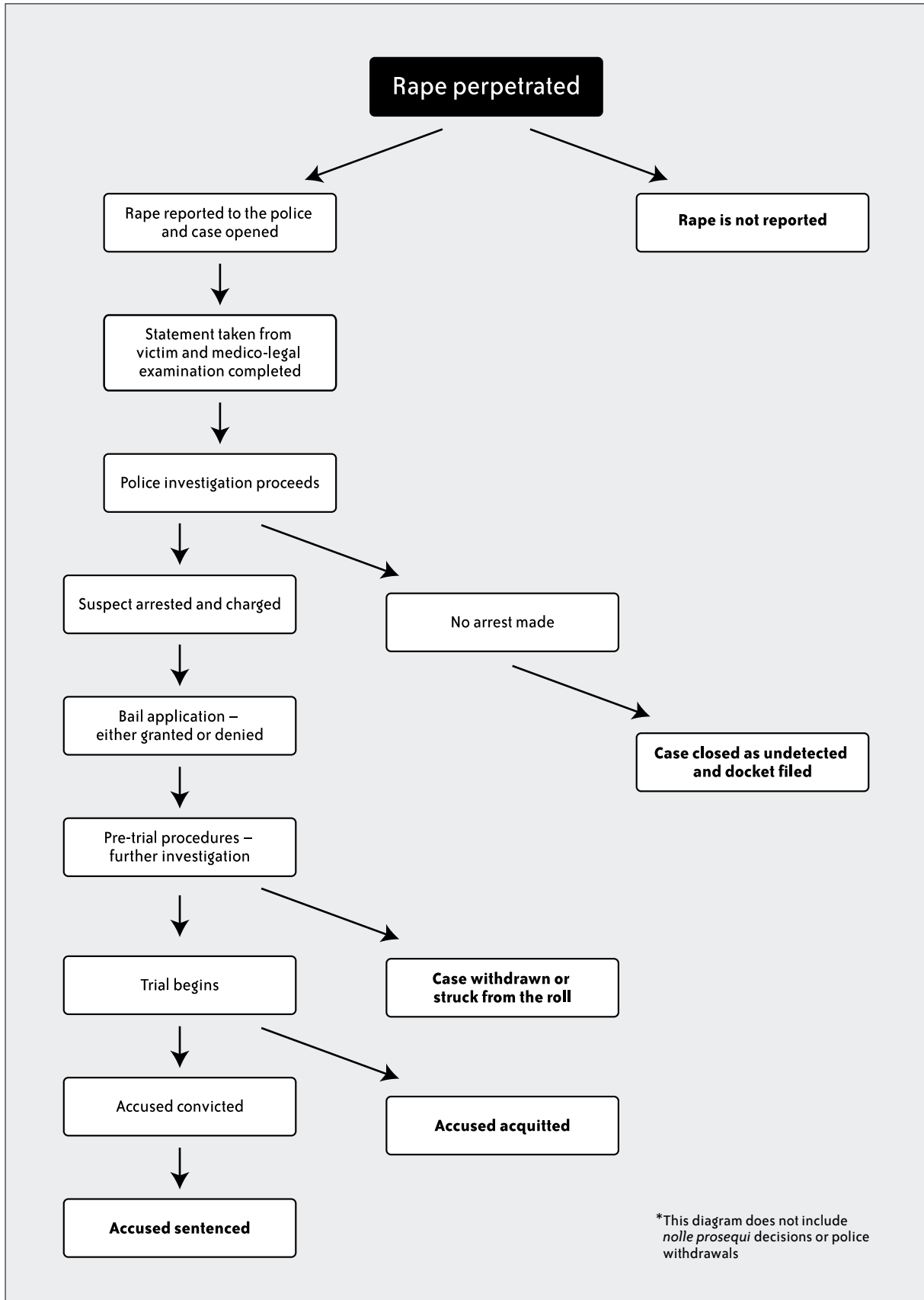
The performance of the courts is currently assessed with reference to the number of convictions secured (NPA, 2007). However, this evaluation is complicated by the fact that three different methods may be employed to calculate conviction rates: as a percentage of the number of trials; as a percentage of the total number of cases referred to court; and as a percentage of the total number of rape cases reported to the police. The NPA calculates conviction rates as a percentage of the number of cases tried, which arguably inflates the conviction rate and ignores the pre-trial filtering of cases. In addition, this approach does not take into account that a conviction is the product of the performance of the criminal justice system as a whole, rather than the courts alone, and is therefore more accurately calculated as a proportion of the number of rapes reported to the police.

Further challenges arise in calculating the conviction rate based on the number of reports made to the police. Two separate sources of data exist from which one could potentially extract such information: the Crime Administration System (CAS) maintained by the police; and the data collected through the Court Management System (CMS), a database maintained by the NPA. Because these two databases are not linked to one another, it is impossible to track the progress of individual cases across both databases. As a result, when efforts are made to calculate conviction rates as a percentage of reported rapes, researchers have abstracted these two sets of data from CAS records and CMS records for the same year. This ignores the fact that many rape cases take months – even years – to finalise and may well not have been concluded within the same year they were reported. Calculations may also be susceptible to fluctuations in the number of rapes reported from year to year, as well as the extent of the annual backlog of cases in the criminal justice system. It is therefore possible that conviction rates calculated on an annual basis may produce figures different to those obtained by tracking individual cases.

Finally, the integrity of police and court data cannot always be taken for granted. Neither the CAS nor the CMS was designed for research purposes, limiting what information may be drawn from these two data sources. Further, any data produced by these two systems is entirely dependent upon it having been recorded correctly in the first instance by the courts and police stations that process rape cases. The police themselves have noted in relation to the CAS: "A certain degree of error, especially as far as the finalisation of cases on the CAS system, also exists" (SALC 2000: 12).

On all these grounds, a study was necessitated that tracked each case to its particular outcome and did not depend on data drawn from the CAS and CMS but relied instead on analysis of source documents such as the police dockets, charge sheets and court books.

Figure 2: Stages in the investigation and prosecution of a rape complaint*



1. Reporting and investigating complaints

In understanding attrition, it is important to distinguish both between *where* attrition occurs in the criminal justice system process, as well as *how* it is accomplished (that is, how cases are disposed of by the police and courts). Cases may be concluded in variety of ways, such as through their withdrawal by the survivor, the police or the courts; the failure to identify or arrest a suspect (undetected cases); the prosecutor's decision to *nolle prosequi*; the matter being struck off the court roll; or through the conviction or acquittal of the accused.

Figure 2 presents a diagrammatic overview of the various stages in the reporting, investigation and prosecution of crimes of rape, illustrating the points at which attrition may occur.

The very first point at which cases are lost to the criminal justice system is in the immediate aftermath of rape when victims decide whether or not to report the attack. Research suggests that rape is extensively under-reported in South Africa with Jewkes and Abrahams (2002) finding only one in nine women who had been raped and also had physical force used against them, having reported the attack to the police. The vast majority of rapes therefore never come to the attention of the criminal justice system.

If police officers refuse to accept complaints from victims, then the actual moment of reporting represents the second point at which cases may be lost. In theory, while "(n)o victim may be turned away", according to section 3(1) of the SAPS National Instruction 22/1998 *Sexual Offences: Support to Victims and Crucial Aspects of the Investigation*, both Francis (2000) in the Western Cape and Andersson et al. (1998) in Gauteng report instances of women being turned away or dissuaded from reporting their experiences.

A further proportion of cases may be lost during the course of the police investigation. Cases may be closed if the allegation is considered false (or 'unfounded'), or if the accused cannot be identified. In the latter instance matters may be closed as 'undetected.' The police may also withdraw complaints in terms of SAPS Standing Order (General) 325 [SO(G) 325]: "cases of no consequence may be withdrawn by the police with an affidavit from the complainant expressing a desire to withdraw

the charges." However, the "serious cases require prosecutorial approval before withdrawal." When confronted by such "serious cases", investigating officers should refer a docket to the prosecutor to consider the merits of the case, as well as the evidence available. On the basis of this assessment, prosecutors will then decide whether or not to *nolle prosequi* a matter. Instances of the police continuing to withdraw matters themselves in disregard for this order have been noted both in parts of the Western Cape (Artz, Smythe and Leggett, 2004), as well as nationally (Interdepartmental Management Team (IDMT), 2002).

Drawing on data extracted from the CAS, the SALC commissioned research looking at the outcomes of 15 529 crimes reported in eight police areas¹ between January 1997 and April 1998. These crimes – which included rape (both of girls under 18 and adult women aged 18 and older); fraud; robbery with aggravating circumstances (referring to the use of a dangerous weapon); and murder – were then followed up some two years later in order to determine their outcome. At this point, 68% of the rape cases involving adult victims and 58% of those involving children had not made it beyond the police investigation stage (SALC, 2000). Failure to identify a suspect was the most common reason why cases did not proceed to court.

In Artz, Smythe and Leggett's analysis (2004) of rape cases managed by the Thuthuzela Care Centre in the Western Cape, 33% of cases at Gugulethu police station, 31% at Khayelitsha and 4% of cases from Manenburg police station were closed as undetected. The researchers do not suggest that Manenburg's detection rate is substantially superior to that of the other two stations. Instead, they argue that this figure is balanced out by the relatively high number of cases from this station which were nollied, suggesting that they sent more of their cases to the courts for a decision on closure, rather than taking such decisions themselves.

However, if an accused is arrested, the case should proceed to court and enter the next stage of the criminal justice system.

¹ These included Western Metropole and Boland in the Western Cape; Port Elizabeth and Cradock in the Eastern Cape; Durban and Midlands in KwaZulu-Natal; and Johannesburg and East Rand in Gauteng.

2. Suspect arrested and matter referred to court

Court proceedings against the accused commence with the filling out of the charge sheet or the issuing of a summons and the clerk placing the case on the court roll, per section 76 of the Criminal Procedure Act (CPA) (51 of 1977). Within 48 hours of being arrested, an accused must appear in court to be charged with an offence and to apply for his release on bail as per section 35 (1)(d) of the Constitution (108 of 1996). The granting of bail to rape accused is directed by chapter 9 of the CPA (as amended through Act 85 of 1997) and, in the case of juvenile offenders, section 29 of the Correctional Services Act (8 of 1959). Release of the suspect will also depend on whether the particular rape is classified as a schedule 5 or schedule 6 offence. The release of a suspect on bail and his subsequent disappearance may also result in cases being lost. Again, however, the extent of such disappearances is unknown.

The accused must periodically appear in court as further evidence is collected and the prosecutor prepares the matter for trial, with the police docket playing a central role in these pre-trial preparations. The prosecutor may issue a series of instructions to the investigating officer via the investigation diary in the docket. The docket shuttles back and forth between the police station and court as these instructions are carried out and added to. From the outset of the investigation until the trial starts, the commanding officer should be inspecting individual dockets on a monthly basis to ensure that the investigation is proceeding as it should and that both the prosecutor, as well as the commanding officer's, instructions are being implemented.

This process may result in a number of postponements at this point, not only for further investigation, but due to the docket being lost or not brought to court; the accused needing to obtain legal representation; witnesses failing to appear at court; the SAP 69 form (which details previous convictions) not being available on time; the accused's attorney failing to appear or requesting further time to prepare for trial; and the need to obtain expert evidence (Van Vuuren and van Rooyen, 1994; Vetten and Motelow, 2004).

The withdrawal of cases

When a case has been postponed a number of times, the prosecutor may choose to withdraw it rather than run the risk of having it struck from the court roll. Cases are also withdrawn on other grounds: because the accused or the victim has died prior to the trial; or, following a psychiatric evaluation, an accused has been declared unfit to stand trial and sent to a psychiatric institution in terms of section 77 of the Mental Health Care Act (17 of 2002). Cases against juvenile accused may also be withdrawn to divert young offenders out of the criminal justice system into rehabilitative programmes instead. While cases withdrawn by the prosecution may be reinstated at a later stage, it is unknown how frequently this actually occurs in practice.

Throughout this pre-trial period, prosecutors will also be assessing whether or not there is a reasonable prospect of obtaining a conviction. Generally, those cases perceived to be weak will be withdrawn and only the promising cases tried to ensure that resources are focused on the cases most likely to result in prosecutorial success (SALC, 2000). Factors influencing the likelihood of a conviction generally include the nature of the offence (some cases, like drunken driving are easier to prove than others, such as rape); the quality of the police investigation; individual prosecutors' experience and ability to effectively present the state's case; the likelihood of the accused pleading guilty; and the quality of the accused's legal representative (*ibid*: 19 – 20).

Of those cases in the SALC study (2000) that resulted in a suspect actually being charged in court, roughly equal numbers of cases were withdrawn as those that proceeded to trial. Fifteen per cent of cases involving adult rape victims were withdrawn while 14% proceeded to trial. Eighteen per cent of child rape cases were withdrawn and 18% resulted in a trial. The report does not, however, specify what proportions of these withdrawals were instigated by the victim, the police or the prosecution services.

An analysis conducted by the SAPS Crime Information and Analysis Centre (CIAC) found 43% of rape cases to have been withdrawn by either the police or courts. A subset of 789 dockets withdrawn in 1999 was analysed by the CIAC, which found that 46% of these cases had been withdrawn at the victim's request, a further 36%

by the Directorate of Public Prosecutions (DPP) and 14% by the police. Matters were withdrawn chiefly because the matter had been resolved between the two parties and/or their families (19%); or because the victim could not be found (17%); or because the available evidence was inconclusive or contradictory (15%). The victim admitting that she had made a false complaint accounted for 7% of withdrawals (IDMT, 2002).

Women's reasons for withdrawing complaints have not been well-explored. In the only study to undertake some limited exploration of this question, court records indicated that withdrawals were prompted by the victim and accused reconciling in some instances and, in others, by the victim stating that the ongoing trauma of her experience made it too difficult to continue with trial processes (Vetten and Motelow, 2004).

Striking matters from the court roll

Apart from withdrawals, cases may also be concluded pre-trial due to the magistrate striking the matter from the court roll.

Repeated requests by prosecutors for postponements will elicit objections from the defence on the grounds that any further postponements will be unfairly prejudicial to her/his client's rights or interests. Section 342A(3)(c) of the CPA gives courts the power to deny a prosecutor's request:

If the court finds that the completion of the proceeding is being delayed unreasonably, the court may issue any such order as it seems fit in order to eliminate the delay and any prejudice arising from it or to prevent further delay or prejudice, including an order that where the accused has not yet pleaded to the charge, that the case be struck off the roll and the prosecution not be resumed or instituted *de novo* without the written instructions of the attorney general.

Thus, it is at the magistrate's discretion to strike the case off the roll if s/he thinks the accused is being unfairly prejudiced by the delay.

The statute further mandates taking into account considerations such as reason and blame for the delay, as well as prejudice to either party caused by a weakening of the evidence, the disappearance of witnesses, as well as the interests of the public. The question of what constitutes

an unreasonable delay remains at the discretion of the magistrate, but the Constitutional Court has warned against applying 342A lightly. In *Wild v Hoffert NO 1998 (6) BCLR 656 (CC)*, the Court refers to granting a stay of the prosecution, as with 342A, a "drastic remedy," to be taken only when the accused's right to a fair trial has been impaired (987 paragraph G).

The trial

A trial officially begins when the accused pleads either 'guilty' or 'not guilty.' If the guilty plea is accepted by the court, the matter moves straight to the sentencing phase of the trial. If he pleads not guilty, the trial opens with the prosecution presenting its case. If the prosecution wishes to halt trial proceedings at any point after the accused has pleaded but before judgement has been passed in respect of that particular charge, then section 6(b) of the CPA may be invoked. The defence may also apply for a trial to be stopped in terms of section 174 of the CPA. If a section 6 or section 174 application is successful, then the accused must be acquitted.

In the SALC analysis of conviction rates and case outcomes, rape cases involving adult victims were less likely to result in convictions than cases involving child victims. Just under 10% (or 9.1%) of children's cases resulted in convictions, as opposed to 5.0% of adult victims' cases (SALC, 2000).

A similar difference between the conviction rates for children and adults' cases was documented in a review of NPA records produced in 2002 by the IDMT (comprising the SAPS, the National Directorate of Public Prosecutions (NDPP) and the Departments of Health and Social Development). (The IDMT calculations were based on comparing the number of rapes reported to the police in 1999 with the number of convictions recorded by the NPA for that same year.)

The IDMT report noted an average conviction rate nationally of 7.7%, with 8.9% of children's cases and 6.8% of adults' cases resulting in convictions. This rate varied across provinces. Mpumalanga, the worst-performing province, recorded a 3.1% conviction rate for cases involving children and a 4.1% rate for cases involving adults. Gauteng was the third worst-performing province, recording a 7% conviction rate for cases of child rape and 4.9% for adult rape. The best-performing province was the Northern Cape which recorded a 16.8% conviction rate overall.

The SALC analysis also underscores how conviction rates may vary according to area. Cradock in the Eastern Cape and Boland in the Western Cape recorded the highest conviction rates for both child and adult rape, as well as in relation to the other crimes analysed. Cradock's conviction rate for the rape of girls under 18 was double that of Johannesburg. In relation to adult women, their conviction rate was five times that of Johannesburg – which had the lowest overall conviction rate for all crime types analysed by the study (2000: 25).

