

**EXPLORING THE RAPE SURVIVOR'S
EXPERIENCES OF THE SOUTH AFRICAN
CRIMINAL JUSTICE SYSTEM**

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Exploring the Rape Survivor's experiences of the
South African Criminal Justice System

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(i)

DEDICATION

This thesis is dedicated to all the women who have been victims of crime. I encourage you to speak out.

(ii)

DECLARATION

I, Nyameka Daniel (student number 9412980) hereby declare that this thesis is the result of my own investigation and research and has not been submitted, in part or in full, for any other degree and / or to any other institution for assessment purposes.

Miss N. Daniel

Date

(iii)

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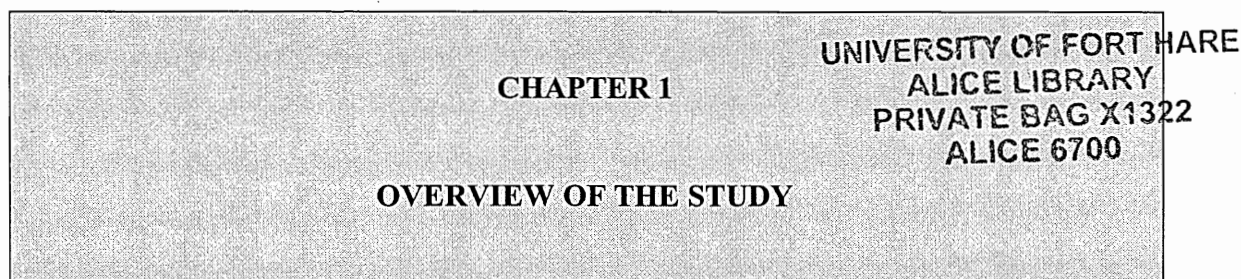
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1.1 Introduction to the study

Until recently, little attention was paid to victims of crime and violence in South Africa. Moolman (1997) argued that within the framework of the Criminal Justice System (CJS) the victim is totally marginalized. Geis also maintains that the victim of crime experiences a number of problems with each subsystem of the CJS (Cited in Galaway and Hudson, 1981). They further argue that the CJS is mainly offender orientated and they also claim that previously within the South African CJS, the focus was primarily placed on the offender of the crime, with the victim viewed as a complainant and/or witness at best. Not surprisingly therefore, research has pointed out that victims of crime and violence are often victimized twice – first by the offender and second by the insensitive treatment meted out by members of the criminal justice system, the health care system and support services (Davis and Snyman: 2005). However, with the introduction of democracy in South Africa in 1994, and the inclusion of the Bill of Human Rights in the South African Constitution (Act 108 of 1996), the rights of victims have finally been recognized and accentuated in terms of legislation.

However, in the field of criminal justice, although legislation is supposed to protect the rights of the potential victim, many victims, including those who have experienced the

act of rape feel that their interests receive very low priority from the police, courts and prisons.

Stravrou (1998) argued that in as far as women are concerned, they are particularly vulnerable to certain forms of victimization, inter-alia rape. Stravrou (1998) further argued that victimization of women is closely linked with the way they are viewed by their specific communities. Along the same vein Snyman (1996) maintains that where there is not much respect for women, they are regarded as “second class citizens”. This has increased concern by feminists on the way the criminal justice system responds to survivors of rape (Snyman: 1996). Arguably, in South Africa it would appear that inadequacies in the criminal justice system have created an environment where conviction rates for rape are low in comparison to reported cases (Robertson, 1998). Given this scenario, it is not surprising that the public's confidence in the CJS is being eroded.

Snyman (1996); Van Dijk (1996); Camerer; (1996) believe that it is relatively easy to commit an offence of rape without any severe consequences, as rape has one of the lowest conviction rates of all serious crimes in South Africa. As such, offenders frequently evade arrest and conviction and continue to intimidate their victims and the victims' family. Surprisingly, though Van Dijk (1996) pointed out that helping victims is often not seen as part of the core business of the police or prosecutor. In South Africa, the criminal procedure is focused on apprehending the offender rather than consoling the victim (Camerer, 1996). *Acta Criminologica* pg. 34 Snyman (1996) contends that

empowerment of the victim reduces secondary victimization, encourages cooperation with the criminal justice process, reinforces socially desirable behaviour, acts as a deterrent to offenders, and enhances public support for the criminal justice system. Similarly, Holtmann (1998) identifies the formulation of victim rights as an important consequence of the initiation of the Victim Empowerment Programme (VEP). He suggests the recognition of the right to be treated with respect and dignity, to offer information, to receive information, to legal advice, to protection, to restitution and to compensation. Van Dijk (1996) too, argued for the following provisions for crime victims within the criminal justice system:

- Considerate reception by the police
- Referral to support agencies
- Provision of advice on preventive measures
- The right to be notified of the outcome of the investigation or of ensuring criminal proceedings
- The right to inform the court of the impact of the victimization
- The right to receive restitution from the offender.

Reilly (1981); Heinz (1982); Herrington (1982); Robertson (1998), maintain that in the absence of effective witness protection services, women often withdraw or fail to report cases, as they fear intimidation by the perpetrator. They further maintain that sentencing of rape perpetrators in South Africa tends to be lenient, which creates an impression that

rape is not seen as a serious crime. It is against this background that this study has been conceptualized and researched.

1.2 Objectives of the study

The study attempts to determine how rape survivors experience the South African Criminal Justice System. The secondary objective was to make recommendations, based on the findings that will empower women who had been raped, on their rights within the CJS as well as identify gaps within the CJS with respect to victims of rape.

1.3 The purpose of the study

The central purpose of the study was to generate an understanding of how the South African Criminal Justice System (SACJS) responded to rape survivors, and made recommendations on the gaps that emerged in respect of the CJS. It will also contribute to criminal justice system's body of knowledge and suggest possible ways to close the knowledge gaps that may exist.

1.4 Critical Questions

This study seeks to answer the following critical question:

- How does the South African Criminal Justice System respond to rape survivors?
- What were some of the changes rape survivors would like to see within the CJS?

1.5 Definition of Key Concepts

1.5.1 Rape

Rape is the unlawful sexual intercourse with a woman, with the use of violence and without the woman's consent. Rape falls under the classification of "violent crimes" Cloete and Stevens (1994). Wade (2000) provides a broader definition for rape which means "any sexual act without the free consent of the participants." The author further describes it as "any act which culminates in an act or acts of unwelcome penetration of the mouth, anus or vagina of either gender by either gender." According to South African Law, rape means "a man having unlawful, intentional sexual intercourse with a woman without her consent. Sexual intercourse presupposes penetration of the female organ by the male penis" (South African Sexual Offences Bill, 2003).

1.5.2 Crime

According to Criminal Law, crime is defined as an act punishable by law; usually considered an evil act. Such an act must be harmful, anti-social, immoral and punishable by people in authority, Van der Walt (1977).

De Wet and Swanepoel define crime as an act which is punishable by law and punishment is the suffering which is administered to the perpetrator by the state, because he or she has committed the crime" (De Wet and Swanepoel, 1985). Therefore, crime is a

violation of the law, for which the state may impose punishment (Gardiner and Lansdown cited by Cloete and Stevens (2004)).

1.5.3 Victim

The Oxford Dictionary (2004) refers to a victim as “a living creature killed and offered as a sacrifice to some deity or supernatural power”. The second, criminological definition more relevant to the study, refers to “a person who is put to death or subjected to torture by another; or one who suffers severely in body or property, through cruel or oppressive treatment” (Oxford Dictionary, 2004). The victim therefore becomes the person against whom the criminal act is perpetrated.

1.5.4 Victimization

Victimization is the process by which the victim innocently - whether through negligence or by intent - exposes himself or herself to the criminal’s negligent or intentional wrongful / unlawful and overt action (or omission) which is punishable by law (WorldNet Dictionary).

1.5.5 Rape victim / Survivor

For the purpose of this study the term rape victims is used interchangeably with rape survivors (by reason of denoting empowerment, rather than powerlessness and

vulnerability). Many victims felt that defining themselves as victims has negative connotations, and chose instead to define themselves as survivors. This is a very personal choice that can only be made by the victimized person. It also remains to be seen whether this terminology for victims of crime will endure (Pithey, 1999).

1.5.6 Criminal Justice System

The criminal justice system refers to those institutions that work with the criminal through out the justice system. In other words, it refers to the operations of the police, the courts and the Department of Correctional Services. These operations commence the moment that a crime is reported to the police, and are concluded when a prisoner is finally released from prison. This includes the investigation of the crime, the tracing and arresting of a criminal (police), the prosecution, trial and pronouncing of sentence (courts) and the detention, treatment and release of prisoners (Correctional Services) (Cloete and Stevens, 2004).

1.6 Rationale for the study

In South Africa rape is currently defined as "the unlawful and intentional sexual intercourse with a female without her consent". Even with this very limited definition, research indicates that 147 women are being raped on a daily basis in South Africa (NICRO).

In South Africa, rape appears to be the only crime where general citizens judge the offence of the victim instead of the offender. Myths and stereotypes still dominate views on rape in South Africa, and police and other key role players in the criminal justice system often treat reported rapes with skepticism. As a result, Rape Crisis Centres' firmly believe that many survivors do not report rape incidents because of the fear of disbelief, the stigma attached to the crime of rape, and the fear of intimidation by the perpetrator(s). This leaves a large number of survivors with no access to justice or future safety. And, even if the survivor chooses to proceed through the system - knowing there is only a 7% conviction rate, she is likely to be subjected to severe secondary victimization by the system itself (Rape Crisis Centre, Cape Town).

If there is one word that describes how the criminal justice treats victims of crime and witnesses to crime, it is "badly" (Reilly, 1981). It is for these reasons that the study attempts to capture the voices of those who have first hand experience with the criminal justice system, especially since there is a paucity of studies that have captured the voices of the rape survivors within this context.

1.7 The Research Site and Participants

The respondents were contacted through the Rape Crisis Centre (RCC), in Port Elizabeth, Eastern Cape Province. Contacts and arrangements to obtain 50 participants for the study were made with the Director of the centre. This was to ensure the availability of willing

participants. This also assisted the researcher in initiating trusting relationships with the respondents (Hammersley, 1993). The sample comprised females between 15 - 45 years. At the time of the study RCC had 50 clients whom they were counseling. Upon consent, all 50 clients agreed to participate in the study.

The Rape Crisis Centre (RCC) is a non-governmental organization established in 1992, to ensure that services to rape survivors are provided seven days a week, on a 24 hour-basis. The core function of the organization is to provide counseling to rape survivors and their immediate family members. Court preparations for rape survivors and witnesses are part of the support services that are available to rape survivors in the Port Elizabeth Magistrates' Court before testifying. In the Court Preparation Project (established in January 2005) relationships between the prosecutors, the Family Violence, Child Protection and Sexual Offences Unit (FCS) of the South African Police Services (SAPS) and magistrates have been established to ensure that survivors receive court preparation (Pre Trial) before appearing in the court. RCC has helped to set up consultation meetings between the prosecutor and the survivors to discuss cases before trial. RCC prepares the survivor and the witnesses by ensuring that they have perused their statements; familiarize survivors with the court setting, and the various role players they can expect on the day of trial. They also ensure that witnesses are confident and reliable. They liaise with the detective assigned to investigate the case on behalf of the survivor, to keep them informed on the progress of the investigation.

1.8 Ethical Considerations

Social research has ethics that the researcher had to consider when conducting this research. In this study, the following ethical issues were considered:

1.8.1 Gaining Access

Gaining access to rape survivors was extremely challenging. Initially, the plan was to access respondents in the Nkonkobe Municipality, since it is a rural area. But the survivors proved not to be reliable as they promised to make themselves available, and at the last moment withdrew from the proposed meeting. This was understandable given the extremely sensitive nature of rape. Alternatively, respondents were accessed through Masimanyane Women Support Centre, an NGO supporting women victims of sexual abuse and domestic violence, based in East London. This too, did not prove successful after numerous attempts to secure meetings with the management failed. Consequently, the research was conducted and completed in P. E. Rape Crisis Centre.

1.8.2 Informed consent

Informed consent entails making the subject fully aware of the purpose of the study, its possible dangers and the credentials of the researcher. The consent should be voluntary and informed to ensure that the participants' rights are respected, and to promote willingness to share information honestly (Hagan, 1997). In this particular study, verbal

consent was sought via the Rape Crisis Director. Before commencing with data collection, all respondents were informed of the nature and objectives of the research, and were requested individually whether they wanted to form part of the study. All 50 respondents agreed to participate. With regards to the focus group discussions, the moderator asked the respondents if they were comfortable with tape recording of sessions, and they had no objections. They were also informed that if at anytime, any one felt uncomfortable about the session, or the questions being asked, they were free to withdraw from the sessions.

1.8.3 Anonymity and confidentiality

Singleton (1988) suggested that “the right to privacy is the individual’s right to decide when, where, to whom, and to what extent his or her attitudes, beliefs and behavior will be revealed”. In this study, all respondents were given assurance that their names would not be revealed to anyone and that all information produced was for the purpose of the study only. They were also assured of anonymity and confidentiality.

1.9 Outline of Chapters

Chapter 1 has provided an introduction and background to the study. It described the objectives, aims of the study and rationale for undertaking the study. It also posed the critical questions, and described the research site of the study. Chapter 2 provided a literature review on the victims of rape. It also explained the theoretical framework that

guides the study. Chapter 3 described the research methodology employed and the data collection methods. It also details how the data is transcribed and analyzed. Chapter 4 presents the analysis and findings of the study. Chapter 5 provides the conclusions and recommendations of the study.

CHAPTER 2

LITERATURE REVIEW

2.1 Introduction

The primary aim of this research study is to understand how rape survivors experience the criminal justice system. This chapter examines concepts of rape as well as related literature by different scholars. It focuses on the policies of rape, theories of rape through a feminist lens, and the lifestyle exposure model of personal victimization. This chapter specifically examines legislation and policies that have attempted to protect victims of interpersonal crime, including the Constitution (Act 108 of 1996), and the Sexual Offences Bill as amended in 2003.

2.2 National Policy Documents

2.2.1 The South African Constitution

On April 27, 1994, the first day of the election that installed the government of national unity, a new “interim” constitution came into effect which for the first time gave South Africans the protection of a justiciable bill of rights. Chapter 3 of the interim Constitution sets out a list of fundamental rights. Section 8 explicitly states that:

Every person shall have a right to equality before the law and equal protection of the law (South African Constitution, Act 108 of 1996).

The South African Constitution (Act 108 of 1996) is unique in its inclusion of the right to freedom from all forms of violence, whether from public or private sources (Section 12(1) (c)), includes the right to freedom and security of the person. Both the specific inclusion of this right and the inclusion of “private” violence, have been seen as significant in extending the right to freedom and security of persons beyond a “due process” guarantee against arbitrary arrest and detention to a more substantial guarantee (Combrinck, 2001).

Other important rights in the constitution include the rights to dignity and equality, and in particular, the guarantee that “everyone is equal before the law and has the right to equal protection and benefit of the law” (Section 9 (1) of the Constitution) (South African Constitution (Act 108 of 1996)). This right has been elaborated by Davis and Snyman in 2003 and in the Promotion of Equality and Prevention of Unfair Discrimination Act (Act 4 of 2000), which among other things, prohibits various forms of racial and gender-based violence. These acts provide for victims to seek recourse, where they have experienced such victimization through an Equality Court established under the Act (Section 20).

2.2.2 The Criminal Justice Response to Sexual Offences Bill

In 2002 the South African Law Reform Commission released its final report on sexual offences, which included a comprehensive Sexual Offences Bill. In August 2003, the Justice Portfolio Committee was briefed by the South African Law Reform Commission on the proposed Sexual Offences Bill, and a cabinet debate was held on the contents of the Bill.

Both international (Adler, 1987; Estrich, 1987; Gregory & Lee, 1999) and local research (Artz, 1998; Stanton et al., 1997; Barday & Combrinck, 2002; Combrinck & Skepu, 2003), as well as intervention programmes with sexual assault survivors, have produced considerable empirically based evidence of the poor treatment of rape victims by criminal justice systems worldwide. These studies of the treatment of victims of sexual violence have demonstrated that the management of rape cases by the police, the prosecuting authorities and the judiciary has, in some cases, had the adverse effect of systematically limiting the rights of rape victims, and of neglecting basic support and protection services for these victims, before and during trials. In response to this criticism of treatment of rape complainants by the criminal justice system, significant legal and procedural changes were introduced in many countries during the 1980s. These legal changes were broadly aimed at redrafting inadequate laws on rape, addressing inconsistent treatment of rape survivors, improving survivor experiences of police investigations and establishing better rape victim examination facilities (Goldberg-Ambrose, 1992).

2.3 Victim Support Services

2.3.1 National Crime Prevention Strategy

Van Dijk; (1996) and Snyman (1996) recognize that there are a number of national strategies and programmes which relate to rape, and the rights of rape victims. A key policy document in South Africa is the National Crime Prevention Strategy (which includes the development of a Victim Empowerment Programme, as one of its four pillars). The South African Government launched the National Crime Prevention Strategy in 1996 as one of the six pillars of the National Growth and Development Strategy. This strategy draws together key role players in government (e.g. Correctional Services, Defence, Intelligence, Justice, Safety and Security and Welfare), to restructure the criminal justice system and develop crime prevention strategies which would address the root causes of crime (Interdepartmental Strategy Team, 1996).