Specialist facilities such as sexual offences courts and Thuthuzela Care Centres (TCC)² have been established partly with the aim of improving conviction rates and may well be producing higher conviction rates than ordinary, non-specialist courts. Statistics presented to parliament by the NPA in 2004 indicated that the specialist sexual offences courts achieved a 62% conviction rate for rape, in contrast to the 42% conviction rate achieved by regional courts (Office of the National Director of Public Prosecutions Sexual Offences and Community Affairs Unit, 2004). Of the 405 cases reported to the TCC at Jooste Hospital linked to the specialist sexual offence courts at Wynberg in the Western Cape, 71 (17.5%) resulted in convictions (Artz, Smythe and Leggett, 2004).

Clearly these figures for specialist courts have been calculated almost exclusively in relation to the number of rapes that proceeded to trial. Their conviction rates relative to the number of rapes reported to the police is unknown (with the exception of the TCC figure). It is also unknown what percentage of cases was withdrawn first to produce these conviction rates. Indeed, a high withdrawal rate intended to weed out all but the strongest of cases, could produce a high conviction rate.

None of these studies report on the number of rape cases which resulted in competent verdicts – findings of guilt for crimes less serious in law than rape. These result when an accused is charged with rape but found guilty of the lesser charges of section 14 (sex with an underage girl, popularly

known as statutory rape), or section 15 (the offensively-entitled 'sex with a female imbecile') contained in the recently-repealed Sexual Offences Act (23 of 1957). Other possible competent verdicts include the common law crimes of indecent assault or assault with intent to cause grievous bodily harm (GBH). Conviction on a lesser charge has obvious implications for an accused's sentence.

Cradock's conviction rate for the rape of girls under 18 was double that of Johannesburg. In relation to adult women, their conviction rate was five times that of Johannesburg – which had the lowest overall conviction rate for all crime types analysed by the study (2000: 25).

Sentencing rape accused

Sentencing in rape cases is informed by minimum sentencing legislation (previously sections 51 and 52 of the Criminal Law Amendment Act, no 105 of 1997 made permanent in December 2007 via the Criminal Law (Sentencing) Amendment Act, no 38 of 2007).

Broadly speaking, a minimum sentence for rape is determined with reference to an accused's previous convictions and/or selected characteristics of the particular rape. Ten years is the recommended sentence for an accused convicted of rape for the first time; fifteen years for a second rape conviction (or a conviction for indecent assault of a child under the age of 16 involving the infliction of bodily harm; or assault with intent to cause grievous bodily harm on a child under the age of 16; or offences contravening section 36 of the Arms and Ammunition Act of 1969); and twenty years for a third conviction for rape (or a conviction for indecent assault of a child under the age of 16 involving the infliction of bodily harm; or assault with intent to cause grievous bodily harm on a child under the age of 16; or offences contravening section 36 of the Arms and Ammunition Act of 1969). Life imprisonment is mandated for those convicted of two or more offences of rape, but who have not yet been sentenced in respect of such convictions.

Life imprisonment is also mandated when the victim is younger than 16; or is physically disabled and rendered particularly vulnerable to victimisation due to her disability; or is mentally ill. When the rape is accompanied by the infliction

² These centres act as a 'one-stop shop' for rape-care management, streamlining a network of existing investigative, prosecutorial, medical and psychological services in the hospital where they are located.

of grievous bodily harm to the victim; where the victim was raped more than once, whether by the accused or by any co-perpetrator or accomplice; or where the victim was raped by more than one person, where such person acted in the execution or furtherance of a common purpose or conspiracy, life imprisonment should again result. Finally, if the accused knew that he had HIV/AIDS at the time of the rape, then life imprisonment should also be imposed as the mandatory sentence.

Deviation from any of these minima is only permissible when “substantial and compelling circumstances” are found to exist.

Research commissioned by the Open Society Foundation (OSF) (O’Donovan and Redpath, 2006), as well as that commissioned by the SALC (Paschke and Sherwin, 2000) has examined the impact of the minimum sentences. The SALC investigation concluded that the legislation had increased the average sentence for rape from eight to ten years but had also created a distinction in sentence severity, with those convicted of raping girls under 12 more likely to be given substantially longer sentences than those convicted of raping adolescents and adults. The OSF research also found sentences for the prescribed crimes to have increased as a result of the legislation. However, they observed that the legislation was neither systematically nor consistently applied (O’Donovan and Redpath, 2006).

3. Factors contributing to and affecting attrition

Overall, a certain amount of attrition is inevitable. Some perpetrators may never be identified and some victims, for a variety of reasons, may well decide that pursuing a complaint is not in their best interests. In still other cases, there may genuinely be insufficient evidence to prove a matter beyond reasonable doubt. What becomes of central concern then, is the extent to which a natural rate of attrition is exacerbated by a combination of weak administrative practices and prejudicial attitudes towards rape victims.

The administration of criminal justice in South Africa

The SAPS employs 234 police officers per 100,000 citizens in comparison to the 380 officers employed in countries for which data is available. Justice employs six prosecutors in comparison to the seven employed internationally.³ Our high crime rate also affects the availability of criminal justice personnel. With seven police officers per murder versus 158 internationally, and 0.14 prosecutors per murder versus 2.6 prosecutors internationally, South African criminal justice officials have higher workloads than officials in most other countries for which data are available (Altbeker, 2005). This understaffing of the criminal justice system has obvious implications for the quality of police investigations and court prosecutions.

Ideally, 20 dockets is the maximum number any detective should be investigating at any one time, according to a 1996 SAPS evaluation. In 2004 detectives working at Gugulethu, Khayelitsha and Manenberg were carrying anything between 27 to 300 dockets for all types of crimes, with anything between 1% to all of these dockets being rape investigations. The most rape cases being investigated by any one individual was 178 (Artz, Smythe and Leggett, 2004). This state of affairs led one researcher to observe that detectives appeared caught up in “perpetual crisis management, responding to whoever yells the loudest...The women

³ In their 2006/07 annual report the NPA reported a 24% vacancy rate.

who get their cases attended to are the ones who show up at the station and demand it.” (*ibid*: 72).

Other factors identified as affecting the quality of rape investigations included lack of proficiency in particular languages; lack of telephones or work contact details for victims and witnesses; difficulties in locating temporary addresses; a shortage of working vehicles; and difficulties in accessing areas without streets or lighting, particularly after dark. This challenge particularly affected survivors who lived in informal settlements with no street names and numbers and where the layout constantly changed as people picked up and moved their shacks (*ibid*). Corruption also contributes to the loss of cases, with 37% of police officers interviewed for the CIETafrica study claiming that one or more of their rape cases had been mishandled due to corruption (Andersson et al., 1998).

The victim’s statement is central to the investigation and prosecution of her matter. According to SAPS National Instruction 22/1998, the “victim’s statement must be comprehensive. (Rather write too much, than too little).” Annexure C of the instructions then sets out a checklist of 77 details that should be included in the victim’s statement.⁴ Yet even such prescriptiveness has not been sufficient in ensuring the quality of the statements taken by the police (Artz, Smythe and Leggett, 2004; SALC, 2002; Stanton, Lochrenberg and Mukasa, 1997).

With writing on the South African legal system’s response to rape having tended largely to focus on the law’s stereotyping and mistreatment of women (see for example Bronstein, 1992; Combrinck, 1995; Jagwanth and Schwikkard, 1998; Schwikkard, 2003), or the impact of specialist sexual offences courts on reducing the secondary victimisation of rape survivors (Stanton, Lochrenberg and Mukasa, 1997; Sadan, Dikweni and Cassiem, 2001), there is little

⁴ Apart from the obvious details of the crime, the checklist also includes: how the suspect approached and maintained control of the victim; exact words spoken; a description of anything touched by the perpetrator; a continual description of the victim’s state of mind during the whole incident; whether the suspect was circumcised or not; whether the suspect took steps to avoid leaving fingerprints; a full description of the suspect from head to toe; and the inclusion of the fact that the victim did not give consent, even if this is obvious.

information available about courts’ day-to-day management of rape cases. However, a lack of co-ordination between investigating officers and prosecutors in relation to the evidence required to prosecute a rape case has been noted. Who should guide the investigation can also be a source of tension leading to a less-than harmonious relationship between prosecutors and detectives (Artz, Smythe and Leggett, 2004).

As with the police, a high caseload limits the amount of time available to prosecutors to consult with witnesses and prepare for trial. The high caseload, combined with a court backlog and the pressure to secure convictions, can unfortunately create a perverse incentive to withdraw cases. The many postponements referred to earlier may also lead to witnesses not coming to court or becoming untraceable (Vetten and Motelow, 2004). The loss of witnesses obviously has a negative impact upon the strength of the prosecution’s case.

Instances have also been recorded of both magistrates and prosecutors failing to adhere to the rules of evidence and procedure applicable to rape during the course of a trial (Vetten and Motelow, 2004; Bronstein, 1994). Whether these are isolated lapses or illustrations of a more widespread systemic failure by the courts has yet to be determined.

Attitudes towards rape

US scholar Susan Estrich (1987) argues that an informal distinction exists in practice between ‘real’ rapes and ‘simple’ rapes. Real, or aggravated, rapes are perpetrated by violent strangers, who are typically also armed and ready to injure their victims. Simple rapes by contrast, typically occur between people known to, or intimately involved with, one another and rarely result in injury. She contends that the latter are treated dismissively and disbelievingly in comparison to those rapes categorised as ‘real.’ Because such ‘simple’ rapes do not readily result in corroborating evidence, they are more challenging to prosecute, making belief in the victim and her credibility central to determining case outcomes.

Assessing credibility is a subjective exercise made vulnerable to misconceptions and stereotypes about rape, victims and perpetrators. The ‘real’ rape scenario described in the previous paragraph illustrates a number of these stereotypes. Others include the belief that rapists

are abnormal, deviant or otherwise ‘sick’ men; that women often falsely accuse men of rape; that women can successfully resist rape if they really want to; that women provoke rape through their behaviour or dress; and rape is a crime of sexual passion (Ward, 1995).

South African law elevated many of these stereotypes to the status of legal fact through the cautionary rule around sexual offences that obliged judicial officers’ to treat rape complainants’ evidence with caution and to always be ready to speculate about their hidden motives in laying the charge. Legal decisions are replete with female caricatures such as the sexual neurotic prone to fantasy, hysteria and subtle mental complexes – including an “unchaste mentality” that concocts imaginary sex incidents in which she is cast as victim or heroine (*S v Balhuber* 1987 (1) PH H22 (A); see also *R v Rautenbach* 1949 (1) SA 135 (A)); the unmarried, pregnant woman who accuses someone of sound financial standing of rape to ensure the child is provided for financially (Hoffman and Zeffert 1998: 579); the hysterical neurotic who imagines things that did not happen (*ibid*: 580); and the spurned woman who concocts false rape claims out of wounded vanity and spite (*ibid*). Her sister is the vengeful woman seeking redress for an affront to her pride and dignity (*R v M* 1947 (4) SA 489 (N)). Still others include the convincing liar gifted with the ability to implicate the wrong man (Hoffman and Zeffert 1989: 580); the woman who changes her mind after sex due to shame, disgust or remorse (*S v Balhuber* 1987 (1) PH H22 (A)); the woman with a motive to implicate the accused falsely for secret, hidden reasons difficult to divine (Hoffman and Zeffert 1989: 580); and finally, the unfaithful or dishonest woman who concocts a rape claim to cover up sex with a man other than her regular male sexual partner (*S v Balhuber* 1987 (1) PH H22 (A)).

While the Supreme Court of Appeal⁵ effectively abolished the blanket application of this particular cautionary rule in 1998, finding it to “unjustly stereotype” rape complainants, as well as to be both “irrational” and “outdated” it still left judges the discretion to apply a “cautionary approach” to particular cases.

⁵ See *S v Jackson* 1998(1) SACR 470 (SCA).

More recently, section 59 of the new Sexual Offences Act legislated that no negative inference may be drawn from there being a delay between the commission of a sexual offence and its reporting. This was to counteract the assumption underpinning the “hue and cry” rule that true victims of rape tell others of the violation done to them at the first reasonable opportunity. Where such delay existed, defence lawyers have been able to raise doubt as to the veracity of rape victims’ claims.

Where such beliefs have been embedded in the law, they can only have influenced, to victims’ detriment, police and prosecutors’ understanding of what constitutes convictability. However, no South African research exists testing how these beliefs affect the disposal of cases.

Despite being some twenty years old, Estrich’s categorisation of rapes as either ‘real’ or ‘simple’ has remained highly influential. However, research conducted internationally provides mixed support for the impact of both this characterisation and other misperceptions upon the processing of rape cases.

In New Zealand, factors identified as negatively impacting upon victims’ credibility to the police include their being drunk or high; having delayed reporting; having had previous consensual sex with the accused; having a prior experience of rape or abuse; having a psychiatric disturbance or intellectual impairment; being perceived as ‘immoral’; having withdrawn a previous rape allegation; and having attempted to conceal or withhold particular information about aspects of the rape (Jordan, 2004). Bachman’s analysis (1998) of US Crime Victimisation Survey data for 1992 – 1994 found no contextual factors (including the victim-offender relationship, the presence of a weapon, injury to the victim and the location of the rape) to predict the likelihood of a rape accused being arrested. However, she notes a greater number of accused known to their victims were arrested than those who were strangers – but attributes this to the fact that it is considerably easier to identify and apprehend a known suspect than a complete stranger.

With their orientation towards convictability, prosecutors are similarly influenced by conceptions around real rapes and legitimate victims (Spohn, Beichner and Davis-Frenzel, 2001; Frohmann, 1991; Frohmann, 1997). However, prosecutors’ decisions to reject cases are not exclusively determined by the victim’s character, reputation or

behaviour. Victims' cooperation with prosecutorial services and their willingness to proceed with matters also forms an important component of prosecutors' decisions around whether to proceed with a case or not (Spohn, Beichner and Davis-Frenzel, 2001; Kerstetter, 1990) – as it also does with the police (Kerstetter, 1990).

Adler (1987), writing in the context of the UK's criminal justice system, has proposed six factors that predict the successful prosecution of a rape complaint. These include: the victim's sexual (in)experience; the presence of resistance and injury; the accused being unknown to the victim; whether the victim may be characterised as 'respectable'; the victim laying a complaint immediately or very soon after the actual incident; and the absence of any consensual sexual contact between the two parties prior to the rape.

Canadian data found the accused's use of physical force to be the only statistically significant predictor of conviction (Du Mont and Myhr, 2000). Cases involving women who did not resist the assailant were less likely to result in charges than cases involving women who physically resisted (Kerstetter, 1990; Du Mont and Myhr, 2000).

There is some limited anecdotal evidence to suggest that a few of these factors may be influencing South African criminal justice system personnel's approaches to rape. Certainly, the nature of the relationship between the victim and the accused appears to affect police officers' willingness both to accept and investigate rapes reported by women against their former boyfriends (Francis, 2000). A similar reluctance on the part of prosecutors to proceed with such cases was also noted in a case study of Boksburg Court in Gauteng (Vetten and Motelow, 2004). Such reluctance may not necessarily be fuelled by doubts about the victim's truthfulness; it is also informed by police and prosecutors' perceptions that such victims are more likely to withdraw their matters than other victims – thus 'wasting' police and prosecutors' time and other resources (*ibid*).

Certainly, the nature of the relationship between the victim and the accused appears to affect police officers' willingness both to accept and investigate rapes reported by women against their former boyfriends (Francis, 2000).

Conclusions

In conclusion, on the basis of the small-scale and limited number of South African studies conducted, it appears as if the majority of rape cases are lost during the course of the police investigation, between women's attempts to report the crime done to them and the police's arrest of the suspect. These studies also suggest a differentiation between cases involving adult women and those involving girls. Proportionally more cases involving child victims are referred to court and result in a trial than those involving adult women. And where a conviction results, men who rape children are likely to be imprisoned for longer than those who rape adult women.

This review also suggests that case attrition is a complex phenomenon shaped by the interplay of a range of factors including the law applicable to rape; prosecutors' concerns with convictability; stereotypical perceptions about real rape and legitimate victims; bureaucratic concerns with case flow management; and the constraints imposed by under-resourcing of the criminal justice system. In addition, attrition not only results from police and prosecutorial decision-making but is also influenced by individual rape survivors' decisions about what is in their best interests.

II. methodology

The aims of this study were: to describe the characteristics of reported rape in Gauteng province; and to describe the processing of rape cases by the police and courts at selected courts and police stations. In order to meet these aims we conducted a retrospective review of records held by the police and courts on a random sample of rape cases reported to the police in Gauteng Province in 2003. All cases selected would have met the common law definition of rape in force at the time: “intentional, unlawful sexual intercourse with a woman without her consent.”

Sampling

We selected a sample of cases reported to the police in the calendar year 2003. This year was chosen on the basis that it was both recent enough to provide a fairly accurate reflection of the current functioning of the criminal justice system, but also sufficiently distant to ensure that the vast majority of cases reported in that year were likely to have been concluded by the time of the fieldwork. We did not have permission to access open cases and so it was important that almost all cases should have been closed as our sample would have otherwise been biased.