One of the primary aims of the strategy was to create a paradigm shift in how crime was perceived and addressed (Interdepartmental Strategy Team, 1996) by the state. Although this strategy did not make the link, it did utilize the principles of the public health approach, and in so doing brought South Africa in line with international trends in terms of how to address crime and violence (Nel and Kruger, 1999). One of the principal proposals of the National Crime Prevention Strategy was to re-engineer the criminal justice system to provide an efficient and legitimate criminal justice system, as the foundation for crime prevention, law enforcement and the protection of human rights. This strategy, inter-alia, sets out roles for all three spheres of government, namely

national, provincial and local in their response to victims of crime (Davis and Snyman, 2005).

2.3.2 Victim Empowerment Programme

The Victim Empowerment Programme advocates the establishment of a victim centered and restorative criminal justice system, and acknowledges that victimization lies at the heart of much retributive crime. The absence of means of victim aid and empowerment, plays an important role in the cyclical nature of violence and crime in South Africa. While victim aid is often regarded as remedial, rather than preventive, in dealing with crime, if untreated, victims frequently become perpetrators of either retributive violence, or violence displaced in the home sphere (Interdepartmental Strategy Team, 1996).

The Victim Empowerment Programme envisaged that The National Victim Empowerment Reference Management Committee would provide strategic direction, and coordinate and manage the implementation of the programme. The functions of the National Victim Empowerment Programme Reference and Management Committee include, but are not limited to the following:

- To formulate policies for victim empowerment
- To advise Parliament of changes that should be made to legislation to improve the position of the victims.
- To develop a programme for the extension of victim-offender mediation, victim compensation and restitution.

- To encourage the training of all service providers.
- To develop systems for the evaluation of customer satisfaction in relation to the victims' experience of the police and justice department (Victim Empowerment Interim Steering Committee, 1997; Snyman, 1992).

Within each province, Victim Empowerment Programme provincial forums were established with representatives from relevant provincial government departments and from all the organizations in the province that provided services to victims of crime and violence. Its intention was to recognize and honour the rights of victims, and in the case of this research, the rights of rape victims (Davis and Snyman, 2005).

2.4 International Response to Women as Victims of Crime

Internationally, there are various legislations and policies that protect and recognize the rights of women as citizens, and as victims of crime. Among these International Treaties are: The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Declaration on the Elimination of Violence against Women and Beijing Declaration and Platform for action.

2.5 Why is rape different from other violent offences?

Rape in South Africa is currently defined, in terms of the common law, as “intentional and unlawful sexual intercourse with a woman without her consent” (Burchell & Milton,

1997). As such, the crime of rape only occurs where there is penetration (however slightly) of the victim's vagina by the perpetrator's penis. It follows that only a man can penetrate a woman and only a woman can be a victim of this crime. That the alleged victim did not consent to sexual intercourse, must be proven by the prosecution beyond a reasonable doubt. As currently defined, rape therefore excludes same sex violations, oral genital violations and penetration of the vagina by objects other than the penis.

Pithey, Naylor, Artz, Combrinck (1999) argue that rape is a crime that is not comparable to any other form of violent crimes. It is a crime that affects all women, their sense of safety, and their physical and emotional / psychological integrity. Rape, and the fear of rape, restricts women's mobility and freedom of movement. Unlike other crimes against the person, rape not only violates women's physical safety, but their sexual and psychological integrity. It is a violation that is not only marked by violence, but by a form of sexual terrorism. "The act of rape is invasive, dehumanizing, and humiliating. It is a crime that is akin to torture," (Artz, 1999). The boundary of the body itself is broken by force and intimidation, a chaotic but choreographed violence. The use of force, violence and subordination are characteristics to the act of rape. The consequences for the rape victim are severe and life-long, and include the loss of the ability to trust, of freedom and identity. For the rape victim, restitution is never fully realized even if the offender is brought to justice (Combrinck, 2001). Rape victims, unlike other victims of crime, are not venerated for their bravery in coming forward with their experiences. Instead they are ignored, dismissed, questioned and shamed by the very people meant to support them,

their families, communities, the criminal justice system and civil society in general (Naylor, 1999).

2.6 The South African Criminal Justice System and Rape Survivors

Within the South African context, media reports as well as research data has revealed that the criminal justice system is one branch of government that comes under scathing attack from all political quarters. Conservatives, liberals, radicals, law-and-order advocates, civil libertarians, civil rights activists, and feminists all find fault with its rules and procedures. Even officials who run its agencies and shape its daily operations have joined the chorus of critics calling for change over the past few decades. The consensus among the experts, is that the criminal justice system does not measure up to expectations. It fails to deliver what it promised. It does not meet the needs and wants of victims as its clients, or consumers, of its services. Law enforcement agencies are at the intake end of the legal system, and are the criminal justice professionals that victims first encounter. Police officers could rush to help the victim and provide whatever physical and psychological first aid might be needed (Davis and Snyman, 2003).

The South African criminal justice system is ostensibly adversarial in nature (Pithey et. al., 1999). Criminal trials are viewed as two sided battles between the state - represented by the public prosecutor - and the accused, who has a right to legal representation. The judge or magistrate in the criminal trial acts as an impartial umpire who decides upon the guilt or innocence of the accused, once all the evidence has been adduced by both sides.

The prosecutors' primary function is to assist the court in arriving at a just verdict and, in the event of a conviction, a fair sentence based upon the evidence presented. The position of the prosecutor differs from that of the defense counsel in the sense that the latter is representing a particular client, whose interests are predominant in determining the nature of counsel's ethical obligations. There is, for instance, no reciprocal duty on defense counsel to disclose evidence which could potentially be favorable to the prosecution (Artz, 1999).

In South Africa, rape is seen as a crime against the state and not against the rape victim. The effect of this, is that the survivor in a rape case is no more than a state witness. She is, together with any other witnesses that the prosecution may call to assist the state in proving its case beyond a reasonable doubt, and is only part of a chain of evidence. The reality is that rape victims experience the rape and subsequent criminal trial as intensely personal (Combrinck et. al., 1999). Rape victims often refer to the incident as my rape, to the perpetrator as my rapist, and to the criminal trial as my case. This contradicts the understanding (dictated by the rules governing the operation of the criminal justice system) that she is not a party to the criminal trial (Artz, 1999).

The conviction rate for rape trials in South Africa is particularly low (Robertson, 1998). South Africa is grappling with one of the highest incidents of rape in the world, with statistics showing a conviction rate of only 1 in 9 (News24, 2006). One of the major difficulties in securing a conviction in a rape trial, is that state evidence frequently depends on the evidence of a single witness, i.e. the survivor. It is therefore imperative to

ensure that this evidence is placed before court in the best form possible. However, there are at present several factors which prevent the evidence of the survivor reaching the court in optimum form. Naylor, (1999), continues to argue that the interests of justice in securing the conviction of perpetrators of rape require measures to address difficulties experienced by survivors during the trial. Pithey et. al. (1999) caution, however, that the interests of justice extend beyond the boundaries of the criminal trial - where an accused, for example, violates bail conditions by further intimidating or assaulting the victim. These interests are also severely prejudiced by the effect which such intimidation or further violence, may have on the ability or willingness of the victim to participate in the criminal trial as well as on the quality of evidence. These factors are briefly discussed with specific reference to events preceding and during the trial (Naylor, 1999).

2.6.1 Before the Criminal Trial

Perusal of literature suggests that, the time period from when the rape is reported to the police to when the matter goes to trial is often very long - it may occasionally take rape cases years to reach the trial stage. This length of time may have a negative effect on the quality of the survivor's evidence. The survivor is usually not included in the investigation of the matter after providing her initial statement about the rape. This implies that potentially useful information (for example, communication between the accused and the victim subsequent to the rape), is not brought to the attention of the prosecution, until the trial stage. Pithey et. al. (1999) argue that the victim is on her own in the sense that:

- Little if any information is communicated to her as to the progress of the investigation of the case;
- She is not given information as to whether the accused has been granted bail;
- She is not given information about the conditions attached to a successful bail application on the part of the accused. In addition, the survivor is not given information about crucial steps in the progress of the case, for example –
 1. Her recourse if bail conditions are broken by the accused;
 2. Any other recourse she may have in law to protect herself from the accused if he is out on bail, in terms of the *Witness Protection Act 112 of 1998*.
 3. The date of court appearances of the accused;
 4. Decisions made by the Director of Public Prosecutions, or his delegated authority as to whether they are going to prosecute the matter or not;
 5. The date of the trial.

They also maintain that a further significant defect in the system is the fact that survivors are seldom given an opportunity to meet with the prosecutor before trial, to discuss any or all of the following:

- The process and procedures of the trial, who the various role players in the court are and what they do;
- The structure and layout of the court room;
- Where to go and what to do on arrival at the court on the day of the trial;

- The evidence the survivor will be expected to give and why (prosecutors often fail to explain to rape survivors why it is necessary, for example, to relate details of whether there was penetration of her vagina by the penis of the accused);
- Potential differences between the police statement and the evidence that he or she will give in the courtroom, and what the consequences of such differences are likely to be;
- The sort of questions to be expected from the defense and what the purpose of cross-examination is;
- The nature of the other evidence to be presented by the prosecution (for example, medical evidence);
- The likely time frames of the trial;
- What the process will be if the accused is convicted; and
- The survivor's role in sentencing.

Differences between the survivor's initial police statement and her evidence in court present a serious difficulty that has received little attention (Combrinck, 1999). Very often survivors who report rape do not speak English or Afrikaans. More often than not, the police statement is written in English or Afrikaans. This means that the survivor's account of what has happened to her is translated by a police officer who is not a qualified translator but happens to speak both the survivor's language and English or Afrikaans. The survivor is then required to sign the statement written in a language she does not understand, swearing it to be a true reflection of what happened. Another reason why statements differ from what survivors report to police is that the quality of

statement-taking by police officers is extremely low. The version of the survivor as relayed to the police official taking her statement is frequently reflected inaccurately, or altogether omitted from the statement. This is largely because of lack of training on, and commitment to the issue of rape, as well as the general apathy in the South African Police Services. A further complicating factor is the universal use of set formulae by police officials to describe incidents of rape, which often contributes to the contamination of the survivor's version. Because of the nature and the effects of rape on women, few survivors identify the inadequacy of the statement, at the time of the report, as something worth pursuing (Combrinck, 1999).

2.6.2 The Criminal Trial

Pithey et. al. (1999) suggest that frequently, the true nature of the survivor's experience and the traumatic effects do not emerge during her testimony. This can be ascribed to a number of reasons:

- Where a pre-trial meeting with the prosecutor does take place, due to staff shortages and a high level of staff turnover, the prosecutor who appears for the State during the trial may not be the same as the one who did the interview;
- As a result of the lack of understanding and insensitivity to rape survivors and the limited space in most courts, many rape survivors often wait to testify in the corridors of the criminal courts where the accused, together with his supporters, also wait - leading to intimidation, and a great deal of distress on the part of the survivor;

- The rape survivor is then expected testify in a court room full of strangers who do very little to allay her fears. It is possible that at this stage, the only person she may actually recognize is the accused. She is required to tell these strangers about the most intimate, traumatic event in her life in graphic detail, without any explanation as to why she is being asked such questions.
- Her testimony is limited to answering questions she is asked by the prosecutor or defense, and thus there are often details of the rape that are omitted, simply because she is not asked about them.
- She may be too ashamed to speak about such intimate matters.
- She may be intimidated by the presence of the accused in the courtroom.
- The questions that she is asked by the accuser's legal representative, or by the accused himself, are often intended to –
 1. Badger her;
 2. Shame or humiliate her further;
 3. Create an impression that she is lying; or
 4. Imply that she is a morally questionable person.
- Because of inexperience and overwhelming case loads, prosecutors are often under-prepared for trial, and therefore not familiar with the subject matter of the particular case.

In effect therefore, there is a great possibility that the above factors significantly influence and jeopardize the testimony of the rape survivor. Due to the fact that she has been given such limited information about the trial and what is expected of her, it is of

little surprise that the rape survivor's testimony is often unclear, contradictory and incomplete (Combrinck et. al., 1999). These inadequacies are explained in terms of a framework of a lack of credibility of the survivor (she must be lying, that's why her testimony doesn't really make sense), rather than by looking at other factors which may have influenced the quality of such testimony. As Carol Smart explains: The experience the victim survivor wishes to convey in court is quite incomprehensible (except in those cases where her rape fits precisely with the legally acceptable definition of rape). The language she will use to explain her experience will be seen as flawed, and may introduce ambiguities which immediately imply she is guilty of consent. It would make greater sense, if in order to address these obstacles influencing the quality of the survivor's testimony, the introduction of a system where the survivor can join the criminal proceedings as an ancillary prosecutor, becomes necessary.

2.7 The Criminal Justice System's Response to Rape Survivors in Other Countries

2.7.1 Germany

Law in Germany is codified and is predominantly federal. The Penal Code is a revised version of a legal code introduced after the unification of Germany in 1871, and is therefore influenced by Prussian legal concepts. The system of criminal justice is derived from civil law, rather than common law that provides the basis for the legal systems used in Britain and the United States. In its modern development in Western Europe, including Germany, civil law incorporates ideas of non confinement punishments, work-release programs, and other measures aimed at rehabilitation rather than the mere isolation of a

criminal from society. Toward these goals, the West German state in the mid-1970s, promulgated the revised Code of Criminal Procedure and the Federal Prison Act. West Germany also joined several other civil-law countries by abolishing the death penalty, which was accomplished under the Basic Law of Germany. East Germany abolished the death penalty in 1987.

Even before the unification of Germany was completed in 1990, East German laws had been modified to delete provisions empowering authorities to detain people for exercising freedom of expression, association, assembly, and movement. The East German prison population fell from 24,000 to 5,000 persons because so many political crimes had been abolished. Following unification, West Germany's criminal code was adopted, with minor modifications.

Criminal cases get their initial hearing at any of the courts of the three-tiered *Land* system, that is, local courts, regional or *Land* courts, and the higher regional (appellate) *Land* courts. Cases can be appealed or revised from the lowest to the next two levels, or from all three courts to the highest court in the criminal justice system the Federal Court of Justice. Prosecutions leading to a maximum sentence of one year are heard by a judge of the local court. In more serious cases involving possible sentences of up to three years, the judge is assisted by two assessors, comparable to jury members in a common law system. Criminal cases in which the sentence exceeds three years are referred to a *Land* court, where they are heard by three judges and three to six assessors. A *Land* court of appeal presided over by five judges usually hears only appeals from the lower courts,

plus cases concerning extraordinary crimes in violation of the Basic Law, such as treason and genocide.

Individual rights of citizens are guaranteed in the Basic Law and in the country's statutes. The law prevents police from subjecting suspects to physical abuse, torture, drugs, deceit, and hypnosis. The record of the police in conforming to these guidelines is good. A suspect has to be brought before a judge no later than the day following arrest, and the judge is obliged to issue a warrant of arrest specifying reasons for detention, or else release the suspect. A relative or another person selected by the detainee has to be notified immediately of any detention lasting beyond the day after arrest. Accused persons have the right of free access to legal counsel, although this right has been restricted in the cases of some terrorists who used contacts with lawyers to continue terrorist activity while in prison. Bail bonds exist but are seldom employed. Criminal trials are held in public; protection against double jeopardy and the usual guarantees of due legal process is observed.

The judiciary is free from political influence and intimidation by terrorists. Substantial progress has been made in reforming the court system of the former East Germany to meet West German standards. Nevertheless, many experienced East German judges had to be disqualified for political and judicial reasons. Judges introduced from West Germany are handicapped by the unfamiliar circumstances in which they are required to function (Pizzi and Perron, 1996).

The judges have an obligation at trial to examine, evaluate, and weigh all relevant evidence in order to reach an accurate determination of the issues. Because the judges have an affirmative obligation to inquire into the charges, it is the judges, not the parties, who have the primary responsibility for deciding which witnesses will be heard at trial, and it is the judges, not the parties, who usually conduct the bulk of the examination of those witnesses.

The judicial function within this system comprises an investigative inquiry aimed at establishing the truth, the state and the accused are not pitted against each other in an adversarial contest to win the case. The German system allows for a survivor who has been injured by an unlawful act to participate as an ancillary accuser (*Nebenklager*), in the criminal prosecution of the accused. The procedure is limited in that it is available only in crimes that have a very personal impact on the victim, including murder, assault, kidnapping, and rape. The *Nebenklager* procedure allows the survivor to apply to the court by way of affidavit to participate as an ancillary prosecutor, once the state has instituted proceedings against the accused. Once permission is granted by the court, the victim becomes a party to the criminal trial and receives treatment equal to that of the accused in that she has the right to be present throughout the proceedings, and can participate through her legal representative, like the accused. She may also under certain circumstances, apply to receive state-funded legal representation if she is indigent. Where a legal representative is appointed, he or she represents the interests of the survivor at trial. A legal representative for the survivor thus functions much like the prosecutor and the legal representative for the accused, and will all have the rights to question witnesses, inspect records, request the recusal of a judge, bring appropriate motions, apply to have

evidence adduced and present a closing argument at the end of the trial. The *Nebenklager* procedure allows for the witness to explain fully all she knows about the crime and its surrounding circumstances. Instead of answering questions, she gets the opportunity to tell her own story, in her own words, through her own legal representative. This process ensures that the evidence is presented to the court in a manner that is nearest to its original form as possible, untainted by police, defense, and prosecutorial interpretation of the events. The rationale for allowing the victim to join as an ancillary prosecutor is not in the public interest of the prosecution of crimes, but her personal interest in obtaining satisfaction for the suffering that is the consequence of the crime. In addition to this, a type of protection of her interests is essential because of the nature of the rape trial. The rape survivor is often subjected to harsh cross examination by the defense counsel about the previous sexual history of the survivor, late reporting of the sexual assault and alleged spurious accusations of sexual assault.

2.7.2 Cuba

Cuba is a democratic-centralist state organized according to a Marxist-Leninist model. The Communist Party of Cuba is the only official political party. The national government is divided into executive, legislative and judicial branches. The executive branch consists of a Council of State and a Council of Ministers. The president of the Council of State serves as the President of Cuba. The national legislative branch consists of an elected, unicameral body known as the National Assembly of Peoples Power. The Supreme Court of Cuba serves as the nation's highest judicial branch of government. It is also the court of last resort for all appeals from convictions in provincial courts.

The Cuban legal system is a composite of the three major stages of Cuban history. Reflecting its past as a Spanish colony, Cuba is a civil law state that emphasizes written codes rather than precedent as the source of law, and the utilization of an inquisitorial system of criminal procedure, similar to that of Spain and France. Intermingled with this, are elements of Anglo-American law, such as the writ of habeas corpus, and a greater separation of courts and prosecutors than is normally characteristic of Marxist-Leninist states. Similar to South Africa, the criminal justice system of Cuba is divided into police, courts and prisons.

Policing in Cuba is organized under the auspices of the Ministry of the Interior (MINIT), which is directly responsible to the Council of State. The MINIT is divided into three directorates: Security, Technical Operations, and Internal Order and Crime Prevention. The Internal Order and Crime Prevention Section is subdivided into sub directorates for corrections, fire protection, and policing. The sub directorate for policing is responsible for the National Revolutionary Police (PNR). The PNR encompasses uniform policing, criminal investigation, crime prevention, juvenile delinquency, and traffic control. The PNR is divided into municipal divisions, each with its own police chief. These local police agencies are responsible to the national directorate of the PNR, through a hierarchical structure that incorporates provincial levels of oversight. The Security division of MINIT is responsible for policing crimes such as espionage, sabotage and other offenses against the state security. The Ministry of the Interior and the National Revolutionary Police have been closely integrated with the Revolutionary Armed Forces (FAR), since the revolutionary victory of 1959. In addition to formal policing by the PNR, the Cuban system of control utilizes the Committees for the Defense of the

Revolution (CDR) as auxiliary eyes and ears of the police. The CDR maintains night neighborhood watches known as *la guardia* to prevent crime. They deal with juvenile deviance and assist crime victims. The CDR is also responsible for promoting compliance with a variety of non-criminal requirements such as water and electricity conservation, pet inoculation, and public health requirements. Active CDR (*cederistas*) also provide the police or MINIT with information about activities they consider suspicious or deviant.

The Cuban court system consists of a Supreme Court, Provincial Courts, Municipal Courts, and Military Courts. The Supreme Court is subdivided into areas of responsibility (*salas*) for penal, civil and administrative, labor, state security, and military cases. Provincial courts are similarly divided, with the exclusion of a military *sala*. There is no formal division of Municipal Courts into jurisdictional areas, although larger municipal courts are subdivided into sections with specific responsibilities.

The Cuban penal system consists of prisons and granjas. Prisons are fenced and sometimes walled facilities, especially in the case of older prisons. Granjas are open farms without gates or fences. Granjas house offenders convicted of relatively minor offenses, while prisons are reserved largely for felony-equivalent violators. Separate school-like facilities are maintained for delinquents under the age of 16.

Women in Cuba, as in many areas around the world, are victims of both rape and domestic violence. The recorded frequency of such offenses in Cuba, however, appears to be lower than both the United States and Latin America.

In Victims' Assistance Agencies, the primary institutions for assisting victims of crimes are the Committees for the Defense of the Revolution (CDRs). The CDRs are block-level neighborhood associations that offer various forms of social support to neighborhood residents, in addition to engaging in crime prevention and political vigilance. Victims of crime can obtain medical care, social welfare assistance, and/or counseling services from one of Cuba's nationwide system of neighborhood "polyclinics".

The role of the victim in prosecution and sentencing is not much. There are no special roles for victims during prosecution or sentencing, other than providing evidence and testimony during adjudication. The victims have no specific rights legislation in Cuba.

2.7.3 United States of America

Section 2907.02 (f) of the Ohio Criminal Code states that:

Upon approval of the court, the victim may be represented by counsel in any hearing in chambers or other proceedings to resolve the admissibility of evidence. If the victim is indigent or otherwise unable to obtain the services of counsel, the court, upon request, may appoint counsel to represent the victim without cost to the victim.

This section was introduced primarily to protect the victim in relation to evidence about her previous sexual history, and is based on the rationale that it is the adducing of this type of evidence, which is so traumatic and damaging to the rape survivor. This means a case can be made for the fact that there are many other aspects of the rape trial, including but not limited to the adducing of evidence of the rape itself, which are extremely

traumatic for the survivor, and thus make a reconsideration of her participation in the trial necessary.

2.7.4 Namibia

The Namibian Law Reform and Development Commission recognized in its report on the law relating to rape that the rights of the survivor in a criminal case are extremely limited, and are confined to attending the trial and to suggesting lines of cross-examination to the prosecutor. The Commission also acknowledged that public prosecutors are not the representatives of survivors, but of the state, and as a result, often fail to object to hostile or degrading cross-examination.

2.8 The Role of SAPS in Victim Support

The National Guidelines / Instructions for police (No. 22 / 1998) on sexual offences (Support to Victims and Crucial Aspects of the Investigation), have been in place since 1998. It claims to provide step-by-step guidelines on how to manage a victim, and an investigation, and to ensure that police follow these guidelines / instructions. These guidelines / instructions, however, have not been implemented adequately. National Policy Guidelines / Instructions are, by definition, intended to establish and maintain uniform standards of policing (s25 (1) (b) of the South African Police Service Act 68 of 1995). As such, they set out policy guidelines for processing and management of certain

offences (National Instruction 22 of 1998, Sexual Offences: Support to Victims and Crucial Aspects of the Investigation).

When reporting a sexual offence, it is important that until the contrary is proved, allegations of sexual offences are to be accepted as such. A sexual offence complaint can be received by telephone, or the victim may present herself at a station to lay a charge of rape or any other sexual offence. If a case of a sexual offence is reported to the police, it must be given immediate attention (SAPS, National Policy Guidelines for Victims of Sexual Offences, 1998).

The guidelines further maintain that, the primary responsibility of the officer who is the first to arrive at the scene is to ensure that the scene (and the surrounding area) remains untouched, and that the victim supplies a full description of the suspect if not already given.

It is extremely important that the scene of the crime and the surrounding area are secured to ensure that the evidence remains intact. The responsibility to safeguard the area where the incident occurred rests with the first officer at the scene. It is the responsibility of the SAPS to ensure that the scene is not disturbed by the victim, or any witnesses who may already be on the scene, the media or police officers not involved in the investigation (SAPS, National Policy Guidelines for Victims of Sexual Offences, 1998).

The victim must be informed of police procedures and must have a thorough explanation of the role of every police official in the process. (SAPS, National Policy Guidelines for

Victims of Sexual Offences, 1998). The National Policy Guidelines sets out the following procedures to be followed by police officers when talking to the victim:

- Introducing one self
- Taking the victim away from the room (or area) where the incident took place to a private place (or area)
- Explaining to the victim and family why it is necessary to secure the scene of the crime
- Obtaining a brief version of the events from the victim
- Trying to get a full description of the suspect. This must be circulated immediately (as the suspect may still be in the area)
- Contacting the detective on standby or the Family violence, Child protection and Sexual Offences Unit to attend the scene

While waiting for the investigating officer to arrive at the scene, the attending officer must:

- Talk less to the victim and let the victim to do the talking;
- Ensure the victim is not left alone until the investigating officer arrives;
- Listen to what the victim says and try to put him/her at ease.
- Must not interrupt the victim when he/she is talking. (If a police official keeps interrupting the victim to obtain the facts, it is possible that important, spontaneous statements by the victim may not be made.)
- Write down everything that the victim is saying.
- Show empathy (understanding), not sympathy (pity), towards the victim.

Often victims are worried that everyone will know the intimate facts of the case. It is the responsibility of the police member to explain to the victim that only the relevant persons will need to access the exact facts, and that it will not be necessary for the intimate details to be told repeatedly. The police member must inform the victim that if he/she wishes to continue with the case, a medical examination will be necessary (SAPS, National Policy Guidelines for Victims of Sexual Offences, 1998).

The guidelines also state that the medical examination must be carried out as soon as possible, and will be done by an accredited health care practitioner. The investigating officer must make the necessary arrangements. A police official must remain with the victim until the person who will investigate the matter further arrives. If it has been established that the victim has been indecently assaulted in his or her mouth, liquid must not be offered to the victim, as evidence may be lost. This restriction is applicable only if the victim has not already rinsed his or her mouth, as an oral swab can be taken only within six hours after the incident. If the victim needs to urinate, he or she must be advised to retain any sanitary material used.

The investigating officer's first responsibility is to register a case docket. The case docket must be registered before:

- The accredited health care practitioner examines the victim, and
- A suspect is arrested and/or held in custody.

If, for any reason, an investigating officer is unavailable to register a docket, it remains the responsibility of the first officer on the scene. If the victim's basic details are

unknown as a result of injury, shock, trauma, unconsciousness or inebriation, a skeleton docket must be registered.

The police member must follow the following procedures when dealing with a victim of rape:

- Identify him/her by stating his/her rank and full name.
- The police member must obtain a brief description of what happened (in private).
- The police member must ascertain whether the procedures have already been explained to the victim and if not, he/she should briefly explain his/her role and the subsequent police procedures.
- The police member should avoid asking too many questions during the first meeting. Instead he/she should concentrate on eliciting relevant detail necessary for the accredited health care practitioner's examination.
- The police member must avoid questions which cast the blame on the victim, and he/she should not be judgmental when posing the questions.
- Police member must report everything the victim says using foolscap paper and file it under annexure B in the case docket (for future reference).
- The police member must provide the victim with the written case number and his/her contact details as the investigating officer.

A SAP 308 (permission for medical examination) must be completed by the investigating officer. The investigating officer must, at the bottom of SAP 308 form, record precisely which samples he/she requires from the accredited health care practitioner. He or she must also ensure that all the relevant details of the incident are noted on the SAP 308, or

attached to it. It is important for the investigating officer to escort the victim to the accredited health care practitioner, and thereafter to a place where the victim feels safe (e.g., the home of a friend or of a family etc). The reason for the above is because the evidence from the health care practitioner is crucial in a court case, and the members of SAPS have to make sure that the survivor is safe (SAPS, National Policy Guidelines for Victims of Sexual Offences, 1998).

Even though there are guidelines that the police officers need to follow up when dealing with rape survivors, there are also challenges within the guidelines. One of the major concerns regarding the existing guideline documents, is that many state officials are simply unaware of the existence of the document, let alone of the nature of its content. The Commission recognizes that the National Policy Guidelines were not distributed widely to SAPS members or stations, and even that “very few members of SAPS comply with or seem to be aware of its existence” The Commission also acknowledges the “unwritten rules” in the management and investigation of rape cases. The instructions also do not contain guidelines relating to information sharing, consultation with and collection of evidence for the trial between the investigating officers and the prosecuting authority prior to the trial meaning there is a big gap. Most importantly, it does not provide any guidance as to what constitutes an “unfounded” allegation or what to do when a victim wishes to withdraw her complaint (South African Law Commission Project 107: 2002).

The Commission also acknowledges that despite the development of a number of national strategies and programmes, as well as provincial and regional protocols, no official

uniform standardised procedures, guidelines or management protocols exist for dealing with victims of sexual offences, or with sexual offenders. By the Commission's own admission, existing services are mostly fragmented and under-resourced. The Commission correctly concludes that "there is no guarantee that a victim of a sexual offence entering the system will be dealt with in terms of acceptable procedures or be protected from further harm" (South African Law Commission Project 107: 2002).

Combrinck further argues that policy documents setting out 'directives' or 'guidelines', such as the SAPS National Policy Guidelines, are generally not accessible to members of the public. A further concern about guideline documents is the prevailing uncertainty of the legal status of these documents, which also impacts on the question of failure to comply with positive duties. The response of state officials to sexual offence victims is unfortunately often still dismissive and disrespectful. The enumeration of statutory duties would serve to convey that the legislature takes sexual offences seriously, and expects state officials to do so as well (Combrinck: 2002).

2.9 Theoretical Framework

In order to obtain a more holistic view of the topic at hand, different approaches or perspectives need to be discussed in order to incorporate all facets of the problem. Therefore, the issue of rape is discussed from the feminist theoretical perspective and lifestyle exposure model of personal victimisation.

2.9.1 Feminist Theory

Feminist theory considers rape to be the result of deep rooted social traditions in which males dominate all important political activities (Ellis, 1989). In 1985 feminist theory became the dominant exploration for rape. The exploitation of women resulted in the existence of prostitution, especially pornography and it was reinforced by men (Brownmiller, 1975). According to feminist theory, the result of male domination over women, is that women are excluded from political decision-making process, which affects them, including those matters dealing with rape and its control.

Feminist theories of rape posit that women are considered unequal participants in interpersonal interactions, because they are excluded from positions of political and economic power. Men view women as little more than property over which men compete (Clark and Lewis, 1977). Many feminists view rape as more or less a direct function of the degree to which females are politically and economically powerless relative to men (Davis, 1975), and as such, are viewed as property (Le Grande, 1973). Feminist theory regard rape as a male response to the social inequality and this tendency affects the sexual interaction between men and women. Many women are not free because they fear rape. Because of the fear of rape, women tend to restrict themselves in activities involving males, especially if they are not familiar with them. These restrictions prevent women from succeeding occupationally, economically and politically.

Donat and D' Emilio (1992), argue that the issues of rape and sexual assault have been a central concern for the feminist movement since its revival in the late 1960's. From their perspective, the feminist movement has been instrumental in revising the common conception and understanding of rape, sexual assault and the common social response to sexual violence.

From a liberal feminist viewpoint, women are victimized because of their restricted socialized roles in society, as well as their limited opportunities, while radical feminism attributes female victimization to factors such as male dominance or patriarchy. Marxist and socialist feminism maintain that women are vulnerable in a capitalist society because of a capitalistic system, as well as inequalities and the division of labour in terms of the class system. Black feminism adds another dimension and highlights the fact that black women are not only vulnerable because of cultural factors, but because of racial discrimination (Pollock, 1999).

2.9.1.1 Liberal Feminism

Liberal feminism argues that equality for women can be achieved through legal means and social reform, and that men as a group, need not be challenged. Liberal feminism is a somewhat conservative or libertarian form of feminism by today's standards, although it is rooted classically in liberalism. Liberal feminism leans towards an equality of sameness with men (Lorber, 2006). Liberal feminism conceives of politics in individualistic terms and looks to reform present "liberal" practices in society, rather than advocating for a wholesale revolutionary change. Feminist writers associated with this

tradition, are amongst others, Mary Wollstonecraft, John Stuart Mill and second-wave feminist Betty Friedan (Friedman 2001).

2.9.1.2 Radical Feminism

Radical feminism views women's oppression (which radical feminists refer to as "patriarchy") as a basic system of power upon which human relationships in society are arranged. It seeks to challenge this arrangement by rejecting standard gender roles and male oppression. The term "militant feminism" is a pejorative one which is often associated, usually by detractors, with radical feminism. Often, radical feminism is seen by people other than adherents, as a form of identity politics on issues of gender.

Radical feminists locate the root cause of women's oppression in patriarchal gender relations, as opposed to legal systems (liberal feminism) or class conflict (socialist feminism and Marxist feminism, (Echols, 1989).

Radical feminists in Western society believe that their society is an oppressive patriarchal society that primarily oppresses women, and as such, seek to abolish this patriarchy. They also believe that the way to deal with patriarchy and oppression of all kinds, is to attack the underlying causes of these problems and address the fundamental components of society that support them.

Radical feminists have claimed that men use social systems and other methods of control to keep non-dominant men and women suppressed. Radical feminists believe that eliminating patriarchy, and other systems which perpetuate the domination of one group over another, will liberate everyone, from an unjust society (Daly, 1978).