In 2003 a total of 11 926 rapes were reported at the 128 police stations in the Province. A sample was drawn for the study using a two stage procedure. The first stage drew a sample of 70 police stations using probability proportional to size, where size was based on the number of rape cases reported to the police in 2003. Within each police station all the closed rape cases for the year were identified by their CAS numbers and a random sample of 30 dockets were selected (or all cases if fewer than 30 cases were reported in that year to the sampled police station). The dockets were then located either at the police station or at the specialist Family Violence, Child Protection and Sexual Offences (FCS) Units and data abstracted. The proportion of dockets from which we were able to draw the sample was 70.1%. We were unable to

ascertain how many dockets were not available, either because they were still open or were missing for other reasons. There was no replacement of dockets that were unavailable. This procedure provided a sample of 2 068 cases for the study.

We obtained court records from both High Courts⁶ in the province, as well as all 30 magistrates' courts in the province. While most court records were from the regional courts, in some instances we used district court records for missing information (particularly with regard to bail).

To be eligible for inclusion in the study, cases of rape had to have been reported to the police between 00h00 on 1 January 2003 and 23h59 on 31 December 2003 at the Gauteng police stations selected. The cases were those classified by the police, at the time the docket was opened, as crimes of rape and attempted rape. Cases of rape were defined for the purposes of the study as assaults against an individual victim. Thus if one man raped two victims this was counted as two cases of rape. If one man raped a victim twice, or one victim was raped by two or more men, it was counted as one case of rape.

⁶ Witwatersrand Local Division (WLD) and Transvaal Provincial Division (TPD).

Sources of data

Before individual stations were approached, permission to review closed rape dockets was first obtained from the national police and then the Gauteng provincial police structure. Court documents are a matter of public record, with section 233(2) of the CPA allowing any member of the public, on payment of the requisite fee, to obtain copies of such records. This provision makes it unnecessary to obtain permission from either the DoJCD or the NPA to view public documents.

On the whole, most courts were familiar with the notion that court records are public documents and, given the requisite prior warning, happy to assist us in gaining access to information. However, a small minority of courts⁷ was either unaware of section 233(2) or unwilling to interpret it correctly. While a letter of permission authorising access to court records was obtained from the national DoJCD, considerable difficulty was experienced in obtaining the necessary permission from the regional office of the DoJCD. When, after four months, neither letters nor telephone calls were successful in eliciting any kind of response from the regional office, TLAC approached the Open Democracy Advice Centre (ODAC) for assistance. A formal complaint, coupled with the threat of litigation, produced the required permission within three days and enabled us to finalise the study.

Three data capture instruments were used in the study. The first recorded information from the police docket and was abstracted by a team of trained fieldworkers. The docket, essentially a file, has three sections consisting of: direct evidence (such as witness statements), the J88 on which the medical examination and its findings is documented and any other reports, including that from the Forensic Science Laboratory if available; administrative correspondence peripheral to the case; and the 'investigation diary', which consists of written communications between the investigating officer, a superior police officer and the prosecutor.

Fieldworkers read through the sampled dockets and recorded: the details of the victim,

the circumstances of the rape and her behaviour after the rape; details of the perpetrator (where they were available); whether, when and how the perpetrator was arrested; whether and when he was charged, taken to trial and the outcome of the case. If cases did not proceed to arrest and then trial, information was gathered on reasons for non-progression. The data sheet contained both closed and open questions. Closed questions were used for items where the range of responses was well defined, such as age, language, occupation, dates or where there were a limited range of likely responses e.g. use of weapons. Open questions were used for items where coding in police stations was likely to lead to inconsistency. This included the circumstances of the rape, instructions given during the rape and actions taken afterwards. These were coded after the end of the data collection by the project team, with one individual working on all dockets to ensure consistency.

All J88s found in dockets were copied verbatim onto the first data capture sheet. Those found in court records were photocopied. Information from the J88s was abstracted by three health professionals on the study team onto a second form prepared for data entry. This collected information on the examination performed, history relevant to the rape, findings of the examination and conclusions. The form was completed after the end of data collection to maximise consistency.

The third data capture sheet was developed by a legal professional and legal researcher and used to record information about those cases that went to court. Fieldworkers photocopied the charge sheet in its entirety and, when it was not available, all information in the court book entries applicable to the accused. Trial and sentencing transcripts were also sometimes relied upon for information about conviction and sentence. Information transferred to this data sheet included details of bail and all appearances in court, postponements, reasons for withdrawals at court, dates of the trial (if any) and its outcome. If there were multiple perpetrators, the information on their legal processes was recorded separately for each one. For the purposes of the study, the information found at court was regarded as the most authoritative record and where information in the docket conflicted with court information, the court information was used.

⁷ These were the Westonaria, Sebokeng, Roodepoort and Krugersdorp courts.

Not every case had information to enable the completion of all three data sheets, with some cases not having J88s (either because it had not been filled out or could not be located) and other matters not having progressed to court.

Confidentiality and ethics

Information about individual rape victims is highly sensitive, with the publication of their names and contact details strictly proscribed by sections 154 and 335A of the CPA. All data were de-identified by creating a unique identification number for each case. No identifying information such as names, CAS numbers or identification numbers were captured on the data collection tools. A separate sheet linking CAS numbers to the identification numbers was kept in order to find the appropriate court records in cases that had progressed to court. These records were kept securely by the Principal Investigator and destroyed once the court information had been located. All completed data coding sheets were kept securely at the Medical Research Council. No attempt was made to contact either the victim or accused. Ethics approval was given for the study by the University of Witwatersrand Faculty of Health Sciences Ethics Committee.

Tracking cases from police stations to courts

Wherever possible, fieldworkers obtained a computer printout of all rape dockets recorded on the station's CAS and then randomly sampled from this list. Once an accused had been arrested, the case was then allocated a court number and the docket sent to court. However, at the time of the study, none of the courts kept electronic records for rape cases originating in 2003 and all court records thus had to be searched for manually.

The police dockets usually recorded the court number, court dates and the outcome of the case on their front cover. Once this number had been identified, a list of cases for each court was compiled and submitted to the clerk of the criminal court. Under ideal circumstances this list should have produced a copy of the charge sheet for each case. Charge sheets provide the most comprehensive record of court proceedings, detailing bail applications, postponements and their causes, the (non) appearance of witnesses, the failure of dockets to be brought to court, the focus of further investigations and the response of magistrates and defence attorneys to delays in

proceedings, amongst other things. In the absence of the charge sheets, we then turned to the court book and investigation diaries for information.

Each court maintains a book recording the day's proceedings. In comparison to the charge sheets, the information in the court books is scant. Entries are spread across two pages and include the name of the accused, the crime of which he or she is accused and the outcome of their appearance in court for that particular day. Generally, some note was also made as to whether or not the accused was in custody or out on bail for each appearance. This entry also contained the date and courtroom to which the case was postponed or remanded. With both the courtroom number and date, we were then able to trace the next appearance of an accused up until the matter was withdrawn, struck off the roll, or tried.

Data analysis

The three data capture sheets for each case were entered separately into an Epi-info database and then merged. The data was cleaned and any errors identified corrected. In a few cases when discrepancies were found between data sources that were incompatible with other data and veracity could not be resolved, the response was set to missing. The data was analysed in Stata 10.0 at the Medical Research Council. The analysis took into account the survey design and used the `svy` commands of Stata. The distribution of variables was described for the whole sample and for the victim age groups 0 – 11 years, 12 – 17 years and 18 years by calculating medians and ranges or means (as appropriate) or frequencies.

In some cases associations between two variables were examined and tested using Chi-squared tests or Fisher's exact tests (as appropriate). To explore the impact of medico-legal findings and evidence on case progression and outcomes we built a series of logistic regression models which examined cases of arrest versus non-arrest in all cases reported to the police; the trial commencing versus not in cases where there was an arrest; and, in those cases that went to trial, a conviction for a sexual offence versus an acquittal. Separate models were built for adult and child (age <18) cases and adjusted for the victim's age and, where appropriate, the victim/perpetrator relationship; the victim having reporting within 72 hours; and whether a first witness statement was taken or not. The results of these models are discussed.

Response rate

The study was designed to enable the findings to be generalised to rapes reported to the police in the province of Gauteng. However, while data were collected from all 70 police stations selected for the study, it was not possible to determine precisely the proportion of dockets at each police station that met the eligibility criteria for the study. This was due to our not being able to obtain figures for the proportion of rape cases still open at the time of the field work. From the data gathered it was apparent that 70.1% of dockets opened in 2003 were available for sampling.

This study has a considerable advantage over previous work in that the sample was drawn from an entire province over a year and data was collected from multiple sources and cross-verified between them (where possible). Some caution is still needed in generalising from the results as only an incomplete range of dockets were available for inclusion in the study. Some dockets could not be found due to misfiling, with dockets from different years and months sometimes organised in the same bundles.⁸ Other dockets may have been unavailable due to corruption. Further, some dockets still remained with the specialist FCS Units and had not been returned to the station where the complaint originated while others had been reopened for investigation. As it happened, the study coincided with a police operation reviewing all closed dockets to ascertain whether or not further progress could be made on these cases. It is impossible to determine whether the non-available dockets would have differed in important respects from the dockets available for the sample. However, it seems likely that the unavailable dockets included both those that had been closed very early due to corruption and so would contain few investigation details, as well as those that may have been re-opened because they contained more information on which to pursue legal action. It is also possible that as a result of the review process, slightly more cases may have resulted in arrests and prosecutions. But given that such reviews are extraordinary, any slight increase in arrest, trial or conviction rates that may have

⁸ Police stations with disorganised docket stores included Rietgat, Sebenza and Kwathema.

been produced are not reflective of the routine processing of cases. Arguably, our results describe what typically occurs during the course of an investigation and prosecution.

This study has a considerable advantage over previous work in that the sample was drawn from an entire province over a year and data was collected from multiple sources and cross-verified between them (where possible).

Limitations of the study

This study was based on data that was generated for particular purposes that did not include research. As a result we had no control over the completeness of information or its availability. Many items of interest were missing from dockets including, in some cases, the victim's age. The proportions presented here were calculated as the frequency with which the item of interest was reported as a proportion of all case that included information on the item. This results in some fluctuation in denominator across tables.

Some of the information we required was not available for other reasons. It is practice at some courts to destroy, after a year, the charge sheets of cases that resulted in an acquittal, were struck off the roll, or were withdrawn by the prosecutor. Charge sheets were also missing in some instances, while at Johannesburg Court all charge sheets – including for those cases that had resulted in convictions – had been destroyed. As a consequence, more detailed and extensive information about court processes is available for those cases which went to trial, than those which were withdrawn or struck from the roll.

Finally, police and court records are compiled for the purposes of a prosecution that must be conducted within the confines of the laws governing evidence and procedure. Witness statements, for example, are very rarely written down verbatim. It is therefore impossible to be sure of either the relationship between the written content of witness statements and what was actually said by the witness to the statement-taker; or the content of the statement and the actual events of the rape. The information contained in witness statements, court books and charge sheets is therefore only as accurate and reliable as the record-keeper and narrator.

III. results:

characteristics of reported rape

Our analysis of the data presented in both this and the next section was informed by an hypothesis that age would influence both the characteristics of reported rape, as well as case outcomes. Firstly, evidence from the medico-legal examination might be more clear-cut in the case of children than sexually active adults and, secondly, the interpretation of such evidence was likely to be less controversial in children where issues of consent did not cloud credibility. By law, a child is classified as someone under the age of 18. However the law presumes that a girl under the age of 12 is incapable of giving consent; while between the ages of 12 to 16, it is unlawful for her to give consent. Because consent is potentially an issue when a girl is over the age of 12, we thought it important to distinguish between prepubescent girls and adolescent girls.

A total of 2 068 individual victims' dockets was included in our sample. Four of these cases however, were little more than shells and consisted only of a CAS number and an indication that the charge was one of rape. They were excluded from the analysis which focused on the remaining 2 064 cases. Twenty-eight of the rape incidents involved two or more victims and accounted for 60 (or 2.9%) of the women, teenagers and girls in our sample.⁹

Overall, 94.3% (n = 1 886) of our sample experienced a completed rape involving an act of penetration. The remaining 5.7% (n = 114 cases) reported an attempted rape, or a suspected sexual assault where it was unclear from witness statements or other evidence whether or not a sexual assault had taken place. In the remaining 68 cases, there was insufficient information in the docket to determine the nature of the sexual violation that had occurred.

Eighty-six per cent of rapes took place over a time period of less than a day, while a further 10% occurred over a period of at least a day. The remaining 4% took place over a longer period of time ranging from 2 – 1 078 days. This proportion of rapes typically reflected cases of ongoing sexual abuse. In total, 7.1% of victims had been raped on a prior occasion by the same suspect. Repeat and chronic abuse was most evident amongst girls aged 0 – 11, of whom 16.4% stated that they had been raped at least once before by the same accused. This percentage under-reports chronic abuse in this age category, however. While some medico-legal examinations found both old injuries and scarring to the girls' hymens, as well as evidence of prior anal penetration, only one charge of rape had been recorded even though it was clear that multiple incidents had taken place.

Repeat abuse was also evident amongst teenage girls, of whom 12.5% had been raped before by the suspect, but least likely amongst adult women, of whom 2.6% had been previously raped by the same suspect.

Analysis of our various records showed 41 (or 1.9%) of victims in the study to have some form of disability. A disability was evident amongst 1.1% of adult victims, 1.3% of girls and 3.4% of teenagers. These figures fall below the prevalence of disability in Gauteng, calculated as affecting 3.8% of the female population in the province in the 2001 Census (Statistics South Africa, 2005). While no age-disaggregated data is available for each province, census data from the same report notes that nationally 2.9% of the female population between the ages of 10 – 19 had a disability and 3.2% of the female population aged between 20 – 29 years. It is impossible to know whether our figures reflect under-recording of disability on the J88s and dockets; under-reporting of rape of disabled victims; or a lower vulnerability of rape amongst disabled people. The last explanation seems unlikely. Research internationally has found the incidence of sexual victimisation experienced by women with disabilities to be either similar to, or greater than that reported by non-disabled women (Groce, 1999; Saxton et al., 2001; Nosek and Howland, 1998).

⁹ In this study, the word 'girl(s)' is used to refer to victims aged 0 – 11, 'teenager(s)' to refer to victims aged 12 – 17, and 'adult(s)' to refer to victims aged 18 and older.

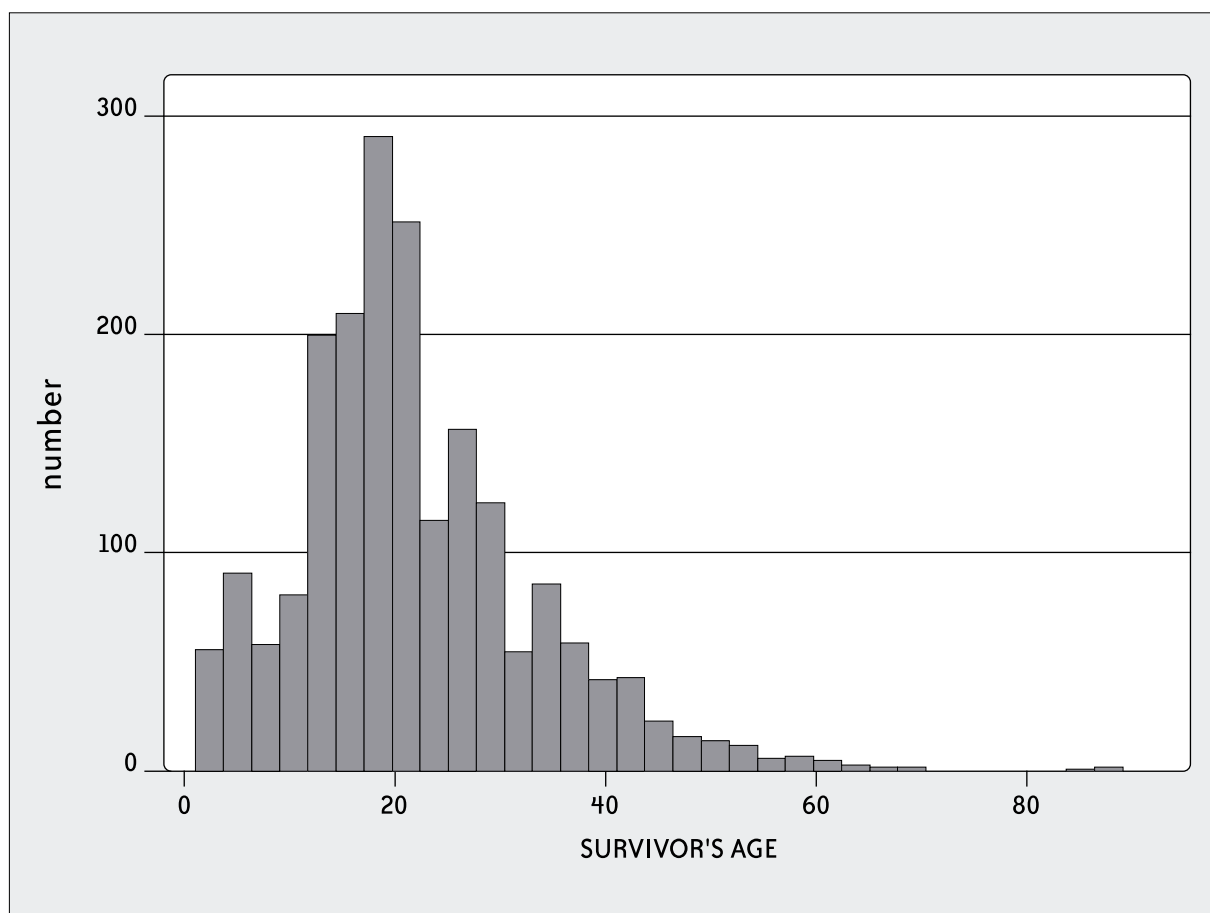
1. Victim and accused: social and demographic characteristics

Victim age

Figure 3 shows the distribution by age of the rape survivors in our sample. The precise age of the survivor was not recorded for 56 of the 2 068 cases, with it being impossible to determine in 22 of these cases whether the victim was a girl, teenager, or adult. Where age could be determined, analysis showed that victims ranged from 1 year to 89 years in age, with the median age being 20 years (average 21.8). Thus, women aged 18 years and older comprised the majority of rape victims in our sample (60.2%). Of the rapes involving children 17 years and younger, teenage girls faced the greater risk, with 25.2% of girl victims being between the ages of 12 – 17.