Many critics of radical feminism argue that the true aim of radical feminists is often not only to abolish the existing patriarchy, but to undermine men by replacing the supposed patriarchy with a different structure embodying similarly oppressive attitudes, with only the genders reversed.

2.9.2 The Lifestyle Exposure Model of Personal Victimization

The lifestyle exposure model was developed by Michael Hindelang, Michael Gottfredson and James Garofalo in 1978. The formulation of this model was based on data gathered by Bureau of the Census in 1972 during victimization surveys conducted in eight cities namely Atlanta, Baltimore, Cleveland, Dallas, Denver, Newark, Portland and St. Louis (Schurink, Snyman, Krugel and Slabbert, 1992). The lifestyle exposure model of personal victimization is the likelihood that for an individual to be victimized, it depends to a great extent on the lifestyle of a person. In general, lifestyle refers to routine daily activities, both vocational (work, school, keeping house, etc.) and leisure time, Hindelang et al., (1978). Fattah (1991) however, define lifestyle as “patterned ways in which individuals channel their time and energy by engaging in a number of activities”. In short, the authors try to explain that a specific lifestyle followed by an individual will link him/her to his/her personal victimization.

In order to function well as a member of the society, an individual must adapt to certain role expectations and social structures. These role expectations and structural constraints differ according to the demographic characteristics of individuals. These demographic

variables vary over the course of an individual's lifetime, and carry with them expectations of appropriate and inappropriate behaviours (Hindelang et. al., 1978, Williams and McShane, 1999). Once these role expectations and structural constraints in the lives of individuals are learned, individuals incorporate them into their routine activities. For example, in terms of role expectations, there are certain behaviours that society deems to be appropriate for children, but not for adults. Similarly, structural constraints such as economic circumstances can change as a person gets promoted to a better paying job.

2.9.2.1 Demographic Characteristics

Although demographic characteristics are directly related to an individual's lifestyle, they are also related to different probabilities of victimization. This is due to the association between demographic characteristics and structural constraints ascribed to groups, whose names share those characteristics. In so far as people share the same characteristics with potential offenders, they face increased risk of victimization. From an offender's perspective, personal characteristics and lifestyles contribute to determine target suitability and desirability (Hindelang et. al., 1978). The personal characteristics which are relevant in the current study comprises of age, gender, marital status, income and race.

2.9.2.1.1 Age

Age influences a person's lifestyle in terms of association with others outside of the immediate family. Generally, young people have higher rates of victimization than older people. Heinzelman and Boyle (2002) confirm the above and they suggested in their research, that younger and better educated persons, are victimized more often than other individuals. Young people are more receptive to promises of fabulous bargains and spectacular opportunities. They also lack life experience and are more careless than older people. The risk of victimization diminishes rapidly after the age of 25 (Siegel, 2004).

2.9.2.1.2 Gender

Gender also plays another important role in an individual's routine activities and lifestyle. Except for crimes of rape and sexual assault, males are much more likely than females to become victims of violent crime (Siegel, 2004). An analysis of murder dockets registered since February 2002 by the South African Police Service (2003) reveals that only 14, 1 % of all murder victims were females. Females run a greater risk of becoming victims of assault with attempt to do grievous bodily harm (GBH). The South African Police Service Annual Report indicates that 40, 2% of the victims were female (South African Police Services, 2003), while in the case of common assault 53, 7% of the victims were females. From the state, it can be established that females run a slightly higher risk of falling victim to common assault than men (Davis and Snyman, 2005).

2.9.2.1.3 Marital Status

Several victimization surveys (Siegel, 2004) indicated that divorced and never married males and females are victimized more often than married people. Widows and widowers have the lowest victimization risk (Davis and Snyman, 2005). The reason for this trend is that many young people are still unmarried. Young people go out more often than married people do, and visit public places such as bars and rave clubs. Their lifestyle puts them at a higher risk of being victimized than older people. Widows and widowers are generally older people who associate with people in their own age group, and they are more likely to stay at home at night.

2.9.2.1.4 Family Income

In general, crime statistics indicate that low income groups are more at risk for violent crime and most non-violent personal crime. However, burglary rates are for low income groups, as well as relatively high for the highest income groups (Mawby and Walklate, 1994). The poorest people appear to be most likely victims of crime because they live in crime prone areas such as the inner city (Siegel, 1994). In the “new” South Africa, the majority of black people still live under dire socio-economic circumstances in the poorest areas, for instance, in squatter camps or informal settlements, where guardianship in terms of effective security is limited. Households with a higher income are more likely to fall victim to property crime than violent crime (Fattah, 1991).

2.9.2.1.5 Race

Similar to income, race is also linked to an individual's lifestyle. Worldwide, black people experience more personal and household crime than whites do. Almost 80% of violent crime victims in South Africa are black, which is a slightly above-average incidence, considering that blacks makes up 75% of the population. This can be attributed, inter alia, to the fact that many black people live in high crime risk areas where unemployment and poverty prevail (Mawby and Walklate 1994).

From the above discussion, one can infer that while lifestyle affects one's exposure to personal victimization, the effects of demographic and socio-economic characteristics through socialization cannot be ignored. In addition to these demographic characteristics, Hindelang et. al. (1978), lists several conditions, which must be met before personal victimization can occur. Firstly, the victim and the offender must intersect in time and space. Secondly, a dispute/claim must arise between the victim and the offender. In this case, the offender should view the victim as a suitable target. Thirdly, the perpetrator must be willing and able to use force or stealth to accomplish the desired goal. Lastly, the offender must view the situation as beneficial to use or threaten force in order to accomplish the goal. The probability of all of these variables being met is associated with the routine activities of the individuals. Differences in lifestyles, in turn, result in varying probabilities among individuals of being in "particular places at particular times, and coming into contact with persons who have particular characteristics" (Gottfredson et al.,

1978). This implies that there are certain people, places and times that will have higher victimization risks than others.

In summary, the lifestyle model hypothesizes that some individuals are more vulnerable to personal victimization than others. This is attributed to demographic characteristics such as age, gender, marital status, education and race. Furthermore, it is postulated that following certain lifestyles, such as going out at night, especially during weekends, also contributes to the risk of personal victimization.

2.10 Conclusion

Chapter two has presented a discussion in terms of legislation and policies that attempt to protect the victims of interpersonal crime, including the Constitution and the Domestic Violence Act of 1998. This chapter examined both national and international documents. It also gave a brief picture of rape being different from other violent offences. It also dealt with the description of the theoretical framework within which the study is located. The discussion of the methodology used in the study will be presented in the next chapter.

CHAPTER 3

METHODOLOGY AND RESEARCH DESIGN

3.1 Introduction

The objective of the study was to gain insight into how the South African Criminal Justice System (SACJS) responds to rape survivors and how this is experienced by rape survivors. In addition, the study attempts to identify any gaps that may exist in reporting a rape case and offers recommendations arising from these findings.

This chapter explains the research methodology utilized, sample selection, the type of instruments used to collect data, as well as ethical considerations. The research methodology reported in this chapter consists of a qualitative analysis of focus group discussions, and a quantitative analysis of structured interview schedules administered to the respondents.

3.2 Research Methodology

This study utilized a largely qualitative research methodology, because the researcher aimed to gain a deep understanding of the rape survivors' experiences. The research has no formal hypothesis and the researcher was not concerned with the testing of

hypotheses. Since limited research has been conducted on rape victims in South Africa, an exploratory method was found to be more appropriate for this study. Exploratory studies are usually undertaken when there is not enough information available about the research subject Sarantakos (1998).

3.3 Sampling Framework

One of the most significant issue researchers have to consider when planning a research project, concerns the type and number of the respondents that will be included in the study. Sampling enables the researcher to study a relatively small number of units in place of the target population. In most cases, however, researchers opt for an incomplete coverage, and study only a small proportion of a population, a sample. Sampling is, thus, the process of choosing the units of the target population which are to be included in the study (Sarantakos, 1998). The type of sampling procedure used for this study is non-probability sampling. Non-probability sampling procedures do not employ the rules of probability theory, nor claim representativeness, but rather are usually used for exploration and qualitative analysis. Purposive sampling is an example of non-probability sampling technique. In this sampling technique (also known as judgmental sampling) the researchers purposely chooses subjects who in their opinion, are thought to be relevant to the research topic. In this case, the judgment of the researcher is more important than obtaining a probability sample (De Vos, 1998). The process of sampling in this case will involve identification of the respondents and arranging times for meeting them. The disadvantages of such a sampling technique however, include difficulty in generalizing

findings of the sample to a larger population, as well as difficulty in controlling bias (Stuwig and Stead, 2001).

In this study the researcher utilized purposive sampling. The respondents were sought via the Rape Crisis Centre (RCC) in Port Elizabeth, Eastern Cape Province. Contacts and arrangements to obtain 50 participants for the study were made with the Director / Counselor who was also utilized as an intermediate. This was to ensure the availability of willing participants. This also assisted the researcher in initiating trusting relationships with the respondents (Mesatywa, 1999). The sample comprised females between 15 - 45 years. The sample was selected on the basis of the following criteria:

- Participants were all rape survivors,
- They had reported their cases to the police,
- They had either been to court or were preparing to go to court, and
- They had all been examined by a doctor.

There is no guarantee that the sample selected from the Rape Crisis Centre is representative of the wider population. However, the respondents were more accessible to the researcher and the centre was a feasible source for obtaining a sample at minimal cost to the researcher. This is not inappropriate in an exploratory study of the experiences of rape survivors.

3.4 Instruments

In attempting to answer the critical questions, structured interview schedules were administered, which were tape-recorded in the Xhosa language, later transcribed and translated into English, in order to explore the rape survivors' experiences of the SACJS. The interview schedule consisted of open-ended and closed-ended questions. The interview schedule generated biographical data, and data on police handling of the rape cases.

3.4.1 Interviews

The interviews aimed to generate an understanding of how the South African Criminal Justice System deals with rape survivors. The choice of the interview as a means of producing data was based on the following merits:

- It generated unique or divergent feelings about a particular matter.
- It allowed participants to express how they regarded situations from their own point of view.
- It allowed for greater depth during discussion.

Cohen and colleagues, (2002) perceived the interview as a research tool that enables participants to discuss their interpretations of the world in which they live, and to express how they regard situations from their own point of view.

Kvale cited in Cohen et. al., (2002) remarked that interviews are an interchange of views between two or more people on a topic of mutual interest, sees the centrality of human interaction for knowledge production, and emphasizes the social situatedness of research data.

3.4.2 Focus Group Interviews

Cohen and Kennedy (2002) define focus group interviews as contrived settings, bringing together a specifically chosen sector of the population to discuss a particular given theme or topic, where the interaction with the group leads to data and outcomes.

This type of interview is favoured because of the following reasons:

- It has a subject and clear agendas.
- It possesses the potential for discussions to develop, thus yielding a wide and varied range of responses about a given topic.
- It is less intimidating when discussing sensitive and contentious issues.
- Participant interaction during discussion can yield insight, awareness, and elicit highly personal data.
- It presents the opportunity for participants to have a homogenous background so that discussions are focused, and the sample is representative of the population under study.

In this study, the respondents were divided into five groups comprising of ten respondents in each group. There were two groups of 15 – 20 year age categories, two 21 – 25 year categories, two 26 – 30 year categories, two 31 – 35 year categories, one 36 – 40 year category and one 41 – 45 year category. The women comprised African, Coloured and White. They had various educational qualifications ranging from high school to post matric. They were all permanent residents from Port Elizabeth in the Eastern Cape.

The focus group discussions dealt with predominantly open-ended and sensitive questions about the experiences of the rape survivors. The researcher had a psychologist on stand-by, in the event of research participants becoming traumatised while participating in the discussion. For the researcher, the data production process was emotionally challenging. The researcher decided to begin with the focus groups as she believed this type of setting will motivate research participants to share and realize that they are not alone and to create an atmosphere of security. The interview schedule began with generic inquires like the ages of the research participants and their occupation. The researcher also informed research participants that they were free to exit the group at any time that they felt uncomfortable or that they felt that the questions were too sensitive. Research participants often spoke in either Xhosa or Afrikaans and this was then translated later into English.

The researcher sometimes used “prompts” to clarify questions, and “probes” to allow research participants to elaborate or qualify their responses, thereby addressing issues of richness and comprehensiveness. The questions were couched in everyday, non-professional language to generate rich descriptions and authentic data (Cohen and Kennedy, 2000). The interview schedule had predominantly closed-ended questions.

The research participants were interviewed in the Rape Crisis Centre Boardroom as prearranged by the centre. The interviews were conducted in a space selected by the centre and survivors, so that they could be more comfortable and relaxed. Since the interview is a social, interpersonal encounter and not merely a data collection exercise, participants were briefed as to the nature of the research in an attempt to make them feel at ease, and offer some sort of security to talk freely about sensitive issues.

Studies of this nature are brought with ethical dilemmas. With regards to the ethical dimension of the study, research participants were given assurances of confidentiality, prior to the interview process. Participants were informed that they could opt out of the study if ever they felt any sort of discomfort. They were also informed that they were at liberty to ask questions and seek responses to their concerns. The duration of both face-to-face and focus group discussions, were approximately sixty minutes each.

3.5 Ethical Considerations

Social research is constrained by ethical guidelines that the researcher has to consider when conducting research. Ethics are described as a branch of philosophy concerned with what is good or bad for research participants or respondents, and what are the moral obligations of the researcher, Robinson and Reed (1998). In this study, there are some ethical issues such as informed consent, anonymity, confidentiality, violation of privacy that had to be considered and implemented by the researcher.

3.5.1 Informed consent

Informed consent entails making the subject fully aware of the purpose of the study, its possible dangers and the credentials of the researcher. The consent should be voluntary and informed to ensure that the participants' rights are respected, and to promote willingness to share information honestly (Hagan, 1997).

In this particular study, consent was obtained through interaction with the Rape Crisis Director. It was verbally accepted. Participants agreed to have the sessions tape recorded. They were also informed that if at anytime one felt uncomfortable with the questions asked, one was free to withdraw from the study.

3.5.2 Violation of privacy / anonymity / confidentiality

Singleton and others, (1988) explain that the right to privacy is the individual's right to decide when, where, to whom, and to what extent his or her attitudes, beliefs and behavior will be revealed. In the case of anonymity the researcher will use pseudonyms, and the researcher will emphasize confidentiality as well (Singleton, 1988).

For this study, all respondents were assured that their names will not be revealed to anyone. It was also stressed that everything taking place during the sessions would remain confidential.

3.6 Conclusion

Chapter three has presented a discussion on how the research was conducted. The discussion on the findings of this study is presented in the next chapter.

CHAPTER 4**ANALYSIS OF DATA****4.1 Introduction**

Although the criminal justice system is represented by the police and courts, it does not influence rape but it does play some part in aggravating the problem. This may be through insensitive and judgmental behavior that deters victims from reporting. It may also be through their perceived inability to arrest and convict offenders, or through the reinforcement and perpetuation of stereotypes. Various explanations for why men rape women have been put forward by psychologists (Holstrom and Burgess, 1978; Grubin and Gunn 1990; Scully 1990), and feminists (Brownmiller, 1976) including the way in which the criminal justice system allows this (Jeffreys and Radford, 1984; Adler, 1987; Temkin, 1987; Ginsberg and Lerner, 1989).

Lee and Stanko (2002) argue that there is very little research on the workings of the legal system in the area of violence against women. She notes that essentially there exist two main obstacles:

- i. Gaining access to police records, court officials and courts, and
- ii. Funding this type of research.

She argues that gaining access requires time, patience and energy. Officials, she claims, employ a variety of delaying tactics, in the hope that researchers will give up and go away.

Lee (2002) maintains that in Britain, a number of changes in the judicial treatment of rape have occurred in the past 20 years, mainly in response to the campaigning of groups such as the Rights of Women, the Women's Aid Federation, Women Against Rape and rape crisis groups, and in the light of growing evidence of the inadequacy of the judicial system. In the South African context, the introduction of the National Crime Prevention Strategy (NCPS), the amended Sexual Offences Bill and the Victims Rights Charter have compelled the CJS to rethink and reconceptualise the notion of rape, and how rape survivors or victims are treated (The word "survivors" and "victims" will be used interchangeably for reason of denoting empowerment rather than powerlessness and vulnerability).

Statistics in South Africa as well as Burnett, Karmali and Manji (2007: 167) have revealed that rape has one of the lowest conviction rates of all serious crimes. This factor, in combination with inconsistent sentencing and a high degree of under-reporting can only suggest to potential rapists that rape is a high reward, low risk activity. Against this backdrop, this chapter analyzes data on how the SACJS responds to rape survivors. It establishes this through data gathered from interview schedules. In addition, this chapter explores the perceptions of rape survivors and the role of the state in providing support to rape survivors. It accomplishes this by analyzing qualitative data generated from focus group discussions.

I attempt to understand what it means to be a victim/survivor of rape in the Eastern Cape Province. I also want to understand what gaps the victims identify through their experiences with the SACJS. This chapter first presents the demographic details of the respondents and thereafter, discusses the results obtained from the survivors through face-to-face interviews. Finally, it presents the results obtained from focus group discussions.

4.2 Demographic details of the respondents

The demographic details such as age, gender, occupation, education level and marital status of respondents are now going to be discussed.

Discussion of Research Findings

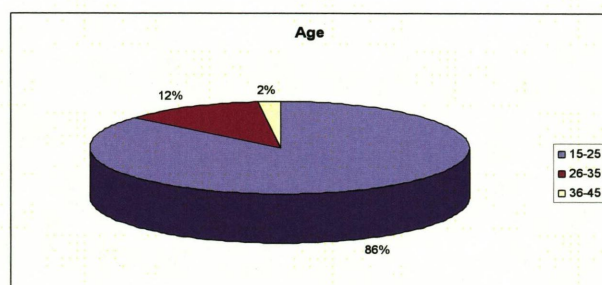
Table 1: Occupational status of respondents

Occupation	Percentage
Unemployed	50%
Student	32%
Employed	18%

Fifty percent of the respondents were unemployed while thirty two percent were either students or scholars. Eighteen percent were also employed (See Table1). In general, crime

statistics indicated that low income groups are more at risk for violent crime and most non-violent personal crime. According to Siegel, (2004), the poorest people appear to be the most likely victims of crime because they live in crime-prone areas such as the inner city.

Figure 1: Age of respondents

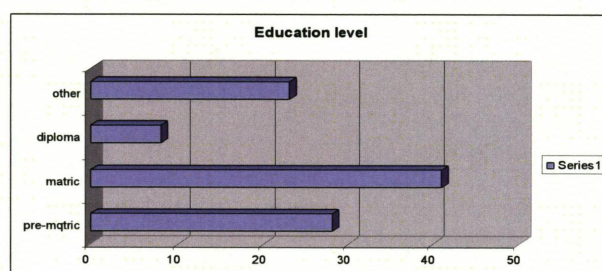


The respondents were categorized into three age groups. Group one ranged from fifteen to twenty five, group two from twenty six to thirty five and group three from thirty six to forty five. Eighty six percent of survivors fell in group one, twelve percent in group two and two percent in group three. The majority of rape victims were between fifteen and twenty five years of age (see figure 1). Hindelang (1978) argues that age influences a person's lifestyle in terms of association with others outside of the immediate family. Generally, young people have higher rates of victimization than older people. Heinzelman and Boyle (2002) in their research, found that younger persons are victimized more often than other individuals. They further maintain that young people are more receptive to promises of fabulous bargains and spectacular opportunities. They lack life experience and are more careless than older people. Victimization risk diminishes rapidly after the age of 25 (Siegel, 2004).

Gender also plays another important role in an individual's routine activities and lifestyle. Except for crimes of rape and sexual assault, males are much more likely than females to become victims of violent crime (Siegel, 2004). An analysis of murder docket registers since February 2002 by the South African Police Service (2003) reveals that only 14, 1 % of all murder victims were females. Females run a greater risk of becoming victims of assault with grievous bodily harm. The South African Police Service Annual Report indicates that 40, 2% of the victims were female (South African Police Services, 2003), also in the case of common assault 53, 7% of the victims were females.

Although men can also be raped, the majority of reported rape victims are females. South Africa has the highest incidence of rape among the countries that report reliable crime statistics (Pithey, Naylor, Artz and Combrinck, 1999).

Figure 2: Educational levels of respondents



Forty one percent of the sample has completed matric, twenty eight percent are still studying, and twenty three percent reported other and eight percent have diplomas. The majority of the sample is the educationally empowered women. Education plays a big

role in the growth and development of the human being. However, Heinzelman and Boyle (2002) confirm the above and found in their research though that younger and better educated persons are victimized more often than other individuals.

Table 2: Race breakdown

Blacks	35	83%
Coloureds	7	17%
Total	42	100%

The sample comprised of eighty three percent Black people and seventeen percent so called Coloured people.

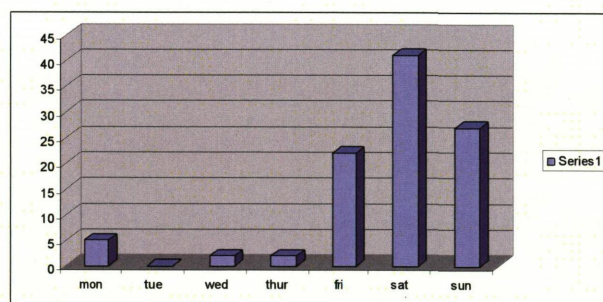
Table 3: Marital status

Single	41	98%
Divorced	1	2%
Total	42	100%

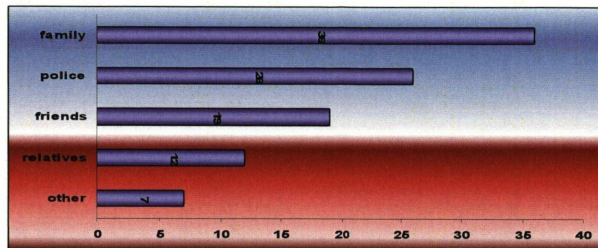
Ninety eight percent of the respondents were single and only two percent were divorced. Victimization surveys indicate that divorced and never married males and females are victimized more often than married people. Widows and widowers have the lowest victimization risk. The reason for this trend is that many young people are still unmarried. Young people go out more often than married people do, and visit public places such as bars and rave clubs. Their lifestyle put them at a higher risk of being victimized than

older people. Widows and widowers are generally older people who associate with people in their own age group, and they are more likely to stay at home especially at night (Siegel, 2004).

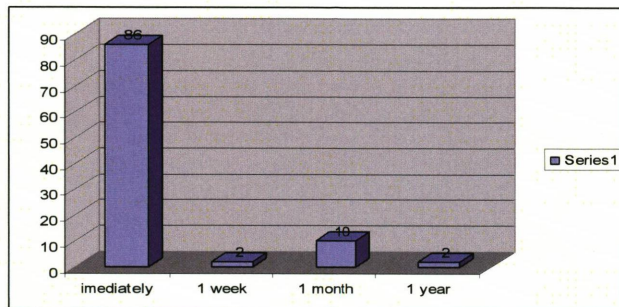
Figure 3: “Which day did the incident take place?”



Twenty seven percent reported that the incident took place on Sunday; five percent on Monday, two percent each on Wednesday and Thursday, twenty two percent on Friday and forty one on Saturday. Rape incidences were highest on week-ends beginning on Friday. Dastile (2004) revealed that various recreational functions are organized such as the fresher’s ball which is the welcoming of new students at universities/colleges, music concerts, sporting events and beauty pageants. Of particular importance is the fact that these activities are likely to be held in public places, at night and on weekends (Fridays and Saturdays) so as not to interfere with the academic programme. Crime Information Analysis Centre (CIAC) of the SAPS, Quarterly Crime Report 3/98 indicates that bulk of rape cases occurred over weekends, with the highest proportion of cases occurring on Saturdays, followed by Sundays. The smallest proportions of cases were reported on Tuesdays and Wednesdays.

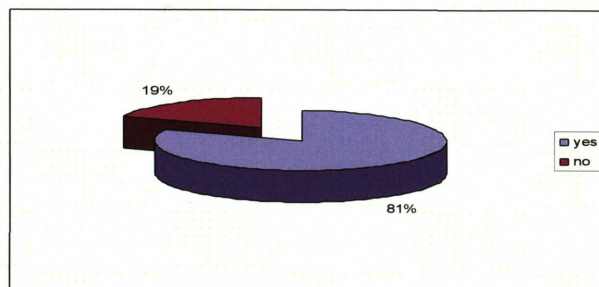
Figure 4: “Whom did you first report the incident to?”

When respondents were asked the above question, thirty six percent of rape survivors reported the incident to their families, twenty six percent to the police, nineteen to their friends, twelve to their relatives, and only seven percent reported it to other people. The majority of the sample reported the case to their families first. According to Rape Abuse and Incest National Network (RAINN) in 2005, most people would say that the first thing to do is go directly to the police. The reality is that every rape survivor has to make the decision herself. Others might not always be happy with the choices. RAINN knew a rape victim whose family was so proud and did not want the neighbours to know, so they chose not to go to the police and deal with it privately. RAINN also knew another survivor who chose to go directly to the police as soon as it happened. She called her sister and soon her entire family rallied behind her. She even testified in court and the rapist was sentenced. However the survivor still needs to decide for herself what to do in such a situation.

Figure 5: “How long did you take before reporting the incident to the police?”

Eighty six percent of the respondents reported the incident immediately, ten percent reported it after one month, two percent reported it after one week then another two percent reported it after a year. Almost the entire sample acted promptly in reporting the incident immediately to the police. The reasons offered by respondents for reporting at the times they did differ; some wanted to lay a charge, to get help from the hospital and have the rapists arrested. Others maintained that they were afraid and angry; they wanted to have evidence for their cases. Still others reported the incident after one month because; they were scared, they were alone and they wanted the whole incident to go away.

The National Policy Guidelines for Victims of Sexual Offences (SAPS) (1998), states that if a case of sexual offence is reported to the police, it must be given immediate attention. A victim can lay a charge at anytime. There is no time restriction in this regard. No victim should be turned away and the investigation should proceed in the prescribed manner.

Figure 6: “Did you know that you may report the case by telephone?”

Eighty one percent of the sample claimed they knew that they could report a rape case by telephone and nineteen percent did not know this. Nevertheless, eighty three percent reported the incident in person and eighteen percent reported it telephonically. SAPS, National Policy Guidelines for Victims of Sexual Offences, (1998) states that when reporting a sexual offence, it is important that until the contrary is proved, allegations of sexual offences are to be accepted as they are. A sexual offence complaint can be received by telephone or the victim presents himself/herself at a station to lay a charge of rape or any other sexual offence. If a case of a sexual offence is reported to the police, it must be given immediate attention (SAPS, National Policy Guidelines for Victims of Sexual Offences, 1998).

The reasons respondents reported the case in person is as follows:

- *I wanted to get help,*
- *I did not know I could report it telephonically,*
- *I wanted them to see what had happened to me and that I'm telling the truth,*
- *I wanted to speed up the process,*

- *I wanted the police to have evidence,*
- *I wanted the person to be arrested.*

Others reported the case telephonically because:

- *I was scared to go outside,*
- *I live far away from the police station,*
- *I could not walk because I was badly hurt.*

Figure 7: “Who addressed your complaint at the police station?”

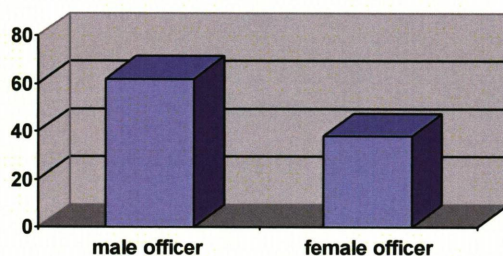
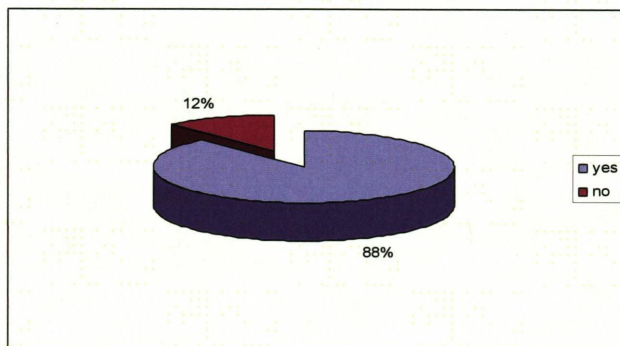


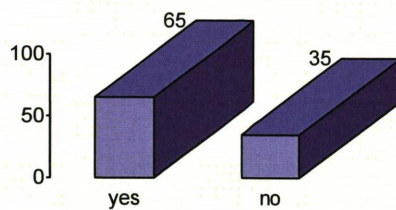
Figure 7 demonstrates that sixty two percent of the respondents were addressed by male members and thirty eight percent were addressed by female members. At the police station, the survivor can ask to speak to a woman police official (Mpumalanga Safety and Security). However, a woman police officer may not always be available. The survivor does not have to give all the details of what happened in the charge office when reporting the rape. After the survivor has said that she wants to report a rape, she should be taken to a private space such as an office, or to the trauma room, which is a more comfortable room that often also has trained volunteers to help her. Most police stations have trauma

rooms that are supposed to be open all the time, even on weekends and at night (Cape Gateway, 2006).

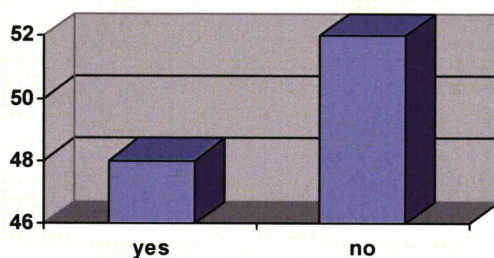
Figure 8: “Were you comfortable with the gender of the member recording your statement?”



Eighty eight percent of the respondents were comfortable with the gender of the member who recorded their statements and twelve percent were not comfortable. According to study conducted by Rassool, Vermaak, Pharaoh, Louw and Stravrou (2003) from Institute for Security Studies (ISS), on violence against women, they found out that nearly three quarters of the women reporting abuse to the police made their statement to a male officer. Various SAPS policies stipulate that whenever possible policewomen should deal with rape complaints. However, there are fewer police women than reported rape cases. Relatively few female officers work in the charge office or flying squads, and these are the first points of contact the complainant has with the police. It is therefore seldom possible for a rape complainant to deal with a policewoman.

Figure 9: “Did the member introduce herself/ himself to you?”

Sixty five percent said the member did introduce him/herself at the time of recording the statement and thirty five percent said the member did not. The National Policy Guidelines for Victims of Sexual Offences (SAPS) (1998) states the procedures clearly of what the police should do when attending to someone who has been raped. There are procedures that are to be followed by police officers when talking to the victim such as: Identifying him/herself by stating her/his rank and full name. Also, stating her/his first name (or name that the victim may use when talking to him/her). The victim may feel more at ease on a first name basis, rather than the full rank and name of the officer.

Figure 10: “Were the police procedures explained to you?”

Fifty two percent said the police procedures were not explained to them and forty eight percent of the sample said they were. The National Policy Guidelines for Victims of

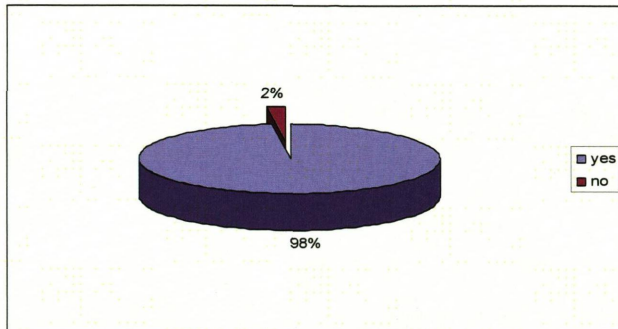
Sexual Offences, (SAPS) Support to Victims of Sexual Offences, states that the victim must be informed of police procedures and must have a thorough explanation of the role of every police official in the process, namely:

- investigating officer,
- fingerprint experts,
- photographer/video unit and
- tracing unit/crime prevention unit (SAPS, National Policy Guidelines for Victims of Sexual Offences, 1998).

These procedures must be followed when dealing with the victim, namely:

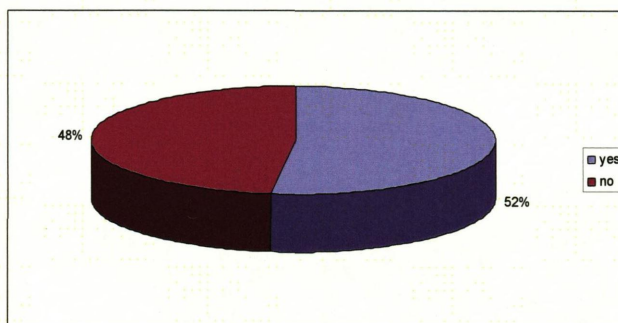
- Obtaining a brief description of what happened (in private).
- Ascertaining whether the procedures have already been explained and if not, briefly explaining roles and the subsequent police procedures.
- Not asking too many questions during the first meeting.
- Concentrating on eliciting relevant detail necessary for the accredited health care practitioner's examination.
- Avoiding questions which cast the blame on the victim, and not being judgmental when posing these questions.
- Reporting everything the victim says using foolscap paper and filing it under annexure B in the case docket (for future reference).
- Providing the victim with the written case number and personal details as the investigating officer.

Figure 11: “Were you asked your name and address?”



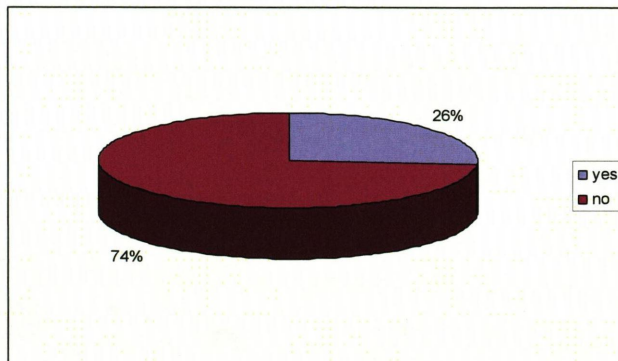
Almost the entire population, ninety eight percent, was asked for their names and addresses.