Baby and toddler rape has attracted considerable public concern and was identified in our sample. Four victims (0.2%) were aged a year or less, another 19 were two years old (0.9%) and 35 were three years old (1.7%). In total, victims aged three years and younger accounted for 2.8% of all victims in our study where an age could be determined. In just over half of these cases (58%) there were genital or anal injuries. It cannot be concluded that rape had not occurred in the other cases where no such injuries were found.

Figure 3: Distribution of victims, by age



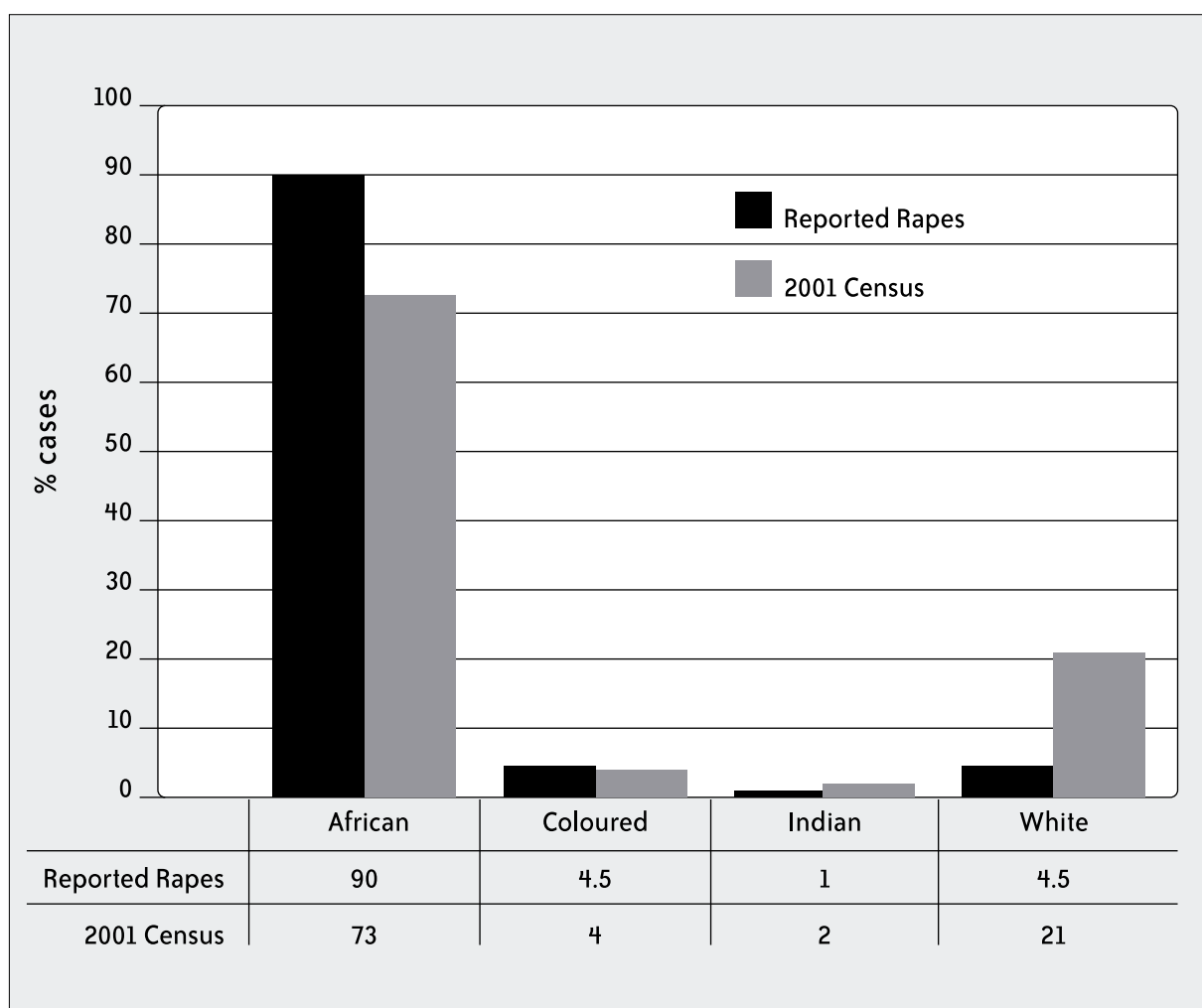
Victim race

Table 1 shows survivors' race by age group. There were significant differences between racial groups in the proportion of survivors in each group, with proportionally more African children raped between the ages of 0 – 11 years ($p = 0.0009$). These findings were compared to the distribution of females by population group according to the 2001 census (see Figure 4). This showed that African women were at a greater risk of being raped as they make up 73% of the population but reported 88.2% of rape incidents. White women appeared to be at lower risk of being raped as they make up 21% of the population in Gauteng but reported only 4.5% of the rapes in our sample.

Table 1: Distribution of race of the rape survivors, by age group

Race	Total n = 2 051	0 – 11 years n = 298	12 – 17 years n = 514	18+ years n = 1 230
African	88.2%	92.3%	83.7%	89.3%
Coloured	4.7%	3.4%	4.9%	5.0%
White	4.5%	1.3%	7.6%	4.1%
Indian	0.8%	-	2.3%	0.4%
Unknown	1.8%	3.0%	1.6%	1.3%

Figure 4: Comparison of the racial distribution in the sample with that of the female population of Gauteng (Census 2001)



Primary caretaker of child victims

Information about who the child was staying with at the time of the rape was extracted from the police dockets and thus dependent on whether or not the police officer writing the statement recorded this information (or enquired who was responsible for the child’s care). Equally, it was also influenced by who reported the incident to the police, as well as what they told the officer at the time.

Analysis of child victims’ primary caretaker at the time of the rape shows that fewer of the teenage survivors were staying with their biological mothers than the younger girls (32.2% vs. 45.9%) and fewer were staying with both biological parents (15.9% vs. 25.7%). However, the proportion of children living with one or both biological parents overall was higher than that found amongst children in the general population (Brookes, Shisana and Richter, 2004). This is surprising given the generally greater vulnerability of children who do not live with parents. It may reflect under-detection of rape in children living with other caregivers, or over-reporting of residence with parents at the time cases are opened.

In a large proportion of the cases involving teenagers, as well as a substantial proportion of the girls’ matters, information about who was caring for the child survivor was not recorded. Yet such information is highly relevant to the police’s child protection function. That this information was particularly likely to be missing in relation to teenage girls points to their not being regarded as vulnerable children.

Table 2: Distribution of the primary caretaker of child at the time of the rape

	Total n = 805	0 – 11 years n = 296	12 – 17 years n = 509
Biological parents	19.5%	25.7%	15.9%
Biological mother	37.3%	45.9%	32.2%
Biological father	3.9%	2.0%	4.9%
Grandparent	6.5%	8.4%	5.3%
Sibling	2.0%	1.0%	2.6%
Other relative (including stepfather)	5.3%	5.1%	5.5%
Other	4.2%	3.0%	4.9%
Unknown	21.4%	8.8%	28.7%

In a large proportion of the cases involving teenagers, as well as a substantial proportion of the girls’ matters, information about who was caring for the child survivor was not recorded. Yet such information is highly relevant to the police’s child protection function. That this information was particularly likely to be missing in relation to teenage girls points to their not being regarded as vulnerable children.

Suspect's age

Table 3 provides details of the suspect extracted from the 52% of dockets containing such information. The girls' dockets contained more information about suspects than did those for adult women. This most likely reflects the higher proportion of arrests in cases involving child survivors than in cases involving adults.

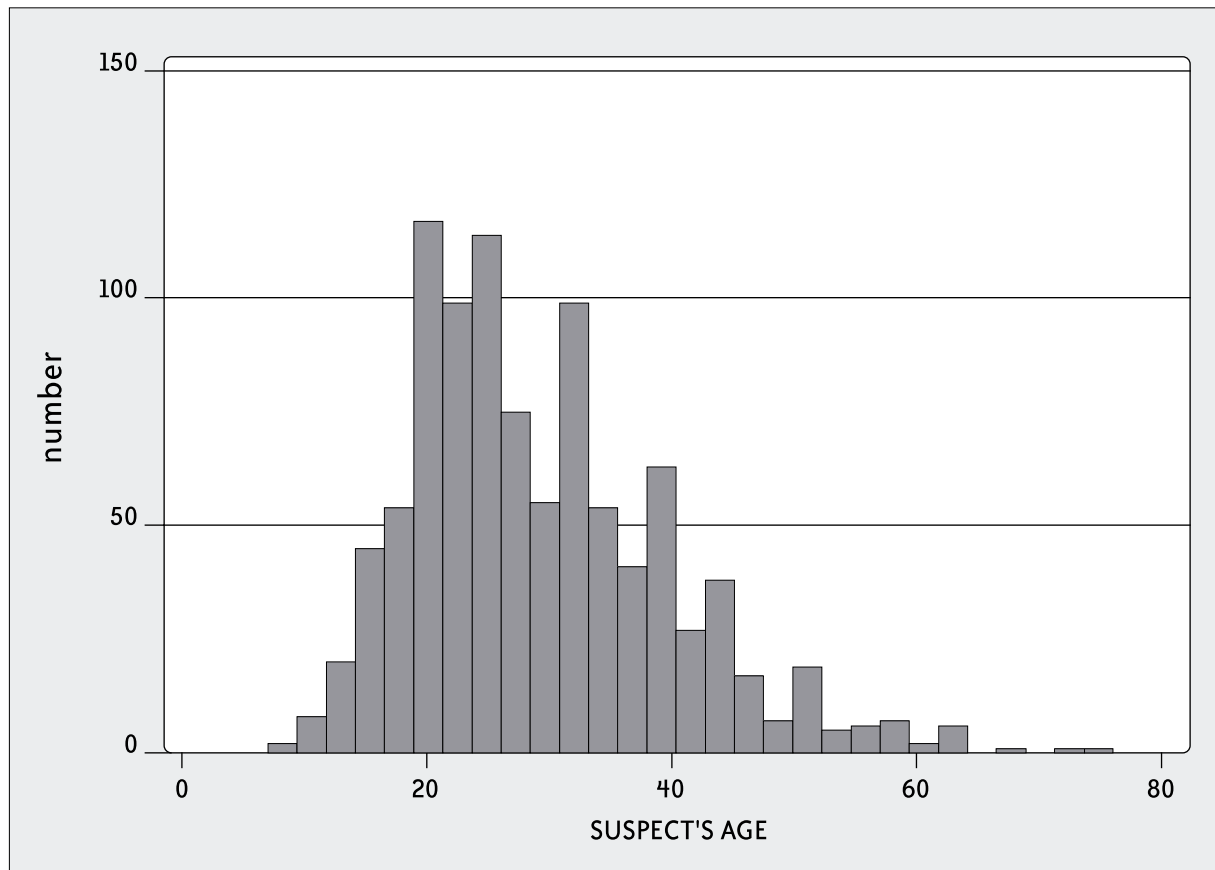
Age was recorded for a total of 1 090 suspects (including those cases that involved more than one perpetrator). Of this total, one in eight (13.1%) were juvenile offenders aged 17 years and younger. More than four out of five (81.2%) juvenile offenders fell between the ages of 12 – 17.

Figure 5 shows the distribution of ages of main perpetrators who had been arrested (where this was recorded). The youngest perpetrator in our sample was 6 years old and the oldest 76 years of age. Suspects were older than survivors and there was no difference in the median perpetrator ages by the different survivor age groups. The pre-teenage child perpetrators, however, had all acted against young girls. In cases involving multiple perpetrators, the second and subsequent perpetrators were generally younger than the main perpetrator. Most of the gang rapes of pre-teenage girls were perpetrated by groups of children.

Table 3: Age of suspect(s), by victim age

	Total n = 2 035	0 – 11 years n = 292	12 – 17 years n = 511	18+ years n = 1 226
Median age of main perpetrator	27 (n = 983)	29.5 (n = 152)	24 (n = 278)	28 (n = 550)
Median age of second perpetrator	20 (n = 77)	11 (n = 10)	19 (n = 25)	21 (n = 42)
Median age of third perpetrator	20 (n = 23)	9.5 (n = 4)	18.5 (n = 6)	20 (n = 13)
Median age of fourth perpetrator	15 (n = 7)	Both 9 (n = 2)	Both 17 (n = 2)	15 (n = 3)
Proportion of cases with no perpetrator details	47.9%	43.2%	40.3%	52.2%

Figure 5: Distribution of main suspect's age



Number of perpetrators involved in the rapes

Just fewer than one in five rapes (17.4%) involved two or more perpetrators, with the maximum number of perpetrators involved in a gang rape being 17. Eighteen cases in the sample involved more than five perpetrators. Multiple perpetrators were more likely to feature in cases involving adult women and teenagers, rather than girls. Indeed, adult women were twice as likely to be the victim of gang rape as girls (20% versus 8.2%).

The extent of gang rape in our study is lower than that reported by two other South African studies. In an incomplete sample of cases examined at three medico-legal facilities in greater Johannesburg, Swart et al., (2000) found 27% of rapes to have involved multiple perpetrators. A docket review of rapes reported at six central Johannesburg police stations similarly found 27% of cases to have involved two or more perpetrators (Vetten and Haffejee, 2005).

Table 4: Distribution of the number of rape perpetrators, by victim age

Number of perpetrators	Total n = 1 886	0 – 11 years n = 255	12 – 17 years n = 475	18+ years n = 1 150
1	82.6%	91.8%	84.2%	80.0%
2	10.9%	5.5%	10.7%	12.1%
3	3.4%	1.6%	1.7%	4.6%
4	1.6%	1.2%	1.7%	1.7%
5+	1.4%	-	1.7%	1.6%

It was not only gang rapes that involved others. In 13.9% of cases others colluded in the planning and commission of the crime, even though they did not participate in the actual rape. The collusion of others was most likely in cases involving teenagers and often involved luring or summoning the victim to the perpetrator.

Table 5: Proportion of cases in which there was collusion of others in perpetrating the rape, by victim age

	Total n = 2 039	0 – 11 years n = 292	12 – 17 years n = 513	18+ years n = 1 226
One or more others colluded but did not participate in the rape or abduction	13.9%	7.5%	18.7%	13.5%

Previous convictions

The majority of suspects for whom information was available were first-time offenders. However, almost one in five (17.8%) of those arrested had previously been found guilty of other crimes, with one-third of these previous convictions (6% in total) being for rape.

Table 6: Proportion of main suspects with previous convictions and nature of the conviction, by victim age

	Total n = 1 064	0 – 11 years n = 169	12 – 17 years n = 307	18+ years n = 584
Any previous conviction	17.8%	17.8%	13.7%	19.7%
Previous conviction for rape	5.8%	8.5%	3.4%	6.4%
Previous conviction for murder, attempted murder or culpable homicide	0.5%	0.7%	1.0%	0.3%
Previous conviction for robbery, housebreaking or hijacking	4.7%	3.7%	3.9%	5.2%

2. Factors and circumstances associated with the rape

Victim-perpetrator relationship

When analysed according to whether the victim was a child or adult, significant differences in the relationship between perpetrator and victim were apparent. While strangers, or those known only by sight, accounted for just under one in seven rapes (14.6%) reported by girls, almost half of adult women (48.1%) reported being raped by this group. By contrast, half of the young girls (52.1%) were raped by those who fell into the friend/acquaintance/neighbour category. This was double the percentage of adult women (24.8%) attacked by this group. Relatives were also very much more likely to rape girls of all ages than they were to rape adult women (31.8% of young girls and 14.0% of adolescents versus 3.4% of adults).

While no statistics have previously been available recording the number of women reporting that they had been raped by their current or former intimate partner, our study found that almost one in five women (18.8%) was raped by men who fell into this category.

Table 7: Distribution of relationship between survivor and main suspect, by victim age

	Total n = 1 488	0 – 11 years n = 192	12 – 17 years n = 364	18+ years n = 932
Relatives	9.7%	31.8%	14.0%	3.4%
Current or ex-intimate partners	13.9%	0.5%	8.5%	18.8%
Strangers / known by sight	39.0%	14.6%	28.6%	48.1%
Friend / acquaintance / neighbour	32.8%	52.1%	43.4%	24.8%
Someone just met	4.6%	1.0%	5.5%	4.9%

While no statistics have previously been available recording the number of women reporting that they had been raped by their current or former intimate partner, our study found that almost one in five women (18.8%) was raped by men who fell into this category.

Abductions

In almost half of the rapes (43.5%) the victim was accosted by the perpetrator and then forcibly taken to another place where she was raped. Such abductions were less common in the girls’ rapes but where they were abducted, it was usually on foot. Teenagers and adults were also usually abducted on foot, but abduction by car was a feature of one in five of the abductions.

Table 8: Proportion of rapes preceded by abduction and means of abduction, by victim age

	Total n = 869	0 – 11 years n = 46	12 – 17 years n = 226	18+ years n = 597
Victim abducted	43.5%	16.4%	44.6%	49.5%
Victim was abducted on foot	78.1%	91.8%	76.3%	77.7%
Victim abducted by car	20.1%	2.2%	21.4%	21.0%

The location of the rapes

More than half of all rapes occurred in a home. However, while a common perception exists that most rapes occur in the victim's home, this data shows the rape was more likely to take place in the perpetrator's home, particularly when the victim was an adolescent girl. Adult women were more likely than children to be raped outdoors, which is probably reflective of the greater number of strangers raping adult women. Three-quarters of the girls' rapes occurred in a home. Although the number was not great, it is notable and of concern that 3.4% of the girls' rapes occurred in a school.

Of the rapes preceded by abduction, 36% subsequently took place in the perpetrator's home and 33% in open spaces.

Table 9: Distribution of the location where rapes took place, by victim age

	Total n = 2 028	0 – 11 years n = 291	12 – 17 years n = 510	18+ years n = 1 219
Victim's home	20.3%	28.5%	17.1%	19.6%
Perpetrator's home	31.7%	34.0%	39.6%	28.0%
Another residence	9.8%	8.9%	12.4%	8.9%
Roadway or alley	5.3%	0.7%	2.2%	7.8%
Open space	20.4%	8.6%	16.9%	24.9%
Education / school premises	1.1%	3.4%	1.4%	0.4%
Institution: children's home, health facility	0.3%	0.7%	0.2%	0.3%
Car / vehicle / train	2.8%	1.0%	3.7%	2.9%
Other	4.8%	2.7%	4.5%	5.5%
Unknown	3.4%	11.3%	2.2%	1.7%

Circumstances of the rape

The circumstances in which the victim was raped were recorded and analysed. The table shows that rapes of teenagers and adult women were most common when the victim was walking or going somewhere and often the scenario involved the perpetrator offering to accompany the woman or offering her a lift. Women who were walking or were offered a lift were frequently abducted. This scenario was also most frequently associated with that limited number of cases where women had been drinking beforehand.

A further 6.1% of rapes were also directly related to women's mobility and use of transport, with the survivor either dragged from a vehicle or being raped on public transport (3.2%), or raped while waiting for transport or otherwise waiting (2.9%). Taken together, these two findings highlight the extent to which rape inhibits women's freedom of movement. This finding is further reinforced by table 9 which indicated 8% of rapes to be related in some way to women's mobility, having either taken place alongside a road or in some form of vehicle.

More than one in ten of the adult women had been raped during a house breaking. A similar-sized group were raped at home by someone they knew (including their intimate partner).

The circumstances surrounding the rape of young children were quite different to those of adolescents and adults. A third of young girls were abducted or lured away to a place where they were raped. In a third of cases, rape was suspected from the victim's behaviour, even though she had not stated that she had been attacked. This is a recognised feature of the sexual assault of young children. One in ten of the young children were raped at home by someone known to them.

Our category of 'statutory rape' captures those 6.7% of teenagers who did not report being raped. Rather, this complaint was made by a parent discovering their daughter's sexual activity. The girl did not allege rape but stated instead that sexual relations were consensual and she was therefore unwilling to testify against the man or boy concerned. In this instance, while the sex was unlawful and subject to prosecution in terms of section 14 of the now-repealed Sexual Offences Act of 1957, it was not rape.

Table 10: Distribution of the circumstances surrounding the rape, by victim age

	Total n = 2 007*	0 – 11 years n = 290	12 – 17 years n = 506	18+ years n = 1 201
Victim approached when walking alone or accompanied	33.5%	4.4%	31.0%	41.7%
Victim looking for or offered a job	1.0%			1.7%
Victim accepts offer of a lift or accompaniment when walking	8.9%	2.0%	9.9%	10.2%
Victim raped whilst visiting someone	6.2%	4.5%	6.9%	6.3%
Victim raped at home by known Perpetrator	10.6%	12.1%	15.0%	8.2%
Victim was child and abducted / lured away	7.7%	36.2%	9.7%	
Victim raped by unknown perpetrator during housebreaking	8.7%	2.4%	5.7%	11.5%
Victim raped during conflict with partner	3.3%	-	1.0%	5.1%
Victim raped when travelling on public transport or dragged from vehicle	2.2%	0.3%	1.2%	3.2%
Victim waiting for transport or outside shops or school or workplace	2.5%	0.7%	2.8%	2.9%
Victim raped after a proposition refused or as punishment	1.9%	0.3%	0.8%	2.7%
Victim incapacitated: drunk, drugged or mentally / physically disabled	2.6%	0.3%	3.8%	2.7%
Victim homeless and offered place to stay	1.4%	0.6%	1.8%	1.5%
Child victim reports symptoms or rape suspected by other	5.7%	33.1%	2.8%	0.2%
Statutory rape	1.7%	0.3%	6.7%	
Victim raped during baby sitting or in foster care	0.4%	2.4%	0.2%	
Other	1.4%	-	0.8%	2.1%

*The total number includes survivors who had missing age data

In 14.5% of cases, victims were sleeping when the rape began. Their being asleep was associated with the rapes which occurred during the course of a housebreaking, or while the victim was otherwise at home. In the latter context, the perpetrator was often a male relative.

In 6.1% of cases the perpetrator declared his love to the victim beforehand. As table 10 showed, the survivor's rejection of the perpetrator's propositions appears to have precipitated the rape in 1.9% of cases.

Although rape myths often emphasise the role of alcohol and drugs in rape, only 13.6% of survivors stated they had been drinking alcohol (n = 2 001) at the time of the rape. This was almost never a feature of young child rapes (0.4%), only occurred prior to one in ten of the teenage rapes (10.1%) and was a feature of one in five (18.1%) of the rapes of adult women. While a victim who was drinking prior to a rape was not necessarily drunk, this group did include a small number of highly inebriated women. Women in this condition fell within those 2.6% of cases where victims lacked the capacity to consent, either because they had an intellectual disability, or because they had taken (or been given) large doses of alcohol or drugs. This particular group of survivors mostly withdrew their complaints because they retained almost no memory of what had taken place.

Drug use, or being given drugs, was a feature of only 1.1% of all the rapes (2.0% in the case of adolescents and 0.9% in the case of women). It is possible that this figure under-reports the extent of drug-facilitated rapes as little to no recall of events is often a feature of such rapes.

Finally, in one in six (16.7%) of the single perpetrator rapes, the victim was subjected to more than one act of sexual penetration.

The presence of others during a rape

Although rape is not frequently witnessed, this was not always the case in our study. Nor were rapes perpetrated only in deserted locations. In 9.3% of cases siblings, other children and friends were present in the room when the rape took place. In one-quarter of cases others were present on the same premises (although in a different room) when the rape took place.

Table 11: Proportion of rapes in which other people were nearby but not assisting the perpetrator, by victim age

	Total n = 2 039	0 – 11 years n = 292	12 – 17 years n = 513	18+ years n = 1 226
Others present in same room as rape but not participating	9.3%	12.0%	10.3%	8.2%
Others present on same premises but not participating	25.6%	29.8%	29.4%	23.0%

Women and girls' attempts to defend themselves

The statements police officers took down from survivors rarely exceeded a page in length and were therefore scarcely comprehensive in their detailing of events. Circumstances surrounding the rape, including survivors' reactions to the attack, were neither well-described nor very detailed. This reflects inadequate training of police officers around the taking of statements. Because the vast majority of rape survivors are very unlikely to be knowledgeable about the various rules of evidence applicable to rape and will therefore be in no position to judge what information should be provided to statement-takers, they cannot be expected to spontaneously volunteer legally relevant information. For all these reasons, while half of the statements captured some form of resistance on the victim's part to the rape, we would suggest this probably underestimates the extent and range of resistance attempted by women and girls. At the same time, fear may also have incapacitated some victims to the extent that they were unable to defend themselves and so submitted to the attack instead. In such cases submission is not to be confused with consent.

Approximately 40% of teenagers and adults reported having said 'no' to the perpetrator at some point. Additional verbal forms of resistance to the rape, such as shouting or reasoning with the perpetrator, were reported by 29.5% of survivors. Non-verbal resistance, such as crying or turning their heads away, was reported by 20.7% of survivors. Overall, girl children attempted less resistance than the other two age categories – which is to be expected, given their smaller stature and lesser physical strength.

Almost one in ten victims (9%) attempted to escape either prior to, or during the rape.

Table 12: Type of resistance offered in the course of the rape or abduction, by victim age

	Total n = 2 061	0 – 11 years n = 298	12 – 17 years n = 514	18+ years n = 1 230
Victim said 'no' during abduction or rape	36.4%	16.7%	40.5%	40.0%
	Total n = 1 997	0 – 11 years n = 280	12 – 17 years n = 507	18+ years n = 1 205
Physical resistance	20.0%	7.1%	18.1%	23.9%
Verbal resistance	29.5%	18.6%	29.0%	32.4%
Non-verbal resistance	20.7%	14.6%	25.4%	20.4%
Some form of resistance offered	46.4%	29.2%	46.7%	51.1%
Attempted escape during abduction	8.5%	1.8%	9.1%	9.9%
Attempted escape during rape	8.1%	1.8%	8.5%	9.3%

Subduing women and girls: perpetrators' use of force and coercion

One in three rapes involved either the use or display of a weapon. Weapons were very rarely used in cases involving young girls (4.7%) and, when they were produced, most likely to be a knife or panga. Weapons were more likely to be employed in rapes involving adolescents (27.4%) and, in particular, adult women (40.9%). The increased use of weapons against adult women reflects the higher number of stranger rapes reported by this group. Weapons were used against adult women in 55% of stranger rapes, 22% of rapes committed by intimate partners and 7% of rapes perpetrated by relatives. This weapon was most likely to be a gun, used in one in five (19.3%) rapes of adult women.

In one in four of the cases involving weapons (24.9%), the weapon was used to injure the victim. Injury was most likely to be inflicted upon adolescent girls (28.1%), followed by adult women (24.3%). In 18.8% of cases involving young girls, the weapon was used to injure. The presence of weapons did not seem to influence whether victims resisted. When the perpetrator had a weapon, half of victims described having resisted while half did not.

Table 13: Use of weapons, by age of victim

	Total n = 1 990	0 – 11 years n = 276	12 – 17 years n = 503	18+ years n = 1 206
Perpetrator or accomplice armed	32.4%	4.7%	27.4%	40.9%
Armed with knife / panga	10.4%	2.7%	7.4%	13.7%
Armed with gun	15.0%	1.0%	13.2%	19.3%
Armed with tools / sharp object	1.9%	0.3%	1.2%	2.7%
Armed with blunt objects	2.7%	0.3%	2.3%	3.5%
Armed with rope or wire	0.7%		1.4%	0.6%

Some form of bodily force (such as pushing/shoving, kicking, strangulation, or slapping and hitting) was used against the victim in more than half of cases, particularly those involving adult women (70.1%). This force often caused injuries with 80% of victims who reported the use of bodily force in their statements also having non-genital injuries recorded on the J88. By contrast, coercion based on adult perpetrators' abuse of their authority and power was most likely to be employed against young girls.

One in three survivors (34.6%) was threatened with death or injury. Almost double the percentage of adolescents (35.5%) and adults (38.3%) were threatened in this way in comparison to children (18.6%).

Table 14: Force, threats and non-violent coercion employed against survivors, by victim age

Use of bodily force	Total	0 – 11 years	12 – 17 years	18+ years
Perpetrator used bodily force	59.9%	25.3%	55.2%	70.1%
Perpetrator threatened to kill, hurt, injure	34.6%	18.6%	35.5%	38%
Coercion included abuse of power or authority	13.9%	49.8%	19.4%	3.0%
Coercion included trickery, blackmail, false pretences, abuse of trust	31.9%	28.7%	36.5%	30.8%

Perpetrators' actions after the rapes

As with the circumstances surrounding the rapes, differences along age lines emerged in how perpetrators behaved once the rape was completed. Perpetrators were most likely to flee after raping adult women (35.9%) but least likely to do so after raping young girls (14.1%). Nearly one quarter (22.4%) were rude or aggressive to adult victims while this behaviour was displayed towards 10.7% of young girls.

Judging from their actions after the rape, almost one in five perpetrators (18.2%) appeared to have little or no grasp of the criminality of their behaviour. Either they made no attempt to flee after the rape (including falling asleep afterwards, 11.0%) or, in a belated display of solicitude (given their prior conduct), helped the victim get home or obtain medical treatment (7.2%).

Table 15: The perpetrator's actions in the immediate aftermath of the rape, by victim age

	Total n = 2 061	0 – 11 years n = 298	12 – 17 years n = 514	18+ years n = 1 230
Fled the scene	28.1%	14.1%	18.3%	35.9%
Fell asleep or remained in place	11.0%	7.0%	13.8%	10.9%
Assisted victim to get home or obtain medical help	7.2%	3.7%	10.9%	6.6%
Locked victim in to prevent her getting help	7.5%	2.0%	9.5%	8.1%
Apologised or made promises to victim	6.6%	6.4%	8.4%	6.0%
Rude or aggressive to victim	18.8%	10.7%	15.6%	22.4%

Victims' actions after the rapes

In total, half of adult women either phoned for help or immediately went to report the attack (38.5%), or were taken to the police or hospital by a witness or friend (11.9%). Reflecting their greater dependence on others, this proportion was reversed for younger children who were more likely to rely on others to take them to the police or hospital (28.2%), rather than relying on their own efforts (14.8%).

Over half of rapes were reported within hours of their occurrence, with three-quarters of victims reporting to the police within a day of the rape. The longest any victim waited before reporting to the police was 5 years (range 0 – 1 834 days). Cases at the extreme end of the range reflected ongoing and chronic sexual abuse.

Being told to tell no-one about the rape was a feature of almost one in five rapes of young girls (17.8%) but a highly unusual feature of adult rape (3.4%). Adolescents were also told to tell no-one in 12.1% of their cases.

Table 16: The victim's actions in the immediate aftermath of the rape, by victim age

	Total n = 2 061	0 – 11 years n = 298	12 – 17 years n = 514	18+ years n = 1 230
Victim fled the scene	15.7%	5.4%	13.4%	19.4%
Victim fell asleep or remained in place	13.0%	5.0%	16.9%	13.4%
Phoned for help or immediately reported	32.2%	14.8%	28.0%	38.5%
Went elsewhere before going to police	19.9%	12.8%	23.9%	20.2%
Taken to police / hospital by witness or friend	14.9%	28.2%	14.8%	11.9%

Survivors' actions immediately after the rape did influence aspects of the criminal justice system's response to their victimisation, with arrests being more likely in those cases where the rape was reported to the police immediately. It may also be easier to locate and arrest a suspect when a rape is reported very soon after its occurrence as delays in reporting might provide some perpetrators with the opportunity to escape the area.

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The medico-legal examination

Once the rape had been reported to the police, survivors were usually taken to a medico-legal facility for a forensic examination. The findings of these examinations were available for 1 528 cases. While some victims were not examined because the complaint was one of attempted rape, others were not examined due to the rape having been reported some time after it had occurred. In still other cases a J88 was completed but subsequently lost or destroyed.

Contrary to popular perception (as well as the evidence of one of the experts in Jacob Zuma's rape trial), the overwhelming majority of rape survivors did not wash immediately or soon after the rape. Amongst our sample (n = 2 036), 1 in 20 (4.8%) washed immediately or soon afterwards. Adolescent girls were most likely to do so (7.2%), followed by young girls (5.1%). Very few adult women (3.8%) washed immediately after the rape. A very small number of J88s (3.6%) reported clinical evidence of the victim being under the influence of drugs or alcohol at the time of the examination, with 2.4% of teenagers and 4.9% of women so affected.

Over and above genital injuries, the general examination also documented injuries to the body in 28% of J88s. The likelihood of non-genital injuries increased markedly with age. This reflects our earlier finding that force was also increasingly likely to be used as victims got older. As would be expected, there was a significant correlation between the use of physical force reported during the rape incident and non-genital physical injuries reported on the J88. Teenage survivors were nearly seven times more likely than the girls to sustain injuries to the body. Such injury was twenty times more likely in women as in young girls. The most common site of injury was the head or neck, with upper or lower limb injuries being the next most common sites. Injuries typically took the form of bruising, but one in ten survivors had scratches, tears or abrasions. One in twenty survivors had some form of stab wound.

Due to the number of children in our sample, the proportion of cases in our study with a non-genital injury (28%) was not as high as is often reported. We have shown these injuries to be less common in children. In fact 39% of adults in our sample had non-genital injuries, which is within the range of findings of studies involving adults conducted in the developed world (range between 32% and 90%, with an average of 65%) (Du Mont and White, 2007; Pentilla and Kahumen, 1990) and similar to a case series of adult rapes conducted in Johannesburg and Cape Town in the 1990s which found 37% of cases to have a non-genital injury (Martin, 1999).