Figure 12: “Were you asked if you were ready to lay a charge?”



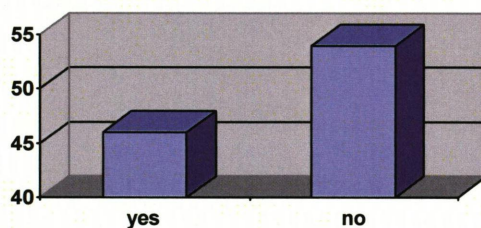
Fifty two percent were asked and forty eight percent were not asked if they were ready to lay a charge. According to National Policy Guideline for Victims of Sexual Offences (SAPS) (1998), the first police must find out if the victim is capable of laying a charge.

Figure 13: “Were you informed that you could lay a charge later if you were not ready?”



Seventy four percent were not informed that they could still lay a charge later if they were not yet ready. Only twenty six percent were informed. According to National Policy Guideline for Victims of Sexual Offences (SAPS) (1998), a victim can lay a charge anytime. There is no time restriction in this regard. No victim should be turned away and the investigation should proceed in the prescribed manner.

Figure 14: “Did you know whether the investigating officer was contacted?”



Fifty four percent of respondents did not know whether the investigative officer was contacted or not and forty six percent were informed. The first police officer must inform

the victim of everything that he/she is doing, including contacting the investigating officer, (National Policy Guidelines for Victims of Sexual Offences, South African Police Services (SAPS) Support to Victims of Sexual Offences, 1998).

Once you explained what had happened to you, what was the initial response of the officer?

Some respondents reported that:

“The police officers were nice, sensitive, helpful and supportive; they showed sympathy and hated what happened to us; they were concerned and they looked after us and they told us to go to the hospital.

Other respondents reported that:

“They were rude; they blamed her for what had happened; they said it was normal; they asked whether I was drunk or not; they asked why I delayed to come forward; they told me to go to the hospital; they asked if I had informed my family about the rape; they said nothing, they continued working and asked other police members to investigate”. (RCC Respondents, 2006).

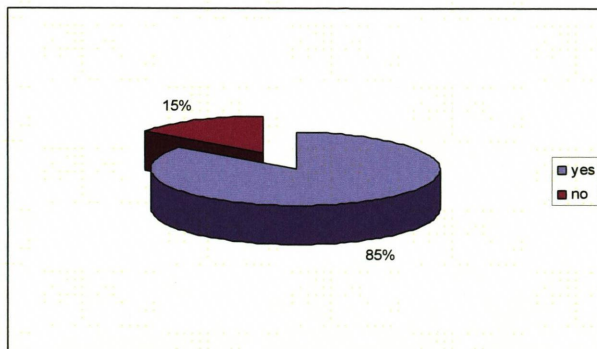
The Sexual Offences Guidelines (1998) states that, the police officer should do the following:

- Introduce him/herself;

- Take the victim away from the room (or area) where the incident took place to a private place (or area);
- Explain to the victim and family why it is necessary to secure the scene of the crime;
- Obtain a brief version of the events from the victim;
- Try to get a full description of the suspect. This must be circulated immediately (as the suspect may still be in the area); and
- Contact the detective on standby or the FCS unit to attend the scene.

In addition while waiting for the investigating officer to arrive at the scene, the attending officer must:

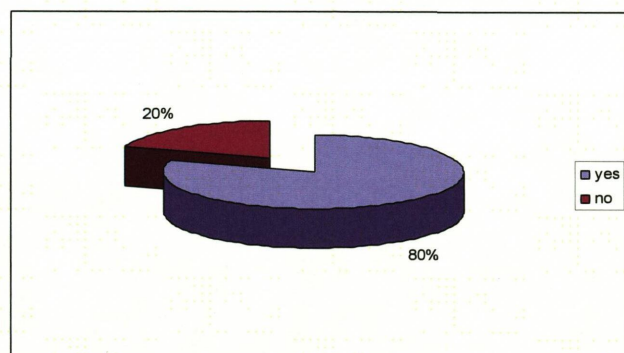
- Talk less to the victim and let the victim to do the talking;
- Ensure that the victim is not left alone until the investigating officer arrives;
- Listen to what the victim says and try to put him/her at ease;
- Ensure that the victim is not interrupted when he/she is talking. (If a police official keeps interrupting the victim to obtain the facts, it is possible that important, spontaneous statements by the victim may not be made);
- Write down everything that the victim is saying; and
- Show empathy (understanding), not sympathy (pity) towards the victim.

Figure 15: “Did the members make arrangements for you to visit the doctor”?

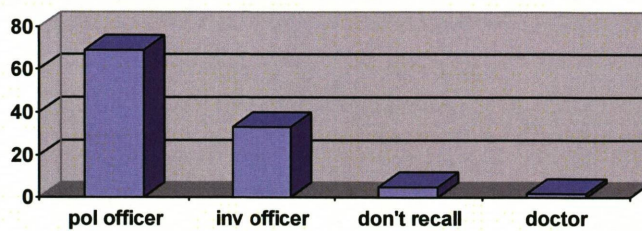
Eighty five percent were taken to see the doctor and fifteen percent said the arrangements were not made. Victims are often worried that everyone will know the intimate facts of the case. There is need therefore to explain to the victim that only the relevant persons will know the exact facts and that it will not be necessary for the intimate details to be told repeatedly. The SAPS must inform the victim that if he/she wishes to continue with the case, a medical examination will be necessary (SAPS, National Policy Guidelines for Victims of Sexual Offences, 1998). The medical examination must be carried out as soon as possible and will be done by a accredited health care practitioner. The investigating officer will make the necessary arrangements. A police official must remain with the victim until the person who will investigate the matter further, arrives. If it has been established that the victim has been indecently assaulted in his or her mouth, liquid must not be offered to the victim, as evidence may be lost. Each case should be dealt with according to its own merits. This restriction is applicable only if the victim has not already rinsed his or her mouth because an oral swab can be taken only within 6 hours

after the incident. If the victim needs to urinate, he or she must be advised to retain any sanitary material used.

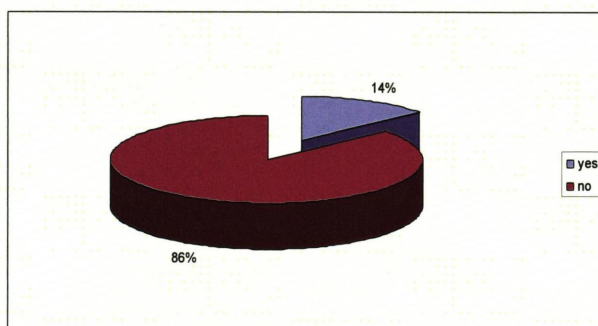
Figure 16: “Were you informed why you had to see the doctor”?



Eighty percent were informed and twenty percent were not told why they had to see the doctor. Bruce (2005) argues that the broad function of the CJS is, in many ways, to ensure that victims and society at large are broadly protected from violence and crime. It has been suggested that the most immediate need that victims have might be for medical treatment, which in cases of rape might also include access to antiretroviral drugs, primarily to prevent HIV infection. It is the responsibility of the police to ensure that medical assistance is called for when needed, and to assist rape victims in accessing the necessary medical attention and help.

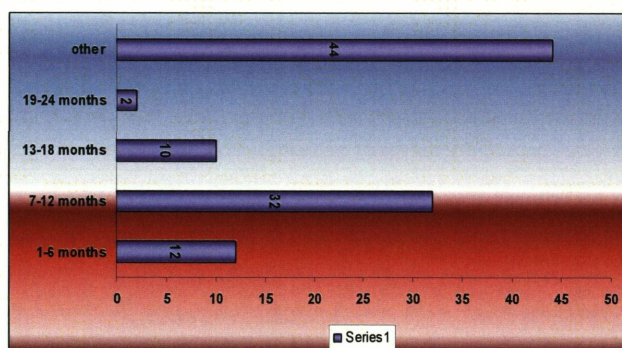
Figure 17: “Who was responsible for taking your statement?”

Sixty nine percent reported that police officers took their statements; thirty three percent an investigating officer, five percent did not remember and three percent said it was taken by the doctor. In the Violence against Women study conducted by Institute for Security Studies (ISS), it was found out that, nearly three quarters (72%) of the women reporting abuse to the police, made their statement to a male officer. Nearly all (68%) of these women however, would have preferred to speak to a female officer. Various SAPS policies stipulate that whenever possible, policewomen should deal with rape complaints. However, there are far fewer policewomen than reported rape cases. It is therefore seldom possible for a rape complainant to deal with a policewoman. The trend did however improve somewhat in the case of sexual abuse.

Figure 18: “Did you receive a copy of the statement?”

The majority of the sample, eighty six percent was not given a copy of their statements and fourteen percent were. Differences between the survivor's initial police statement and her evidence in court presents a serious difficulty that has received little attention (Pithey, et al., 1999). Very often survivors who report rape do not speak English or Afrikaans. More often than not, the police statement is written in English or Afrikaans. This means that the survivor's account of what has happened to her is translated by a police officer who is not a qualified translator, but happens to speak both the survivor's language and English or Afrikaans. The survivor is then required to sign the statement written in a language she does not understand, swearing it to be a true reflection of what happened. Another reason why statements differ from what survivors report to police is that the quality of statement-taking is extremely low. The version of the survivor as relayed to the police official taking her statement is frequently reflected inaccurately or altogether omitted from the statement. This is largely due to a lack of training on and commitment to the issue of rape, as well as the general apathy in the SAPS (Pithey et. al., 1999).

Figure 19: “How long did you wait before your case went to court?”



At the time of data collection forty four percent were still waiting for their cases to go to trial, thirty two percent waited between seven and twelve months, twelve percent waited between one and six months, ten percent waited between thirteen and eighteen months and two percent waited between nineteen and twenty four months.

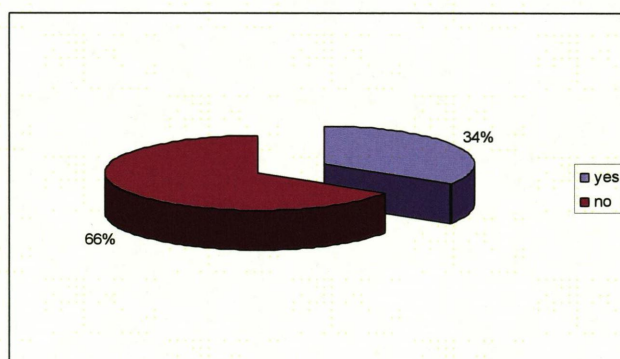
The time period from when the rape is reported to the police to when the matter goes to trial is often very long; it may occasionally take case years to reach trial stage (Combrinck, 2001). This length of time may have a negative effect on the quality of the survivor's evidence. The survivor is usually not included in the investigation of the matter after providing her initial statement about the rape. This implies that potentially useful information (for example, communication between the accused and the victim subsequent to the rape) is not brought to the attention of the prosecution until the trial stage.

Table 4: Showing person responsible for court preparation

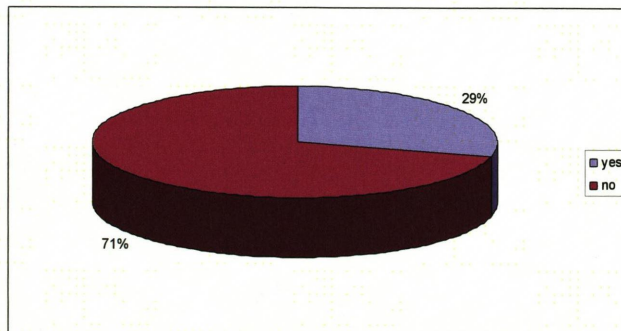
Response	Percentage
Rape centre	34%
Court counselor	16%
Police inspector	16%
Have not been to court as yet	16%
Never been prepared	15%
My Mother	3%

Thirty four percent of rape survivors were prepared by the Rape Crisis Centre, sixteen percent by the court counselor, sixteen percent by the police inspector, sixteen percent had not been to court as yet, fifteen percent received no preparations and three percent were prepared by their mothers. The Sexual Offences Guidelines (Justice) (1998) explicitly states that the prosecutor must consult thoroughly with the victim before the trial commences. The prosecutor must ascertain what fears the victim has and attempt to allay these fears. It is often useful to familiarize the victim beforehand with the court room itself, and the interpreter, if applicable.

Figure 20: “Were you taken to court prior to the day of the trial?”



Sixty six percent of the sample was not taken to court while only thirty four percent were taken to court prior to the day of the trial. According to Sexual Offences Guidelines – Justice (1998), all the court proceedings must be explained to the victims so that they can fully understand. The victims need to be treated with the utmost empathy and respect at all times.

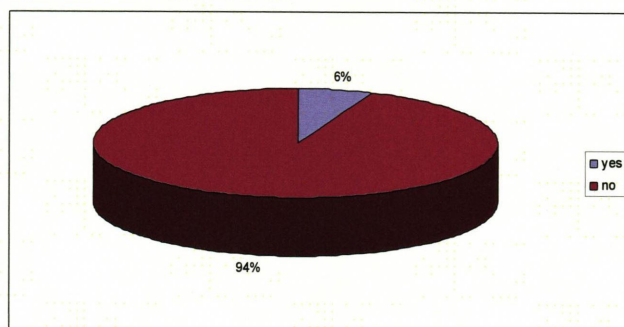
Figure 21: “Did you have pre- trial consultations?”

Seventy one percent did not have pre- trial consultations and twenty nine percent did. In this regard Pithey et. al., (1999) argue that a significant defect in the criminal justice system is the fact that survivors are seldom given an opportunity to meet with the prosecutor before trial, to discuss any or all of the following:

- The process and procedures of the trial, who the various role players in the court are, and what they do;
- The structure and layout of the court room;
- Where to go and what to do on arrival at the court on the day of the trial;
- The evidence the survivor will be expected to give and why (prosecutors often fail to explain to rape survivors why it is necessary, for example, to relate details of whether there was penetration of her vagina by the penis of the accused);
- Potential differences between the police statement and the evidence that he or she will give in the courtroom, and what the consequences of such differences are likely to be;

- The sort of questions to be expected from the defense and what the purpose of cross-examination is;
- The nature of the other evidence to be presented by the prosecution (for example, medical evidence);
- The likely time frames of the trial;
- What the process will be if the accused is convicted; and
- The survivor's role in sentencing.

Figure 22: “Was the meaning of the “in camera” hearing explained to you?”

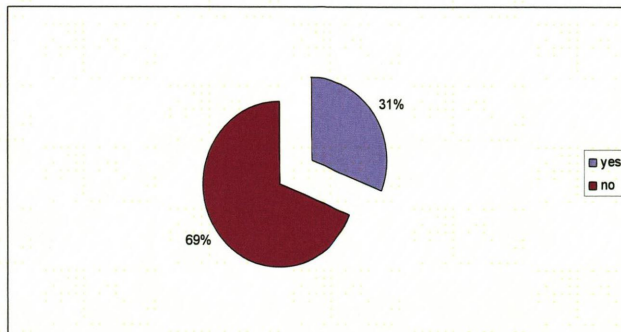


Ninety four percent did not have the “in camera” hearing explained to them and six percent received explanation. The Sexual Offences Guidelines (1998) states that the meaning of “in camera” should be explained to the victim as the prosecutor may ask the magistrate to hear the evidence “in camera”.

Table 5: “How did you feel about going to court?”

Response	Percentage
Afraid	50%
Haven't been to court	33%
Scared to meet perpetrator	17%

Fifty percent were afraid, thirty three percent had not been to court and seventeen percent were scared to meet the perpetrator. As a result of the lack of understanding and insensitivity to rape survivors, and the limited space in most courts, many rape survivors often wait to testify in the corridors of the criminal courts where the accused, together with his supporters, also wait - leading to intimidation and a great deal of distress on the part of the survivor. A national victim survey that was conducted in 2003 by Institute for Security Studies (ISS), found out that just over half (51%) responded satisfied with the way courts generally deal with perpetrators of crime, with almost as many (45%) expressing their dissatisfaction. The ones who were satisfied said the courts pass appropriate sentences, have high conviction rates and are not corrupt.

Figure 23: “Were you informed about the progress of the case?”

Sixty nine percent said they were not informed on the progress of their case and thirty one percent knew exactly what was going on with their cases.