Genital injuries were the most commonly reported injuries, with 58% of J88s recording some form of injury to the genitals. Any genital injury was recorded in two out of three child survivors, but only one in two adults. In 36% of these cases overall, there was an injury to the hymen, vaginal walls or cervix. These injuries were significantly less common in adult women, being found in only one in four victims in this age group, but in one in two child survivors.

In 44% of J88s there was an injury to the external genitalia recorded. There were no differences in prevalence of such injuries by age. This reflects the commonness of the finding of a posterior fourchette tear – even in sexually active adults and women who have had children. In 3% of examinations there was evidence of an injury to the anus. These were far more commonly reported in young children. Forty-four per cent of J88s recorded an injury that involved some form of breach of the skin or mucosa. These were most common in teenagers and young children and somewhat less common in adults. These injuries would have been associated with an increased risk of HIV acquisition if the rapist was HIV positive.

We found a higher proportion of cases with an ano-genital injury (58%) – including in the adults in our sample – than did studies conducted in the developed world where 9% – 42% of cases had an ano-genital injury with an average of 30% (Du Mont and White, 2007). This suggests that penetration may actually be more forceful in rape in South Africa. The proportion of ano-genital injuries reported here is also higher than the 38% reported by other South African studies (Martin, 1999). It should be noted that coloscopes are rarely used in medical-legal examinations in Gauteng and would not account for this finding.

Rape in South Africa appears to often result in injury and may, in general, entail more violence to the genital region than rape in other countries. However, a key finding of our study is that in a high proportion of rapes there were no injuries to either the genitals or other parts of the body. When women are sexually active and have given birth, genital injuries are highly unlikely (Rambow et al., 1992; Lindsay, 1998). Even in children under the age of 12 there were no genital signs of recent or previous penetration in over

a third of cases of rape. This confirms findings from other countries and the literature on sexual violence internationally that vigorously argues that absence of injuries cannot be reliably interpreted to mean that no rape took place (Du Mont and White, 2007).

Table 17: Proportion of cases with injuries recorded on the J88, by victim age

	Total n = 1 528	0 – 11 years n = 227	12 – 17 years n = 364	18+ years n = 932
Any non-genital injury	28.0%	2.6%	15.7%	39.1%
Injury to head or neck	18.6%	0.9%	10.0%	26.4%
Injury to thorax or abdomen	4.6%	0.4%	1.7%	6.8%
Injury to back, buttocks or side of pelvis	4.8%	0.9%	1.7%	7.0%
Injury to upper limbs	9.7%	1.3%	4.5%	13.9%
Injury to lower limbs	9.1%		4.8%	12.9%
Types of non-genital injury				
Incised wound	5.5%	0.4%	2.5%	8.0%
Strangulation	0.7%			1.1%
Scratches, abrasions or tears	10.5%	0.9%	5.8%	14.8%
Bruising	15.5%	1.8%	8.0%	21.8%
Tenderness or pain	6.3%		3.6%	8.9%
Types of genital injury				
Any injury to genitals or anus	57.5%	65.3%	66.2%	51.8%
Any injury to genitals	56.9%	63.6%	66.2%	51.2%
Any injury to external parts of genitalia	44.2%	44.4%	45.9%	43.3%
Any injury to hymen, vagina or cervix	36.4%	49.8%	54.3%	25.5%
Any anal injury	3.3%	8.4%	1.1%	2.7%
Any skin break injury to genitals or anus	43.9%	49.4%	55.3%	37.7%

Discussion

Almost two-thirds of rapes (60.2%) reported in Gauteng in 2003 involved adult victims. Teenagers comprised one in four victims (25.2%) and girls aged between 0 – 11 years one in seven (14.6%) victims. The docket analysis also revealed significant differences by age in the perpetration of rape in the province. Adults were three times more likely to be raped by strangers than were young girls (48.1% vs. 14.6%). Stranger rapes perpetrated against adult women were also likely to involve weapons and to take place outdoors. A sizeable proportion of women were also attacked opportunistically in the course of their routine daily activities such as walking, or while simply being at home. Women were more likely than both young girls and teenagers to sustain injuries to their bodies in the course of a rape. Adults were more than twice as likely to be the victims of gang rape than young girls (20.0% vs. 8.2%).

In contrast to adults, one in six young girls was the victim of repeat or chronic abuse. Girls were also twice as likely to be raped by friends/acquaintances and neighbours than were adult women (52.1% versus 24.8%). Relatives accounted for nearly one in three of those raping young girls. Reflecting the more intimate nature of the relationship between the young child victim and perpetrator, the majority of these rapes also occurred within a home environment. Young girls were the group most likely to be told not to tell others about what had happened and in one in three cases did not do so. Rather, the rape was recognised either from changes in their behaviour or because they reported symptoms indicative of sexual assault. While the vast majority of juvenile offenders were adolescent boys (comprising 80.2% of young offenders), the study confirmed the worrying involvement of pre-adolescent boys in raping pre-adolescent girls.

Reflecting their state of transition between childhood and adulthood, the rape of adolescent girls displayed features of both child and adult rape.

3. Implications for preventing and responding to rape

3.1. *Changing social norms on rape: ending the culture of entitlement and impunity*

Rape is a sexualised act of humiliation and punishment. Rape is also perpetrated by men acting on a sense of sexual entitlement, one indication of which is the finding that more rapes took place in the perpetrator's home than the victim's home, with some perpetrators even falling asleep afterwards. Such men clearly saw no need to conceal themselves. Even if they did understand the wrongfulness of their actions, then it suggests that such men feel empowered to act with a sense of apparent impunity. The fact that others acted to assist the perpetrator in committing abduction and rape, rather than preventing its occurrence, highlights the extent to which sexual violence is socially tolerated and supported. Taken together, these various behaviours show the importance of changing social constructions of masculinity predicated on the control of women. The criminal justice system needs to improve the investigation and prosecution of sexual crimes so that men and boys realise that they cannot rape with impunity.

3.2. *Protecting young children: childcare arrangements*

The study findings confirm the vulnerability of some children to rape by family members and those they know. In preventing child rape the quality and safety of childcare arrangements must be emphasised. This may include developing a greater understanding amongst parents and other caregivers of the degree of supervision required to protect children in our violent society. The government needs to raise awareness of childcare as an important aspect of child protection and to work with the private sector and non-profit organisations to provide safe, accessible and affordable childcare.

3.3. *Protecting adult women: safe environments and transport*

The findings show that many adult women live in unsafe environments that allow for opportunistic attacks by strangers, both in their homes and in public spaces. It seems likely that attention to a variety of components of urban safety could play a role in reducing some of the risks that women face. Aspects of environmental design that need

attention include providing good street lighting; avoiding the location of transport nodes in deserted areas or spaces that are not peopled for parts of the day or night; avoiding the creation of places where women may be easily trapped such as tunnels and alleyways; and designing parks and public spaces that are open to surveillance and do not provide hiding places for attackers. The government should consider economic measures that enable low income women and families to afford effective security for their homes.

3.4. *Strengthening protection of children*

Evidence from the dockets suggests that police officers are failing to grasp their role in child protection and, in particular, their responsibility to prevent children's repeat victimisation and intimidation. Police officers need to be trained to ensure that when children are sexually assaulted, their primary caregiver is established and documented. The Department of Social Development and child protection agencies designated by the Children's Act (32 of 2005) must be involved in assessing children who have been raped. The police should never close cases of child sexual abuse without having received an assessment report from such child protection services first. To remind the police of their duties in this regard, a child safety checklist could be developed and included within the docket.

3.5. *Strengthening protection of disabled women and girls*

Prosecutors, police officers and health professionals need to be trained to identify disability and make appropriate referrals when disabled people are sexually violated. Both the police dockets and J88 should record whether or not a complainant is disabled, as well as the particular form the disability takes. To increase awareness of sexual violence against people with disabilities, this information should be incorporated into the regular reporting of crime statistics. When adults with learning disabilities are raped, a referral should be made to the Department of Social Development for an assessment of the home circumstances to ensure that efforts can be made to reduce future vulnerability.

In addition, the collection of a larger number of cases involving survivors with disabilities could give insights into how to decrease the vulnerability of such persons, including by providing information about perpetrators, as well as the settings in which violence is likely to occur. This information would be useful in identifying preventative strategies.

IV. results:

the attrition of rape cases through the criminal justice system

To describe the processing of reported rape cases, we drew on the police dockets, as well as various court documents. Court charge sheets were a source of information for 33% of cases while the police investigation diaries and court books provided the bulk of information about court processes (65% and 60% respectively). In 8% of cases we drew on either bail or trial transcripts. The limited number of charge sheets sourced for the study can be ascribed to court record-keeping practices. The charge sheets of cases that resulted in an acquittal, were struck off the roll, or were withdrawn by the prosecutor were usually destroyed after a year. However some charge sheets were simply missing in their entirety while others were incomplete.¹⁰

The processing of rape cases by the criminal justice system

The process of drawing our sample of dockets highlighted inconsistency in the recording of cases involving multiple rape complaints. In some stations where more than one victim was raped in the same incident, separate dockets were opened for each victim. At other stations multiple victims were all grouped into one docket. In our sample, 28 dockets included two or more victims which added a further 32 rapes to our study that will not have been captured by the police CAS system. At the moment of reporting then, we found slightly more rapes than the police officially recorded.

We also considered the extent of false reporting in our sample, suggested by the presence in the docket of a withdrawal statement by the victim claiming the initial rape allegation to be untrue. However, because such withdrawals may be the result of intimidation, they cannot always be taken at face value. In addition, a very few of the victims claimed to be sex workers who had not been paid by clients. Such cases are not false and actually

qualify as rape because consent was obtained fraudulently (the promise of payment in exchange for sexual services). However, they cannot be prosecuted as rape since it is illegal to ask for payment for sexual services in the first place. Nonetheless it is possible that some of the remaining false claims may have indeed been unfounded.

There did appear to have been some false allegations made by teenage girls fearful of being punished by their parents for having sex. There were also some withdrawal statements where the victim merely stated that the sex was consensual. Finally, there were also some cases opened on behalf of small children where no genital injuries were found and there was no clear history to suggest that there had been an act of sexual penetration (or attempt). For most people, the absence of such injuries automatically precludes all possibility of a rape having taken place. However, as we have already stated, vaginal penetration does not necessarily result in genital injuries in children (Paradise, 1990; Berenson, 2000; Emans, 1987).

In total 68, or 3.3% of cases may have been false complaints. Young girls' cases accounted for 4.0% of these complaints, teenagers 6.4% and adults 1.8%.

¹⁰ At Johannesburg Court for example, all charge sheets, including for those cases that had resulted in convictions, had been destroyed.

Disposal of cases overall

Table 18 provides an overview of how cases in our study were disposed of and contrasts these outcomes with those for survivors with disabilities. Obviously, given the low number of victims with disabilities in our study, these comparisons are limited. Overall, more than half of cases (54.3%) proceeded beyond the police investigation to court, with 17.3% of matters actually being tried. While fewer complaints involving victims with disabilities made it to court, they were twice as likely to be withdrawn at court as cases involving the non-disabled (46.3% versus 22.3%).

Table 18: Disposal of cases in the study

	Non-disabled	Disabled
Complaints reported	2 027 (100%)	41 (100%)
Complaints closed by the police	912 (44.7%)	6 (14.6%)
Complaints disposed of by the courts (including matters filed as <i>nolle prosequi</i> or struck off the roll)	780 (38.2%)	30 (73.1%)
Cases proceeding to trial	353 (17.3%)	5 (12.1%)

Overall, half of adult women's complaints did not proceed beyond the police investigation. This means that a greater proportion of girls and teenagers' matters were processed by the courts in comparison to adult women.

1. The police investigation

Cases closed by the police

Of the 2 055 cases for which information was available, 918 (44.7%) were withdrawn by the police. This proportion increased where adult women were concerned, with half of their cases (50.2%) withdrawn in comparison to only one in three (34.9%) cases involving girls under the age of 12.

The majority of cases (52.3%) were closed because a perpetrator could not be traced. Within this category of untraceable perpetrators we included cases where a suspect could not be identified by name or appearance, as well as those cases where the suspect was known but subsequently disappeared. More than half of adult women (55.4%) and teenage girls' (51.8%) cases were closed because the perpetrator could not be identified or found. The high number of withdrawals resulting from the failure to locate the perpetrator can, in part, be attributed to the higher number of stranger rapes perpetrated upon these two groups of victims. By contrast, just over one in three (36.3%) girls' cases were closed because the perpetrator could not be found. This is to be expected given that over 80% of girls were raped by family members, friends or neighbours, whose identities and addresses were more likely to have been known.

Close to one in five (17.6%) cases involving young girls were closed because no evidence of rape could be found by the medical examiner. It is possible that the medico-legal investigations in these particular matters were not entirely adequate, explaining such a finding. Again, our earlier comment about vaginal penetration not necessarily resulting in genital injury applies here too.

The greatest proportion of complaints classified as false or unfounded was made by adolescent girls (9.7%). This category included both the complaints instigated by parents, as well as the complaints made by teenagers fearful of their parents' response to their sexual activity.

Table 19: Reasons for complaints being withdrawn by the police, by victim age

	Total n = 918 (44.7%)	0 – 11 years n = 102 (34.9%)	12 – 17 years n = 196 (38.1%)	18+ years n = 617 (50.2%)
Perpetrator untraceable	52.3%	36.3%	51.8%	55.4%
Victim untraceable	30.1%	32.3%	27.7%	30.2%
No evidence of rape	2.6%	17.6%	1.5%	0.5%
False accusation	4.4%	5.9%	9.7%	2.3%
Victim too traumatised	0.1%			0.2%
Pressure from victim's guardian / caregiver / parent	0.4%	2.9%	0.5%	
Families of victim and accused have resolved matters	0.9%		1.5%	0.8%
Victim and accused have resolved matters	2.3%		0.5%	3.3%
Victim wants to get on with her life or otherwise uncooperative	5.3%	2.0%	5.6%	5.9%
Docket lost	0.2%			0.3%
Other	1.3%	2.9%	1.0%	1.1%

Almost one in three victims (30.1%) apparently could not be found after they had reported their complaints to the police. In half of the cases involving young girls who became untraceable (50.0%), investigating officers stated that the victims and their guardians had moved without leaving any details of their new address. The proportion of adult and teenage survivors who became uncontactable for the same reason was about one in three (33.3% for teenagers and 35.2 for adults). In approximately half of cases involving adolescent girls (49.1%), inadequate contact details were recorded at the time of reporting, meaning that no further contact between victim and investigating officer occurred thereafter.

The median number of attempts made to contact untraceable victims was three, ranging from no effort whatsoever, to a maximum number of 15 attempts. On average, a month passed between the investigating officer's first and last attempt to contact the survivor and the case being closed. However, in 25% of cases where the victim disappeared, as few as four days had passed between the investigating officer's first and last attempt to trace her. In three-quarters of cases just over three-and-a-half months (107 days) passed between the first and last attempt to locate the survivor (range 0 – 1 278 days).

Table 20: Reason for victim being untraceable, by victim age

	Total n = 319	0 – 11 years n = 34	12 – 17 years n = 57	18+ years n = 213
Provided inadequate contact details	39.0%	32.4%	49.1%	37.1%
Moved without leaving new address	36.7%	50.0%	33.3%	35.2%
Doesn't return calls and moved without leaving new address	13.6%	11.8%	12.2%	14.6%
Doesn't return calls and provided inadequate contact details	4.9%	2.9%	1.8%	6.1%
Doesn't return calls	3.9%		1.8%	5.2%
Went missing or was never at home	1.9%	2.9%	1.8%	1.9%

Quality of dockets

To understand why victims disappear, it is also necessary to consider the quality of statements taken and the completeness of documentation compiled for the dockets. An investigating officer, for instance, can only locate the survivor if contact details are available in the docket. However, a residential address was not recorded in the docket in 2.5% of cases and a work address not captured in three-quarters (75.2%) of the dockets. This latter proportion was greater than the number of victims who were unemployed and thus unlikely to have work addresses. Details of a contact person in addition to the victim were also rarely captured (recorded in only 17.8% of dockets). The address of the crime scene was missing in 13.7% of cases and was more likely to be missing in cases involving younger girls (19.2%). Only 18 (6%) victims for whom this information was missing were under the age of five so mental age alone does not explain this finding.

As was reported in the previous chapter, 39% of rapes overall, rising to 48.1% of adult rapes, were committed by strangers. More than half of cases were closed by the police because a suspect could not be identified or found. That descriptions of the perpetrator were absent from more than three-quarters of victims' statements (78.4%) must surely have compounded this problem.

In 41.2% of cases an instruction needed to be issued by a detective's commanding officer before a suspect was arrested. In more than half the dockets (52.7%), an instruction had to be issued twice or more before the investigating officer complied with it. These two indicators go some way to explaining why at least some suspects disappeared and became untraceable. In 30.2% of the cases (n = 269) where an instruction was issued on two or more occasions to arrest the suspect, he had disappeared.

Because decisions by prosecutors to *nolle prosequi* or withdraw matters are almost entirely informed by the contents of the docket, its quality clearly plays a determining role in the attrition of rape cases. Evidence crucial to the prosecution of matters was also sometimes absent from dockets, with the survivor's statement missing in 7.5% of dockets. This percentage of missing statements rose to 30.2% when the victim was a young girl.

A first witness statement should routinely be taken from the first person the survivor tells of being raped. Such a statement should capture what the survivor said, her appearance and her demeanour. Overall, a first witness statement was not taken in 45.8% of cases. There was a greater likelihood of a first witness statement not being taken when the victim was an adult (53.6%), compared to teenagers (38.1%) and young girls (26.0%). In addition, some victims' statements made reference to others who had either witnessed some part of the rape or had knowledge of the events. No statements were taken from these other potential witnesses in 41.6% of cases.

Table 21: Indicators of problems with the quality of the docket completion, by victim age

	Total n = 2 042	0 – 11 years n = 292	12 – 17 years n = 514	18+ years n = 1 227
Address not recorded	2.5%	3.4%	2.5%	2.0%
Work address not recorded	75.2%	75.0%	72.9%	76.1%
Contact person not recorded	82.2%	76.2%	78.3%	85.3%
Address where rape occurred not recorded	13.7%	19.2%	13.3%	12.3%
Handwritten victim statement not in docket	7.5%	30.2%	6.6%	2.1%
Victim not asked to describe perpetrator	78.4%	87.4%	82.0%	74.7%
First witness statement not taken	45.8%	26.0%	38.1%	53.6%
Other witnesses but no statements taken	41.6%	35.2%	37.1%	46.7%
Instruction issued to make arrest before it was made	41.2%	36.9%	38.8%	43.3%
Instruction issued 2+ times to make arrest before it was made	52.7%	55.7%	54.5%	52.6%

How long aspects of the police investigation took to complete

On average, when the police took a first witness statement, they did so on the same day the victim made her report, with three-quarters of such statements taken within 9 days of the report (range 0 – 535 days). Similar time frames were observed in relation to the time taken between the police being given the suspect’s contact details and his arrest. On average, suspects were arrested a day later and three-quarters arrested within 9 days.

Where the police closed cases, on average they did so within two-and-a-half months (median 75 days) of the survivor having made her report. One-quarter of cases were however, closed within a month of the report (29 days) and three-quarters closed in under six months (160 days). In one case, three-and-half years (1 336 days) passed before the police filed the docket permanently.

Table 22: Period of time in days that passed between different stages of the process

	Range	Median	25 percentile	75 percentile
Reporting to SAPS to first witness statement	0 – 535	0	0	9
Giving SAPS the accused’s contact details to his being arrested	0 – 522	1	0	9
Reporting to SAPS and closing of the case	0 – 1 336	75	29	160

2. The collection of medico-legal evidence

A physical examination, coupled with the collection of forensic evidence, is another key component of the police investigation and provides crucial corroboration of victims’ allegations. The forensic examiners’ findings from both the gynaecological examination, as well as the general examination, are recorded on the J88 and any physical evidence (such as semen or hair) collected, sealed within a Sexual Assault Evidence Collection Kit (SAECK) and sent to the police’s Forensic Science Laboratory (FSL) for analysis. The J88 and the report by the FSL will play a central role in prosecutors’ decisions around how to proceed with complaints.

The following table shows the attrition of medico-legal evidence from the completion of the J88, to the receipt of a report from the FSL. The J88 was available for our scrutiny in 77% of cases. From information available in these reports and the docket, we learnt that in 67% of cases a SAECK was completed and in 51% of cases sent to the FSL. Ultimately, in 2% of cases a report from the FSL containing the results of DNA testing was available in the docket.

Teenagers were significantly less likely than young children to have a J88 completed and for it to be available in the docket. However, the likelihood of the SAECK being completed increased significantly as the age of victims increased. Only 39% of young children had a kit completed as compared to 61% of teenagers and 77% of adults. When kits were completed, there was no difference in the likelihood of them being sent to the FSL by age of the survivor. However, the SAECKs of girls were significantly more likely to be analysed and a report made available after being sent to the FSL, than adults.

Table 23: Attrition in medico-legal evidence, by victim age

	Total	0 – 11 years	12 – 17 years	18+ years
Opening case	2 064	298	514	1 230
J88 completed and available	1 595 (77.0%)	240 (80.5%)	380 (73.9%)	961 (78.1%)
Forensic kit completed	1 374 (66.7%)	116 (38.9%)	313 (60.9%)	942 (76.6%)
Suspect’s blood drawn (calculated as % of those arrested / appearing in court)	170 (16.4%)	28 (17.0%)	42 (14.4%)	100 (17.3%)
Forensic specimens sent to lab	1 055 (51.2%)	86 (28.9%)	235 (45.7%)	732 (59.5%)
Report from forensic lab	38 (2.1%)	8 (2.9%)	12 (2.7%)	18 (1.6%)

Quality in completion of J88s

While the primary focus of data collection on J88s was to determine the types of injuries that are found in cases of rape reported to the police, we collected some indicators of the quality of medical evidence collection and the completion of J88s. The results on medical evidence should be seen in the context of the quality of examinations.

The forensic examiner’s concluding statements on the J88 are particularly relevant to case progression. The examiner is required to draw two conclusions: one based on the gynaecological examination and the other on the general examination. Some one in six (16.2%) J88s did not have a concluding statement related to the gynaecological examination. A concluding statement was missing in a higher proportion (18.9%) of adult cases in comparison to girls’ cases, where 11.9% did not have a concluding statement. A concluding statement was missing from the general examination section in 41.5% of cases – which could be due to clinicians focusing their examination on the gynaecological examination alone.

Clinicians often wrote “Alleged Rape” in the conclusion section of either the general examination or gynaecological examination. This phrase does not qualify as a conclusion about the examination. In 13.4% of J88s, both concluding statements were missing or the clinician had recorded “Alleged Rape”. This was more likely to have occurred when the survivor was an adult than a child aged 0 – 11 (16.1% and 6.3%).

Another factor that could affect case progression is erroneous recording of the survivor’s personal details. The family name matched that in the docket in 92.2% of cases and the first name matched in 89.9% of cases.

Table 24: Indicators of the quality of completion of J88, by victim age

	Total 1 435	0 – 11 years 211	12 – 17 years 331	18+ years 886
First name matches docket	89.9%	91.5%	86.7%	90.7%
Family name matches docket	92.2%	90.5%	92.7%	92.4%
Body build not recorded	41.7%	37.8%	43.5%	41.8%
Condition of clothes not recorded	24.6%	26.8%	20.0%	24.4%
Emotional state not recorded	20.0%	19.0%	20.3%	20.0%
Clinical evidence of drugs / alcohol not recorded	24.3%	26.6%	25.7%	23.2%
Concluding statement from general examination missing	41.5%	47.0%	46.4%	38.2%
Pregnancy test not reported in potentially pregnant women	65.5%	11.4%	72.8%	75.9%
No concluding statement from gynaecological examination	16.2%	11.9%	12.6%	18.9%
Both concluding statements missing, or only alleged rape stated	13.4%	6.3%	11.3%	16.1%
Anal examination not done	25.3%	39.2%	21.3%	23.1%

Clinicians often wrote “Alleged Rape” in the conclusion section of either the general examination or gynaecological examination. This phrase does not qualify as a conclusion about the examination.

3. Matters referred to court

Cases resulting in nolle prosequi decisions

Three hundred and thirty-one cases (16.1%) were closed by the prosecution deciding to *nolle prosequi* these matters. The greatest proportion of cases, one in four (25.7%), were nollied based on an assessment that there was too little evidence to warrant a prosecution. Young girls’ cases were most likely to be nollied on this basis (45.5%), chiefly because the medical examination found no evidence of rape. The greatest proportion of adult women’s cases (20.2%) were nollied because they disappeared. A similar proportion (17.0%) was closed because the victim and accused had resolved matters between themselves, frequently because they had been (or still were) in an intimate relationship.

In the introductory chapter to this report, reference was made to the inconsistent application by the police of their SO(G) 325 which stipulates when they may withdraw cases. Similar inconsistency was also evident in our study where some stations always referred their matters to the prosecutor for decisions around the closure of particular cases while others rarely did so. There is therefore considerable overlap between the various categories capturing the reasons for police withdrawals and *nolle prosequi* decisions.

When the victim became untraceable, the police were more likely to withdraw the complaint than refer the docket to court for a decision to *nolle prosequi* (30% of police withdrawals versus 14% of *nolle prosequi* decisions). By contrast, when it appeared as if the matter had been resolved between the victim and perpetrator or his family, the police were more likely to refer the docket to the prosecutor for a decision (3.2% of police withdrawals versus 13% of *nolle prosequi* decisions). Similarly, the police withdrew 4% of rape cases on the basis that they were false. The prosecution declined to prosecute double this proportion of cases (8%) for the same reason. Again, adolescent girls’ matters predominated (15.4%) in this category.

Table 25: Matters filed as *nolle prosequi*, by victim age

	Total n = 331 (16.1%)	0 – 11 years n = 66 (21.8%)	12 – 17 years n = 91 (17.5%)	18+ years n = 188 (14.2%)
Insufficient evidence and little chance of getting more	25.7%	45.5%	30.8%	16.0%
Wrong accused	1.4%	1.5%	1.1%	1.6%
Complainant disappears	14.2%	6.1%	7.7%	20.2%
Witnesses disappear	0.3%			0.5%
False report	8.1%	9.0%	15.4%	4.3%
Complainant declines to co-operate and wants to get on with her life	10.4%	7.6%	8.8%	12.2%
Guardian of minor declines to co-operate	1.7%	4.5%	2.2%	0.5%
Complainant would be incompetent witness	0.9%		2.2%	0.5%
Victim and accused or their families have resolved matter	13.0%	6.1%	9.9%	17.0%
Other / unknown	24.3%	19.7%	22.0%	27.1%

The median number of days between the complaint being laid and the prosecution deciding to *nolle prosequi* the matter was 43.5, or six weeks (range 0 – 1 065). One quarter of cases were nollied in just over a week of the report (9 days) and three-quarters just less than six months later (163 days). Cases that fell at the far end of the spectrum, such as the case that was nollied two-and three-quarter years later (1 065 days) included those cases initially placed on the court roll, but subsequently withdrawn.

Arrest of the suspect

In total 1 014 suspects (49.7%) were arrested with a further 33 subpoenaed to appear in court. Of this total, a number of cases were nollied almost immediately, resulting in only 885 (42.8%) suspects being charged in court. After being charged, a further 103 suspects (4.9%) had the charges against them withdrawn before they needed to make a bail application. Just over one in three (36.4%) of the remaining 782 accused who had been charged were granted bail. Bail amounts ranged from free bail (meaning no sum of money was paid) to R5 000, with the median average being an amount of R2 000.

Table 26: Bail amount, by victim age

	Total	0 – 11 years	12 – 17 years	18+ years
Median amount of bail in rands (range)	R2 000 (500 – 5 000)	R2 000 (500 – 5 000)	R1 500 (500 – 5 000)	R2 000 (500 – 5 000)

Of the 885 suspects charged in court, 70 (7.9%) were minors. Of this number, 4.3% were put through formal bail hearings while 52.2% were released into their parents' custody and the remaining 43.4% released into a place of safety or juvenile section of a men's prison.

Suspects should spend no more than 48 hours in custody before making their first appearance in court. They should also be charged at the same time as they make their first appearance. For the most part this constitutional right was being observed, with a quarter of suspects making their first appearance within a day of their arrest and three-quarters being brought to court within three days. (This day's delay usually occurred when the suspect had been arrested just before a week-end.)

On average, suspects waited nine days between being arrested and having their bail applications decided. A quarter of bail applications were finalised within two days' of suspects' arrests and three-quarters within a month (28 days). In one instance, a bail application was decided a year-and-a-half (604 days) after the particular suspect's arrest.

Withdrawing or striking matters from the court roll

In total, 460 (22.3%) rape cases were disposed of by the courts before coming to trial. Prosecutorial withdrawals accounted for 415 (20.1%) of these disposals and magistrates' striking of matters from the roll for 45 (2.2%) case disposals.

One in three cases (33.5%) was withdrawn because the victim could no longer be located or, in a very small number of cases, had died. (However, more accused died (11) than disappeared or skipped bail (6).) Victim withdrawals also accounted for just under one in three withdrawals (29.2%) by the state. Approximately 14% of cases were withdrawn or struck from the roll due to evidence being lost or unavailable (this evidence typically being the DNA results). A very small number of accused (1.1%) had the charges against them withdrawn following a psychiatrist's assessment in terms of section 77 of the Mental Health Care Act. The overwhelming majority of rape accused were therefore neither 'mad' nor 'sick.'

Table 27: Reasons for matters being withdrawn or struck from the roll

	n = 460
Juvenile accused sent on diversion programme	15 (3.2%)
Accused disappears / dies	17 (3.7%)
Victim becomes untraceable / dies	154 (33.5%)
Other witnesses become untraceable / die	37 (8%)
Evidence lost or not obtained	65 (14.1%)
Victim withdraws the matter	135 (29.2%)
Section 77 withdrawal	5 (1.1%)
Other	60 (13%)

In total, 460 (22.3%) rape cases were disposed of by the courts before coming to trial.

One in four cases was withdrawn within five weeks (35 days) of the accused being charged. On average however, three months (92 days) elapsed between the accused being charged and the case being withdrawn. Three-quarters of cases were withdrawn within eight months (235 days). One case spent three years and four months (1 029 days) on the court roll before it was withdrawn.

Survivors’ engagement with the criminal justice system

Up to this point, the report has examined the role of the police and courts in closing cases before they come to trial. This portion of the report concludes with findings showing survivors’ pre-trial engagement with the criminal justice system, with table 28 setting out how victims opt out of processes and effectively conclude matters.

Overall, 37% of survivors in our sample discontinued their criminal cases. Contrary to police and prosecutors’ perceptions, only 1 in 20 victims withdrew their complaints following reconciliation between the accused or his family. The same proportion of victims withdrew because they found proceedings too upsetting or disruptive of their lives. What requires further investigation however, are the circumstances leading to the disappearance of almost one in four victims (22.9%). When victims became untraceable, they were most likely to do so after reporting the rape and during the course of the police investigation. Two-thirds of those who disappeared (67.2%) did so at this stage in criminal justice proceedings. It is possible that at least some of these survivors may have wanted to remain in contact with the police but were unsure of their rights and the extent to which the police would welcome their inquiries. They may well have lacked the confidence to demand information from the police and waited instead to be contacted by them. Such follow-up contact will never have happened in those cases where the police took down inadequate contact details from victims.

In some instances victims becoming untraceable could be ascribed to the police’s failure to confirm victims’ addresses and contact details at the time the reports were made. Some of the statements also suggested that victims belonged to a mobile section of the population which migrated across provinces, as well as within the province, either looking for work or moving between family and friends. They therefore did not have fixed, permanent addresses. Survivors’ continuous cell phone ownership and airtime availability was also not guaranteed, given that the majority of women in our sample were unemployed. Some women may also not have wished to be found, wanting only to register that a crime had been done to them but not wishing to engage with the criminal justice system on a longer-term basis. Indeed, engagement with the system often prompts traumatic memories that survivors may wish to put behind them. Intimidation by the perpetrator or his friends and family may also have contributed to survivors’ disappearance.

Finally, we cannot know how many of these disappearances are the result of police corruption or, in the face of case-overload, the selective prioritisation of cases based on an assessment of the victim’s perceived cooperativeness. Previously we indicated that some police officers made no or only one attempt to locate the victim before filing the case. In another suspicious example, the investigating officer arrived at court claiming the victim could not be found and suggesting the matter be closed. The victim had, of her own accord, arrived at court and so the matter was postponed instead. However, by the next court appearance the victim had indeed become ‘untraceable’ and so the matter was withdrawn.

Table 28: Proportion of cases where victim actions or non-availability resulted in cases being closed

Total number of cases open	n = 2 068
Total number of cases closed due to victim actions or non-availability	766 (37%)
Detail of victim actions	
Victim disappears / becomes untraceable	474 (22.9%)
Matters resolved between victim and accused or families	110 (5.3%)
Victim does not wish to continue	110 (5.3%)
Other	72 (3.4%)

Contrary to police and prosecutors’ perceptions, only 1 in 20 victims withdrew their complaints following reconciliation between the accused or his family.

4. Cases proceeding to trial

Table 29 summarises the attrition of cases from the time of reporting to the start of a trial. It shows that of the 2 064 cases included in our analysis, half (50.3%) resulted in an arrest or a subpoena for the suspect to appear in court. An arrest was more likely in cases where the survivor was a teenager (56.5%) or a young girl (54.7%). The higher proportion of arrests for those who sexually violated children may be explained to some extent by our earlier finding that survivors and perpetrators in this age group were more likely to be known to one another and thus more readily identified.

Between an arrest to a first appearance in court, 7.7% of suspects were released without being charged. Of the 42.8% subsequently charged in court, more suspects were charged where the survivor was either a young girl (46.3%) or teenager (48.1%).

Overall, a trial commenced in less than a third of the cases which resulted in an arrest (34.5%) and in only one in seven cases reported to the police (17.3%). Again, differences along age lines were observed with there being a greater likelihood of a trial commencing if the survivor was a young girl (22.1%) or teenager (21.2%). But while more than one in five girls and teenagers' matters went to trial, only one in seven adults' cases (14.7%) were tried.