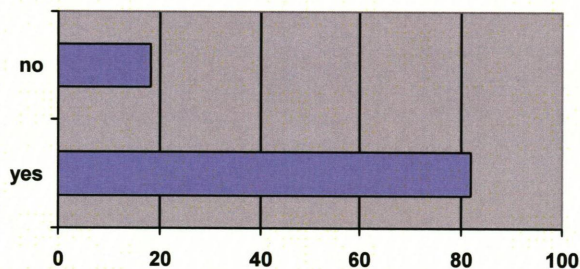
Pithey et. al., (1999) states that the victim is on her own in the sense that:

- Little if any information is communicated to her as to the progress of the investigation of the case;
- She is not given information as to whether the accused has been granted bail;
- She is not given information about the conditions attached to a successful bail application on the part of the accused.
- In addition, the survivor is not given information about crucial steps in the progress of the case, for example, her recourse if bail conditions are broken by the accused;
- Any other recourse she may have in law to protect herself from the accused if he is out on bail, in terms of the *Witness Protection Act 112 of 1998*.
- The date of court appearances of the accused;

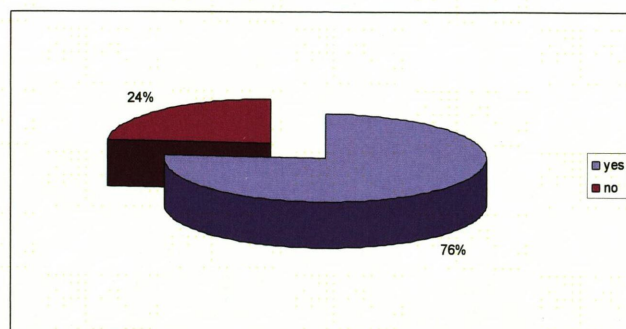
- Decisions made by the Director of Public Prosecutions or his delegated authority as to whether they are going to prosecute the matter or not;
- The date of the trial (Pithey et al., 1999).

The National Policy Guidelines for Victims of Sexual Offence (SAPS) specifically state: “Always keep the victim informed of the progress of the case (e.g. bail proceedings, court hearings). Even if you do not have any positive progress to report, the victims will feel reassured that their case has not been forgotten if regular reports are given to them”.

Figure 24: “Were you informed that there may be reporters at the trial?”



Eighty two percent were not informed and eighteen percent were informed as to whether there will be reporters at the trial. If the victim sees reporters in court, it may distress her. The police must reassure the victim that her particulars will not be published. Children too are always protected in this regard (National Policy Guidelines for Victims of Sexual Offence (SAPS)).

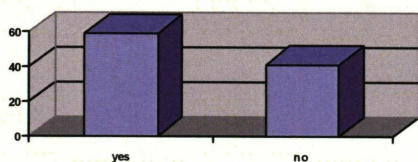
Figure 25: “Were you satisfied with the sentencing?”

Of those who had been to court (sixty seven percent) and the majority (seventy six percent) were not satisfied, and twenty four percent were satisfied with the sentence the offender received. The National Policy Guidelines for Victims of Sexual Offence (Justice) (1998), states that, prosecutors should place before the court evidence relating to the impact (physical, emotional or financial) the crime has had on the victim's life. Where the available evidence pertaining to aggravating circumstances has not been placed on record during the trial, this must be done after conviction. When the merits and complexity of a matter before court, demand expert witnesses, they should be called to testify. An example is the problems encountered on treating sexual offenders such as paedophiles.

The provisions of section 286A of the Criminal Procedure Act, which allow persons to be declared dangerous, may be useful. Because of the seriousness of this type of offence, a special effort must be made by the prosecutor to address the court fully in every case. The prosecutors must not hesitate to call for a sentence of imprisonment. When arguing for imprisonment, the shortcomings and/or disadvantages of other sentencing options must

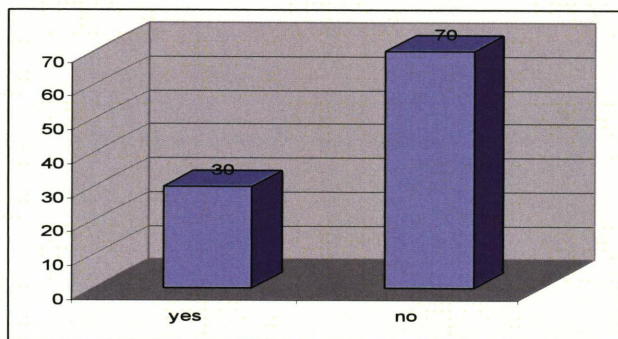
be highlighted. For example, a suspended sentence or a sentence of correctional supervision will usually result in the offender being released back into his own home. This is obviously totally inappropriate where the victim resides in that home. The prosecutor should consider prosecuting all cases of assault and indecent assault involving children under the age of 18, in the regional court, for purposes of proper sentences.

Figure 26: “Are you aware of victim support centres provided by the state?”



Fifty nine percent were aware and forty one percent were not aware of victim support centres provided by the state. South Africa provides victim support centre such as National Institute for Crime prevention and Reintegration of Offenders (NICRO), People Opposed to Women Abuse (POWA), Stop Women Abuse, Speak Out, Rape Crisis, Lifeline, etc.

Figure 27: “Did you access the victim support centres?”



Seventy percent did not access the centres and thirty percent did access the centres. NICRO Community Victim Support Project is for the survivors of crime. It does the following:

- listen to what happened,
- help a victim to lay a charge,
- assist the victim with court procedures,
- help the victim to find ways of staying safe in the future, and
- also stand by the victim when they need them most.

People Opposed to Woman Abuse is a Gauteng-based organization offering shelter and counseling services to women in abusive relationships, rape survivors, survivors of incest etc. Helpline: (011) 642 4345.

Stop Women Abuse is crisis counseling for women who have been raped or abused, provides advice and support for people wanting to support women in need of help, legal and other options available for abused women and rape survivors.

Run by Life Line. Toll-free Helpline: 0800 150 150.

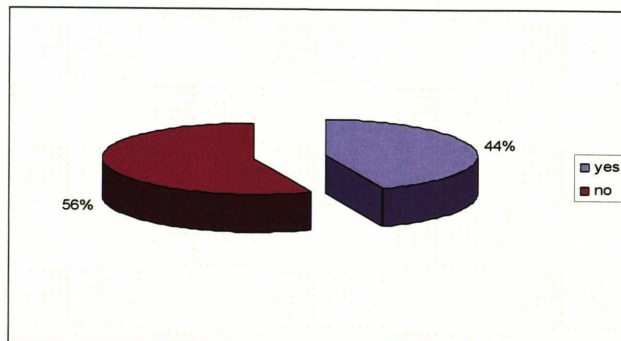
Speak Out is rape emergency information, services, advice, links and a non-governmental organization.

Rape Crisis Centre provides rape counseling, court preparation, support groups; it gives important contact numbers to rape survivors and is a non-governmental organization.

Rape Crisis strives to free our society from rape and all forms of oppression. Rape Crisis

Cape Town Trust is an NGO that believes in challenging power imbalances in society on which sexual violence is based. Rape Crisis seeks to confront and prevent sexual violence and empower survivors through working with individuals, communities and other social structures in order to provide accessible services. Rape Crisis approach is integrated, holistic, feminist, developmental and empowering. Rape Crisis offers free counseling, pre trial consultation, etc. to victims of crime.

Lifeline provides a 24-hour confidential crisis intervention service available at no cost to all sectors of the community regardless of race, religion or social standing and regards itself as an emotional 'First Aid station'. A wide range of counseling services are offered throughout the Greater Johannesburg area. Centres are located in Norwood, Johannesburg, Alexandra and Soweto. These centres offer the following additional specialized services: face-to-face counseling by appointment, trauma debriefing, rape counseling, support groups, particularly in Alexandra and Soweto, retrenchment counseling, training/outreach programmes for other welfare organizations and the broader community, education and awareness programmes for schools in rape, trauma and life skills issues, and commercial skills training courses to business, schools and universities in communication, basic counseling skills, stress management and life skills.

Figure 28: “Do you think the state provides adequate support to rape survivors?”

Fifty six percent responded that the state does not provide adequate support to rape survivors, and forty four percent thought that the state did provide adequate support to rape survivors.

The motivations for a clearly defined advocacy model are listed below: The criminal justice process (policy and legislation) is currently fragmented in relation to sexual offences. There are presently little or no structures, legislation and policy that facilitate change of women's status, thereby creating blockages in access to justice for women. Present legislation and policy structures tend to fail in their operational/effectiveness due to inappropriate or lack of administration of justice. There is no clear paradigm for advocacy for survivors of violence against women. Appropriate policy and legislation may reduce the extent and frequency of secondary victimization. Therefore, there is a need for developing advocacy skills in non-governmental organizations, community-based organizations and community structures, or forums through research, workshops and conferences. Advocacy is dependent on information from communities, community-

based organizations, NGO's and the state. There are presently no mechanisms in place which facilitate the flow of research results, information and resources to inform advocacy objectives. Although there is a broad understanding of government positions regarding violence against women, gender advocates are not picking up and acting on inconsistencies, especially with respect to public statements (i.e. not scrutinizing or tracking public statements in media etc. methodically). There is a lack of intersectoral communication and focus on advocacy.

Progress in legal reform in South Africa to address women's rights and services has been a slow and uneven process, and requires identification and assessment within a feminist jurisprudence model. What a feminist jurisprudence model sets out to do is to assess the differential impact on women and men of policies, programmes, and legislation or legal principles.

In other words, there is a need to analyze the legislative or policy impact on gender equality. It emphasizes the need for an active policy of bringing into the mainstream, a gender perspective in all policies and programmes related to violence against women, and of achieving gender equality and fair access to justice, as well as establishing a goal of gender balance in areas of decision-making related to the elimination of violence against women (The International Centre for Criminal Law Reform and Criminal Justice Policy, 1997).

The International Centre for Criminal Law Reform and Criminal Justice Policy (1997), developed model strategies and practical measures for legal reform based on the United

Nations Commission on Crime Prevention and Criminal Justice's Model Strategies for the elimination of violence against women, from which South African advocates for women can take example from.

The areas for analysis include criminal law, criminal procedure, police, sentencing and corrections, victim support and assistance, health and social services, training, research and evaluation, crime prevention measures, international cooperation and follow-up activities. The general thrust of the model is the periodic review, evaluation and revision of law and procedure, to ensure their value and effectiveness in eliminating violence against women and removing provisions that allow for, or condone violence against women. Some examples include:

- Revising criminal procedure in order to ensure that the police have, with judicial authorization and adequate powers to enter premises and conduct arrests in cases of violence against women.
- Ensuring that the primary responsibility of initiating prosecution lies with prosecutors and does not rest with women subjected to violence.
- The protection of women as witnesses in court and the protection of their privacy.
- Ensuring that rules and principles of defense do not discriminate against women, and the removal of any legal principle that allows room for defenses such as honour, ownership or provocation, to allow perpetrators to violence against women escape criminal responsibility.

- Ensuring that perpetrators who commit acts of violence against women while voluntarily under the influence of alcohol or drugs, are not absolved of all criminal or other responsibility.
- Safety risks are taken into account in decisions concerning non- or quasi-custodial sentences, the granting of bail or conditional release.
- To develop investigative techniques that does not degrade women subjected to violence and minimize intrusion.
- To make available to the courts, through legislation, a full range of sentencing options to protect the victim.

The need for a well-defined strategy for advocacy for women in South Africa stems from a gendered exclusion of women in South Africa's transition. Women in South Africa have been effectively excluded from the public exercise and experience of democracy. This is especially true in relation to violence against women.

When asked what type of support the state should provide, respondents maintained the following:

- *Support groups,*
- *harsher sentencing,*
- *treatment for HIV positive survivors,,*
- *counsellors at police stations,*
- *provide victims with information on what is going on with their cases,*
- *create a non-threatening environment so that survivors will feel free to talk,*

- *give food parcels to survivors who are unemployed*
- *Provide a place to stay (shelters)*
- *Train police members to change their attitudes towards victims to a more sensitive one.*

What was the most difficult issue for you to deal with in relation to the criminal justice system?

- *Facing the rapist in court,*
- *Reporting the incident to the police,*
- *Finding out that the accused was given free bail,*
- *The investigative officer's cruelty*
- *When the doctor did not take the HIV test,*
- *When the accused's lawyer let the rapist approach me inside court,*
- *No money to go to the court,*
- *The type of questions that were asked, they were difficult,*
- *When I was left outside the court room alone,*
- *The long wait for the case to be tried.*

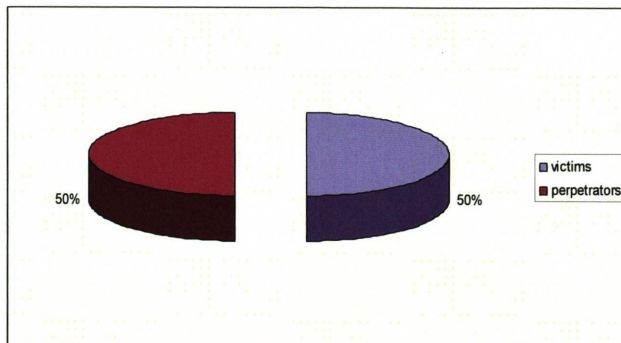
Pithey et. al., (1999) argues that, as a result of the lack of understanding and insensitivity to rape survivors and the limited space in most courts, many rape survivors often wait to testify in the corridors of the criminal courts where the accused, together with his supporters, also wait - leading to intimidation and a great deal of distress on the part of

the survivor. The rape survivor is then expected testify in a court room full of strangers who do very little to allay her fears. It is possible that at this stage the only person she may actually recognize is the accused. She is required to tell these strangers about the most intimate, traumatic event in her life in graphic detail, without any explanation as to why she is being asked such questions. Her testimony is limited to answering questions she is asked by the prosecutor or defense, and thus there are often details of the rape that are omitted simply because she was not asked about them. She may be too ashamed to speak about such intimate matters. She may be intimidated by the presence of the accused in the courtroom. The questions that she is asked by the accused legal representative, or by the accused himself, are often intended to – badger her; shame or humiliate her further; create an impression that she is lying; or imply that she is a morally questionable person. Because of inexperience and overwhelming case loads, prosecutors are often under prepared for trial and therefore not familiar with the subject matter of the particular case (Pithey et. al., 1999).

Which part of the criminal justice system process were you comfortable with?

- The way in which the doctor comforted me,
- My second appearance in court,
- The support I received from rape crisis centre

Figure 29: “Do you think that that the South African CJS favors the criminal or the perpetrator?”



Half of the sample felt that the SACJS favors the perpetrator and the half said it favours the victim. Some of the reasons to the above question were:

- *it favours the perpetrator because they are granted bail,*
- *they have lawyers,*
- *the police do not arrest them although they know where they stay,*
- *they get out of prison, and*
- *survivors are asked to leave the court when the offender speaks*

Others feel that the criminal justice system favours the victims because:

- *they helped the victims with their case,*
- *judges are sympathetic to victims, and*
- *they received counseling and support.*

Inadequacies in the criminal justice system create an environment where it is relatively easy to commit an offence of rape without any severe consequences. Rape has one of the lowest conviction rates of all serious crimes in South Africa. Offenders frequently evade arrest and conviction and continue to intimidate their victims and the victims' family. In the absence of effective witness protection services, women often withdraw or fail to report cases as they fear intimidation by the perpetrator. Sentencing trends to be lenient, this creates an impression that rape is not seen as a serious crime (Robertson, 1998).

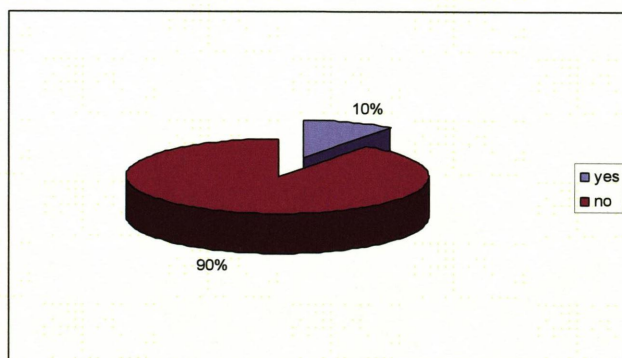
Drawing from your experience, what changes would you like to see in the criminal justice system?

When responding to the above question the respondents claimed they want to see the police taking care of the people and treating them with dignity, time management- speed up the time the case goes to court, taking survivors to relevant places on time, explaining procedures, meting out harsher sentences to offenders, reintroducing the death penalty, and giving the victim a rest period when taking her statement.

The high incidence of crime in this country has been of concern to the government of South Africa since 1994. In recognition of this, the Cabinet initiated a process for the development of a National Crime Prevention Strategy (NCPS) which was approved in May 1996. This document resulted in a paradigm shift, namely from crime control to crime prevention. This meant a shift in emphasis on crime as a security issue to crime as a social issue. There was also a shift from the emphasis on a state-centered system to a

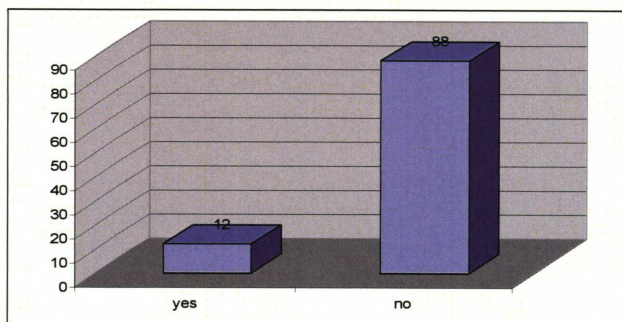
greater emphasis on a victim-centered, restorative justice approach (van der Hoven, 2001).