Table 29: Attrition of cases of rape at each stage of the criminal justice system, by victim age

	Total	0 – 11 years	12 – 17 years	18+ years
Opening case	2 064	298	514	1 230
Perpetrator arrested or asked to appear in court	1 036 (50.5%)	164 (55.0%)	291 (56.7%)	575 (46.8%)
Charged in court	885 (42.8%)	138 (46.3%)	247 (48.1%)	495 (40.2%)
Trial commenced	358 (17.3%)	66 (22.1%)	109 (21.2%)	181 (14.7%)

In relation to accused, 8% of those tried were minors under 18. Twice as many juvenile offenders (29) were tried in comparison to those put through diversion programmes (15).

Of the 358 cases that went to trial, between 2 days to 3 years and one month (1 121 days) passed between the time of reporting the matter, to the trial starting. On average, trials started six months after the report (179 days), with a quarter beginning within three-and-a-half months (92 days) and three-quarters just over ten months later (311 days).

Most exceptionally, one matter was concluded within two days of the report being made. The 20-year old accused was arrested within a day of the complaint being laid and he then pleaded guilty the next day to a section 14 offence with a 14-year old girl. He was sentenced to a fine of R2 000 or 4 months imprisonment wholly suspended for three years.

Guilty findings

Just under two-thirds (64.5%) of cases that went to court resulted in the accused's acquittal. While more than half of the trials required both the state and defence to put forward their cases, one in ten (11%) were stopped after the state concluded its case in terms of section 174 of the CPA.

Table 30: Outcome of the case, by victim age

	Total n = 358	0 – 11 years n = 66	12 – 17 years n = 109	18+ years n = 181
Found guilty of any sexual or assault-related offence	127 (35.5%)	30 (45.5%)	39 (35.8%)	58 (32.0%)
Not guilty of rape	191 (53.4%)	30 (45.5%)	55 (50.5%)	106 (58.6%)
Discharged in terms of section 174	39 (10.9%)	6 (9.1%)	14 (12.8%)	17 (9.4%)
Matter stopped by the prosecution in terms of section 6	1 (0.3%)		1 (0.9%)	

A suspect was found guilty of any sexual or assault-related offence in 6.2% of cases reported to the police. Those who offended against young girls were more likely to be found guilty (10.1%) than those convicted of offences against teenage girls (7.6%). Adult women’s cases were least likely to result in findings of guilt (4.7%).

Two-thirds of these 127 convictions (66.9%) were for rape while the remaining third reflected convictions on lesser charges (or competent verdicts). Thus, when adjusted to exclude competent verdicts, only 4.1% of rape cases reported to the police actually resulted in a conviction for rape.

Age affected the likelihood of a matter resulting in a conviction for rape, rather than a competent verdict. Nine out of ten cases (93.1%) involving an adult victim resulted in a rape conviction while just over half of younger girls’ matters resulted in a rape conviction. Cases involving adolescent girls were least likely to result in rape convictions. Indeed, for adolescent girls the most frequently-occurring conviction (46.2% of cases) was in terms of section 14 of the previous Sexual Offences Act – sex with an underage girl. For younger girls, one in ten convictions (10.2%) was for indecent assault (classified as ‘other’).

Those who offended against young girls were more likely to be found guilty (10.1%) than those convicted of offences against teenage girls (7.6%). Adult women’s cases were least likely to result in findings of guilt (4.7%).

Table 31: Convictions for sexual offences and competent verdicts as a proportion of all convictions, by victim age

	Total n = 127	0 – 11 years n = 30	12 – 17 years n = 39	18+ years n = 58
Rape	85 (66.9%)	16 (53.3%)	15 (38.5%)	54 (93.1%)
Attempted rape	9 (7.1%)	4 (13.3%)	3 (7.7%)	2 (3.4%)
Sex with a minor	20 (15.7%)	2 (6.7%)	18 (46.2%)	
Other	13 (10.2%)	8 (26.7%)	3 (7.7%)	2 (3.4%)

On average, cases took ten months (311 days) to finalise from the day of being reported until a verdict was reached. A quarter of cases were finalised within three-and-a-half months and three-quarters within about 16 months (490 days). The maximum any case took to finalise was five years and eight months (2 067 days).

Sentences handed down for rape

Two different minimum sentences have been mandated for rape: 10 years and life imprisonment. Where life imprisonment is under consideration, matters must be referred to the High Court for sentence.

Six (6.9%) out of the 87 accused (two of whom were minors) pleaded guilty to the charge of rape. Close to three-quarters of victims whose cases resulted in convictions (65 or 73%) were aged 16 or more, while one in four cases (22 or 26.4%) involved girls younger than 16. Twenty-two cases (25.3%) were heard at the High Courts and the remaining 65 (75.2%) at the regional courts. Only eight of the High Court matters involved survivors 16 and older; the remaining 14 cases involved girls younger than 16.

Minors

Four accused were minors at the time they committed their offences and thus the minimum sentences would not have applied to them. They received the following range of sentences instead: 10 years wholly suspended for five years; four years suspended for five years; and five years imprisonment. Sentencing was postponed for five years in the final case. Two out of the four also pleaded guilty to rape. These four cases have thus been excluded from the remaining discussion which focuses on the 83 cases to which the minima were applicable.

Applying the minimum sentences

Table 32 shows the length of sentences. In 13 cases (15.6%) the minimum sentence of 10 years was not applied. Those who escaped this minimum included two adult men who pleaded guilty to rape and received instead five years suspended for five years, and four years with a further three suspended for five. The one offender in this category who raped a child under the age of 16 received an eight year sentence.

Table 33 shows that close to half the cases that resulted in convictions (34 or 41%) were eligible for life imprisonment in terms of the criteria set out in the minimum sentencing legislation. Only three life sentences were handed down, with the victims in all three cases being under 16 years of age.

Overall the median average sentence imposed upon those who raped women 16 years and older was 10 years. For girls under 16 the median sentence was 16.5 years, well below the minimum of life imprisonment.

Table 32: Length of sentence overall

Sentence	n = 83
> 10	13 (15.6%)
10	26 (31.3%)
11 – 15	26 (31.3%)
16 – 20	9 (10.8%)
21 – 25	6 (7.2%)
Life	3 (3.6%)

In 13 cases (15.6%) the minimum sentence of 10 years was not applied.

Table 33: Number of rapes where the offender was eligible for a life sentence, by category of eligibility

Category	n = 34
Victim under 16	18
Victim disabled	2
Victim raped by two or more perpetrators (two gang rapes were also accompanied by assault GBH)	9
Victim raped more than once	3
Victim also assaulted with intent to cause grievous bodily harm (excl. multiple perpetrator cases)	1
Multiple victims (also all under 16)	1

Sentences handed down for other convictions

Sentences for attempted rape, section 14 offences, assault with intent to cause grievous bodily harm and indecent assault depend on the presiding officer's discretion. Sentences for the nine cases of attempted rape included direct imprisonment, suspended sentences and combinations of the two. Sentences of imprisonment ranged between 3 – 15 years with the median being 8 years.

There were 20 convictions for section 14 offences, three-quarters of which (15) were either partly or wholly suspended. The maximum period of imprisonment handed was 6 years, with the median being 3.5 years. Four fines ranging between R300 – R2 000 were issued. Sentences for the remaining 13 convictions for indecent assault or assault GBH included direct imprisonment, suspended sentences and fines. Periods of imprisonment ranged between 1 – 10 years with a median of 5 years. Fines varied between R1 500 – R6 000.

How medico-legal evidence affected case outcomes

The medico-legal evidence is often treated as impartial corroboration of survivors' allegations of rape. We undertook an analysis of the data in order to determine the contribution of bodily (non-genital) injuries, genital injuries and FSL reports on DNA towards case progression and outcomes for adults and children (<18 years). We found that the presence of injuries, severe or otherwise, made no difference to the likelihood of a suspect being arrested. Following an arrest, cases involving children were twice as likely to go to trial if there was a genital injury with a skin or mucosal tear (adjusted odds ratio (AOR) 2.18 (95% CI 1.28, 3.74) $p=0.004$). Injuries in adults made no difference to case progression at this stage. Among cases going to trial, a conviction for a sexual offence in adults was three times more likely if there was a bodily injury (AOR 3.03 (95%CI 1.11, 8.31) $p=0.03$) and more than four times more likely if there was a genital injury (AOR 4.57 (95%CI 1.57-13.28) $p=0.005$). Injuries made no difference to the likelihood of convictions in children's cases.

The availability of a report on DNA made no difference to the likelihood of conviction. However, DNA reports were available in very few cases. This was because kits were very infrequently analysed and the suspect's blood rarely taken for comparison against any DNA identified by the laboratory. The dockets indicated blood samples to have been taken from the suspect in only 16.4% of cases for which information was available (170 dockets). A DNA report was only available for 10 adults and there was a conviction in 3 of these cases. A report was available for 12 children's cases, with convictions resulting in 2 of these cases. The DNA report more often led to an acquittal than a conviction. In five adult and five child cases the STR profile did not match the suspect's profile, a circumstance which should obviously result in an acquittal. However, in one adult and three children's cases where the STR profile matched, the accused were still acquitted. This shows that it is not always sufficient only to prove sexual contact has taken place; the absence of consent must still be established.

We found that the presence of injuries, severe or otherwise, made no difference to the likelihood of a suspect being arrested.

Discussion

The majority of rape cases (55%) in our sample were disposed of by the courts, rather than the police (45%). This is a desirable state of affairs, suggesting that the majority of cases are making it beyond the first hurdle in the criminal justice system. Further, considering that the police arrested suspects in 50% of cases while only 17% of cases were referred to trial by the courts, their performance appears somewhat better than that of the prosecution services. Either police practice has changed since the time of the SALC study in 2000, or police performance has improved since then. Another alternative explanation may lie in the fact that while the SALC researchers examined the outcomes for a high number of cases, the pool of stations from which they selected these cases was too small to be representative.

At the same time, poor police investigation (as in the failure to locate and subpoena witnesses, or get evidence to court on time) is, in some instances, resulting in cases being withdrawn or struck off the roll. This has a detrimental affect on courts' performance because it ultimately decreases the number of cases that can be referred to trial. There is also room for improvement in court record-keeping practices, the safe-keeping of those records, as well as public access to court records. When the courts are free to destroy charge sheets and the taped records of proceedings – unlike the police, who may not destroy dockets – it becomes difficult to assess whether justice has indeed been done.

Importantly, this study found that cases were more likely to progress to trial and more likely to result in a conviction if genital injuries (both those with a tear as well as those without a tear) were documented. This is the first study to have established that documented genital injury per se is associated with a conviction (McGregor et al., 1999; McGregor et al., 2002; Schei et al., 1995). It should be noted that two studies from the United States found an association between genital injuries and the filing of charges (Wiley et al., 2003; Du Mont and White, 2007). Similar to previously published studies (Du Mont and Parnis, 2000; Du Mont et al., 2000; McGregor et al., 2002; Pentilla and Kahumen, 1990; Rambow et al., 1992; Schei et al., 1995;

Tintinalli and Hoelzer, 1985), this study has not demonstrated an association between the identification of sperm and/or semen with arrests, cases going to trial or convictions.

These findings underscore the extent to which genital injuries are still treated by the courts as the only acceptable form of corroboration for a claim of rape – particularly when that claim is made by an adult woman. They also go some way to explaining why young girls enjoy slightly better case outcomes than adolescents, who both enjoy slightly better treatment than adult women. In the case of young girls, consent cannot ever really be at issue as it is with adults and adolescents. Indications of genital injury are more likely and obvious and make a guilty verdict more likely. While not suggesting that young girls enjoy optimal treatment by the criminal justice system, there clearly is room for improvement in the processing of adult women's cases in particular. Also of concern is the extent to which courts treat teenage girls' claims of rape as lesser offences. Competent verdicts, rather than convictions for rape, were most likely for this age group, with close to half of the verdicts reached being section 14 offences.

This report began by asking: what is the measure of justice afforded rape victims by the criminal justice system? The findings tell us that a significant minority of victims opt out of criminal justice processes, whether through withdrawing their matters or becoming untraceable – clear signs that they do not consider pursuing a complaint to be in their best interest. What then would this group of victims consider to constitute both just processes and outcomes in their matters, and how could these be achieved? For those women and girls who stay the course, the findings also tell us that very few cases will ultimately result in a conviction. Little wonder then that so many sexually violent men are able to act with impunity. However, the problems that contribute to this phenomenon are not irremediable and examples of both good and bad practice co-exist within the study. The challenge is to identify and support what is well done while holding to account those who fail to uphold their duties. This report provides an indication of where such processes could begin.

For those women and girls who stay the course, the findings also tell us that very few cases will ultimately result in a conviction.

5. Recommendations to reduce the attrition of cases in the criminal justice system

5.1. Keeping victims involved: enhancing record keeping in dockets and information to victims

While some of the attrition documented by the study may be unavoidable, there is also evidence of avoidable attrition. Victims and other witnesses' contact details should be verified when cases are reported and contact details obtained for others (such as family and friends) who could help make contact with victims. Workplace addresses or, in the case of children, school addresses should also be recorded. When victims are taken home by the police after reporting the case they should be taken to the front door of their homes so that the address can be confirmed and notes made of how to find the residence again.

Further research is also required to understand why some survivors disengage from the criminal justice system and what steps could be taken to make the system more responsive to their needs. Information brochures explaining criminal justice system processes to victims and reminding them to inform the police of any change in their details could be helpful in this regard (the new Department of Health booklet for rape survivors could also be distributed through police stations, for example).

The police should develop guidelines for tracing victims and suspects to establish the minimum effort to be expended in this regard.

5.2. Police record-keeping

Record-keeping by the police was often poor, with the quality of statements falling well below that set out in SAPS National Instruction 22/1998. We suggest that the police develop a pro forma statement for use in rape cases similar to that used to record details of road traffic accidents. The use of tape-recorded statements should also be investigated. Overall, our findings point to the need to strengthen training, motivation and supervision related to statement-taking and record-keeping, as well as investigation of cases.

5.3. Ensuring arrests

The study highlighted a number of cases where it was most surprising that the accused could not have been located and arrested, given that he was a close relative or friend of the victim. The docket analysis suggested that victims were often not asked for all the information they may have had about suspects. Efforts need to be strengthened to ensure that police officers can and do arrest suspects promptly, rather than waiting to be ordered to do so by their commanding officers.

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5.4. Medico-legal findings: need for training of health professionals and criminal justice system personnel on interpretation of injuries

Medico-legal findings, and the documentation of injuries in particular, can significantly affect the progression of rape cases through the criminal justice system. Yet the quality of J88 completion is often poor. Inappropriate conclusions drawn by the examining health professional may lead the police officer or prosecutor to draw equally inappropriate conclusions from the J88. As a result cases are prematurely withdrawn from the system. Training health professionals to document their findings and complete the J88 correctly is essential. Furthermore health professionals and all criminal justice system personnel need to be better informed about how to interpret the presence or absence of injuries and other medical findings.

5.5. Enhancing the use of DNA evidence in trials: streamlining DNA collection from the accused

South Africa is one of the few developing countries equipped with Forensic Science Laboratories capable of providing DNA reports for rape trials. Yet we have shown DNA analysis to contribute very little to court proceedings. The police need to increase the proportion of cases for which SAECKs are completed and ensure that the specimens

collected are actually sent to the laboratory. New systems should be introduced to remove the barrier to processing caused by delays in obtaining samples from suspects. Specimens could be collected in the form of buccal (mouth) swabs at the point of arrest by the investigating officer. Alternatively, blood specimens could be obtained at the same time blood is taken from suspects for HIV testing.

We have shown DNA analysis to contribute very little to court proceedings. The police need to increase the proportion of cases for which SAECKs are completed and ensure that the specimens collected are actually sent to the laboratory.

5.6. Understanding the nature of rape: implications for interpretation of events and findings by police and the courts

The findings challenge many of the assumptions about rape that influence police investigations and the interpretation of evidence by the courts. Particularly important in this regard are the findings relating to the use of force, the extent of resistance by victims and their likelihood of sustaining injuries. While the rape of adult women was often quite violent, we also found a high proportion of cases in which no violence was used, injuries were not sustained and victims did not offer strenuous resistance. As the new Sexual Offences Act recognises, victims can be compelled to submit to unwanted sex under a variety of coercive circumstances which do not require the use of physical force and will therefore not result in injury. We recommend that all stakeholders in the criminal justice system deepen their understanding of the wide range of circumstances in which rape occurs, including how victims and perpetrators behave before, during and after a sexual assault. A more nuanced and informed approach to the interpretation of the medico-legal evidence is also required. This is essential to providing justice to rape survivors.

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- Criminal Law (Sexual Offences and Related Matters) Amendment Act (32 of 2007)
- Mental Health Care Act (17 of 2002)
- Sexual Offences Act (23 of 1957)
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Case Law: South Africa

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- R v Rautenbach* 1949 (1) SA 135 (A)
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- S v Jackson* 1998 (1) SACR 470 (SCA)
- Wild v Hoffert* NO 1998 (6) BCLR 656 (CC)

We recommend that all stakeholders in the criminal justice system deepen their understanding of the wide range of circumstances in which rape occurs, including how victims and perpetrators behave before, during and after a sexual assault. A more nuanced and informed approach to the interpretation of the medico-legal evidence is also required. This is essential to providing justice to rape survivors.