Figure 30: “Have you ever been involved in a study of this nature?”



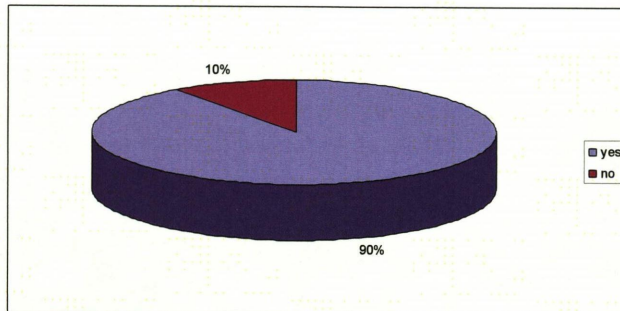
Almost the entire sample (ninety percent) had never been involved in a study of this nature.

Figure 31: “Do you know of other survivors involved in studies of this nature?”



The majority of the sample (eighty eight percent) did not know of anyone and twelve percent knew other survivors who had been involved in this type of study.

Figure 32: “Do you think that this type of study is valuable?”



An overwhelming ninety percent of respondents thought the study was valuable and ten percent did not think so. Some of the reasons why the respondents thought that this kind of study was valuable is because it helps them to talk to people with the same problem, it gives support to others, and it creates awareness that victims have a voice. However, others felt that this kind of study did not help because people did not believe in them.

Table 6: Kindly rate your experience with the following services.

	Fair	Good	Very good	Excellent
Police	29%	29%	22%	20%
Magistrate	33%	17%	17%	33%
Prosecutor	17%	50%	8%	25%

Defence lawyer	75%	13%	13%	0%
Court orderly	36%	45%	18%	0%
Doctor	11%	3%	28%	58%

Twenty nine percent rated the police as fair, twenty nine percent good, twenty two percent very good, and twenty percent excellent. Thirty three percent rated the magistrate fair, another thirty three percent excellent, seventeen percent good and seventeen very good. Fifty percent rated the prosecutor good, twenty five percent excellent, seventeen percent fair and eight percent very good. Seventy five percent rated the defence lawyer fair, thirteen percent rated good and thirteen percent rated very good. Forty five percent rated the court orderly good, thirty six percent fair and eighteen percent very good. Fifty eight percent rated the doctor excellent, twenty eight percent very good, eleven percent rated fair and three percent good.

What intervention programmes do you think the state should provide for rape survivors?

In response to the above question respondents expressed ideas that the state should provide assistance for victims through support groups and counseling programmes by trained counselors, more rape centres, clinics and hospitals which are closer to the people, talk shows, television, radio campaigns and awareness workshops in communities, skills development, court preparation for survivors and support by giving out AIDS treatment.

Greater Rape Intervention Program (GRIP) is an example of a nonprofit organization, which was established in 2000 in response to the high levels of rape, and the concordant high levels of HIV/AIDS infection transferred to predominantly child rape survivors. GRIP was initiated by volunteers and offers services to all rape and domestic violence survivors. GRIP seeks to empower all women, men and children through the process of counseling & testing, preventative and legal education, post-traumatic assistance, advocacy and lobbying. GRIP's mandate is to seek both pre- and post-trauma interventions with a spectrum of role players, including government departments, schools, traditional healers, other NGO's and the business community. GRIP has a five-year plan to expand its financed interventions to other areas and to contract with government stakeholders to ensure more sustainability. The head office of GRIP is currently based in Nelspruit, Mpumalanga, and has branches in Masoyi, Kabokweni, KaNyamazane, Barberton, Lydenburg, Tonga/Shongwe, White River, and the Matzulu area as well as Malelane.

Another intervention programme that is available for rape survivors in South Africa is Services to rape survivors. All the special clinics for rape survivors include the Post Exposure Prophylaxis service. In order to use the service properly the person who is raped needs to reach the clinic and be tested for HIV within 72 hours (days) of the rape.

What other comments do you have on the South African Criminal Justice System?

Many respondents said there were too many delays in going to court, the process was too long, the investigating officers discriminated against them because of the rape; and the police did not take them seriously as a result the perpetrators should not be granted bail; the rapist should be jailed for life; the investigative officers should be more helpful to them, they should be kept informed; the police need to respond immediately; the court should not be on the side of the rapists; the government should get more serious because rape is a dangerous thing; the hospital should take care of them; the lawyers should ask reasonable questions; the police officers must identify themselves; women must be recognized; and treated with respect and dignity at all times.

4.4 FOCUS GROUP DISCUSSIONS (FGD)

Six focus groups were constituted with survivors of rape who were also part of the main sample. Owing to the limited sample, and after having consulted with the director of RCC who believed that the survivors may feel discriminated against if they are excluded from the focus group discussions, I decided to include all the respondents. Each group was made up of respondents from the various age categories discussed in fig. 1, as well as different cultural/race groups and various educational and employment categories. All respondents had experienced the act of rape and had some experience of the SACJS. There were seven respondents in each group. This helped with the facilitation of the discussions. All groups were asked exactly the same questions and a moderator facilitated

the responses. All responses were tape recorded with prior permission from the respondents. Personnel from RCC volunteered as interpreters for those respondents who spoke Xhosa and Afrikaans since the questions were formulated into English. The recorded data was first transcribed and then translated into English. The data was then analyzed according to themes that emerged. The focus groups answered critical questions through identifying gaps in the SACJS. The moderator led the questions and the responses were captured verbatim.

4.4.1 Focus group questions

Describe your experience with the police?

- *I got an excellent service from the police station.*
- *I was afraid, I didn't know why.*
- *The police showed no interest in my case.*
- *I was uncomfortable because I got a male officer and this thing was done by a male officer so I asked for a female officer.*
- *I had a problem with a female officer, she had an attitude.*
- *I was not happy at all, the officer who was taking my statement was rushing home to her kids so she kept on saying that I must hurry up or she will leave me.*
- *I didn't have a problem with the police; they came to my place because I couldn't walk after the incident.*

- *I am not happy at all with the police; I want to withdraw the case because the police are not doing anything even though I brought them the information about the rapist and where to find him.*
- *I didn't get much attention.*
- *The police were very helpful on my side.*
- *He asked me to calm down so that I can be able to tell him everything that happened so he could write up a statement.*

In the study that was conducted by ISS, thirty per cent of women reported the worst incident of abuse to the police. Half of these women (49%), had experienced sexual abuse and almost as many (46%), had experienced physical abuse. Most of those (57%), who reported the abuse to the police said the incident occurred in the past five years. Most of the incidents of sexual and physical abuse were reported by victims themselves at the charge office, in the police station: 73% of cases were reported to police by the women in question — the remaining 27% were reported by someone else. This emphasizes the importance of having properly trained and effective police officials at station level to deal with victims of violence. More than two-thirds (71%), of women went to the station; the remainder reported the incident over the telephone. In most cases (82%), the police official who took the statement was a male. The majority of women (72%) who dealt with male officials would have preferred a female taking their statement.

Did you feel intimidated or uncomfortable at anytime during the interview?

- *The police showed no interest in my case.*

- *I was intimidated, at the police station it depends on who you are. For example, with me they made me feel responsible for what had happened to me.*

Women were asked how satisfied they were with the police when reporting the abuse. Questions covered whether they felt comfortable with the police, whether the police made them feel understood, and whether the police believed what they were told. Most of the 41 women responding to these questions were positive about the way police dealt with them: most women thought the police believed them, and almost two thirds felt the police understood their problem. The majority said the police were willing to help and that they felt comfortable in the presence of these officials

Were you comfortable with the number of questions or the types of questions asked?

- *All the questions they asked me were appropriate.*
- *I wasn't happy at all I didn't expect those questions from them but the thing is I don't remember exactly the questions they asked but I know they were not appropriate.*
- *I was comfortable with all the questions.*
- *they were appropriate because you had to explain what happened to you, you had to explain how it happened, how it made you feel at that time.*

Were you informed of your rights as a victim?

No, I was not told of my rights, I knew them. My parents who told me everything.

When it came to informing women of their rights when making a statement, the police performed poorly. Two-thirds of the women were not even told of at least one of their rights, many of which are important in preparing cases for trial. For example, 86% of the women were not told that they could make supplementary statements at a later stage — a crucial piece of information, for someone who might be in shock at the time of reporting an incident of violence. Women who reported cases of domestic violence and sexual assault in the last five years, were asked whether police told them of their legal options. Although the police performed better in this area than they did with regard to women's rights, their record remains poor.

Did the police officer at anytime imply that you were responsible for the incident?

- *Yes, they did. Sometimes they treat you well but they tell you that you are the only one responsible for that because you wear g-strings and mini skirt or suggest that since he bought liquor for you, you had to pay back.*
- *No, I don't have any problems; the police officers treated me well, they even offered tea or coffee.*
- *They treated me fine except that I had to wait for a long time to be transferred to the hospital.*
- *I was treated fine except that we stayed for a long time and it was very cold.*

They treated me fine.

- *They called an investigating officer and she was not available so the police officer asked me to go and sleep at my boyfriend's place and come back the following morning. They took a statement but I felt I wasn't ready but I gave them anyway.*

How long did you wait before your case went to court?

- *It waited for 2 years but up until now I have never taken the stand because firstly the offender was sick and then now he escaped from the court.*
- *I waited for 10 months*
- *It happened 1 year 5 months back and now the rapist is dead. He was HIV positive.*
- *3 years and it is still going on.*
- *I don't know if the case is still on. The investigative officer does not tell me anything. He used to deliver the summons asking me to appear in court the following day but now he is not doing anything.*
- *Mine took two years but now the witness died this year.*
- *I never went to court.*
- *It took 3 years but it is over now.*
- *I waited for four years and the last time I spoke with the officer he said the case only closes after twenty years so I don't know whether I should wait another 19 years for them to make an arrest.*

Victims of sexual offences and those persons involved with supporting these victims on a day-to-day basis, are generally aware of the time delays which are inherent within the present criminal justice system. The consultative workshops conducted throughout the country indicated that currently, most cases of child sexual abuse are managed poorly. Delays do not only affect the victim. They may also have a negative impact on the alleged offender who may, after spending a long time awaiting trial in prison, lose employment and other associated necessities, only to be acquitted, with no recourse to compensation. In some cases, unless bail is granted, a person may be in custody from the time he or she is arrested, until the conclusion of the trial. Since such a person is presumed to be innocent until proven guilty, it is therefore of critical importance to keep the period of delay prior to the trial as short as possible.

Delays may also work in favor of the defence (accused person), as multiple adjournments (for a variety of reasons) requested by the defence, effectively delay court proceedings. This, in turn, takes its toll on the memories of the victim and any witnesses. A number of years can easily elapse between the time a person is charged with an offence, and the handing down of sentence. Delays may be experienced during the police investigation phase, the criminal court processing phase or both. 'Inadequacies in the police investigation phase' is a handy scapegoat for unnecessary delays (van Vuuren and van Rooyen 'Postponement in criminal cases in Pretoria magistrates' courts: a cost effectiveness study' 1994 (1) SACJ 20 – 21). Investigations are hampered by a number of factors, all making efficient policing, including processing of dockets, very difficult. The police normally commence their investigation by opening a docket (police file) when a

case is reported, i.e. when a complaint is lodged. The case is allocated to the relevant department, and then to a specific investigating officer who will refer the docket to the prosecutor's office. When a suspect is arrested, the docket reaches the prosecutor within forty-eight hours, for purposes of the first court appearance of the accused (Section 50 (1) of the Criminal Procedure Act 51 of 1977). The suspect will probably apply for bail, of which the application will be heard in either a district or regional court, depending on the 'classification' of the offence in terms of the Criminal Procedure Act 51 of 1977. The docket is then returned to the police contact officer attached to the court, who in turn sends it back to the police station, from which it originated. The prosecutor may give directions as for further investigations needed on the docket. The docket is usually sent back and forth repeatedly, while instructions are given and carried out. There is no specific time-limit for the completion of an investigation, or any prosecutorial direction of the investigation, but once a month, the officer in command of a police station does an inspection of all ongoing investigations. It is this officer's duty to monitor the progress of all investigations under his or her command, and to promote their timely completion. Even though they do not have fixed time-limits on investigations, the police are bound by the date set for the hearing by the court. The prosecutor may request a postponement on the grounds that further investigation is necessary, but it remains in the discretion of the presiding judicial officer to grant or deny the request (Section 168 of the Criminal Procedure Act 51 of 1977).

Reasons identified as the most frequent causes of delay of court proceedings are as follows (Van Rooyen and Van Vuuren 1994 (1) SACJ 18): postponements for further

investigation; witnesses do not show up; the accused requests legal representation; the accused's attorney does not show up, or requests a postponement because he or she has not had enough time to prepare for the case; (other) postponements at the request of the defence (reasons unspecified); postponement in order to acquire the evidence of expert witnesses; the docket is lost or is not available at the trial; the SAP 69 form (list of previous convictions) is not available in time.

Were you satisfied with the court procedures?

- *No, because I was afraid to look at the people who raped me, they were there in court.*
- *I was thinking of the questions that they will ask me and I was afraid.*
- *I didn't experience anything difficult because I knew I was going to say what happened to me.*
- *I don't know about the court because I had never been to court ever since I reported the incident.*
- *With me, I didn't have the problem because I knew I was going to say what had happened to me.*
- *I don't have a problem I'm just waiting for the court.*

The Department of Justice disseminated National Guidelines for Prosecutors in Sexual Offence Cases during May 1998. The Guidelines made specific provision for sexual offence cases to be dealt with by specialist prosecutors and prescribes how consultations

with victims, accredited health care practitioners and the police should be dealt with. To minimize the trauma already experienced by victims, prosecutors are urged to keep victims informed, ensure their privacy when going to court, where necessary to arrange for proceedings to be held in camera, and where a child is involved, to approach the magistrate to allow the use of an intermediary. The general approach regarding bail is that applications for bail must be opposed. The Guidelines encourage the prosecutor to object to unnecessary, aggressive and badgering cross-examination, and to oppose delaying tactics or adjournments.

Were you satisfied with the sentence that the offender received?

- *No, not at all. He was found not guilty.*
- *Yes, I am. They were sentenced to four years in prison.*

With regard to sentencing, the Guidelines require prosecutors to place victim impact statements before the court. The Guidelines reinforce the fact that the prosecutor also does not have to accept a sentence which is too lenient. The Guidelines seek to ensure that proper consultation takes place between the specialist prosecutor and the victim, the accredited health care practitioner and with police. One example of the general nature of the Guidelines in this regard should suffice:

“Where possible the prosecutor must consult with the police who investigated the case, particularly those likely to be called as witnesses. Discussion to ensure that all necessary documents and exhibits are available will assist the smooth running

of the case” (National Policy Guidelines for Victims of Sexual Offences, SAPS, 1998).

How would you describe your feelings during the trial?

- *It was fine, I was not afraid because I knew that I was going to say exactly what happened to me.*
- *It is not good, not good at all.*
- *After the incident my life has never been the same again.*
- *My life changed completely, I am HIV positive now.*
- *I don't feel safe anymore, I'm scared. I can't go out as I wish.*
- *I moved away just because it reminded me too often, I'm at George now with my boyfriend.*
- *It changed my life completely; we have a misunderstanding with my mom because of this. She always shouts at me.*
- *I don't feel anything because the guy who raped me is behind bars so I'm glad and it was easy for me to move on with my life.*
- *There was a slight change within me because I was angry and I felt like not respecting my parents but now that they are behind bars at least life is going on and I respect my parents.*
- *There was a change within as well, my parents didn't know about the incident but they know now they didn't hear it from me. My parents don't understand that you don't invite a rapist and it is not like you were raped because you were walking at night, you get raped anytime of the day.*

4.5 CONCLUSION

Until recently, little attention has been paid to victims of crime, including rape victims/survivors, in South Africa. The focus was placed primarily on the offender of the crime, with the victim viewed as a complainant and / or as a witness at best. Victims of crime and violence are often victimized twice- first by the offender and then by the insensitive treatment meted out by members of the criminal justice system, the health care system and support services. With the advent of democracy in South Africa and the acceptance of the Bill of Human Rights in the South African Constitution (Act 108 of 1996), recognition came that crime violates the human rights of victims of crime. Bruce (2006) argues that the interest in victims of crime was not something new in South Africa in the 1990's. The transition to democracy certainly saw new impetus given to an engagement with the concerns of victims. The National Crime Prevention Strategy (NCPS), for instance, motivated for 'a victim-centered approach to the problem of crime', and emphasized 'the development of interventions and modifications in the criminal justice process, which are aimed at the empowerment of victims' (Interministerial Task Team, 1996).

This study provided the understanding that there is very little research on the workings of the legal system in the area of violence against women. As reported by the respondents, this research study revealed that although rape survivors reported the incident, the treatment they received from the CJS was, at times, often unsatisfactory. Respondents reported secondary victimization by the CJS as they perceived members of the police as

being insensitive to them, as well failure to provide private waiting or report-taking facilities, and failure to provide women with information on procedures. Also, not explaining why certain questions are being asked or procedures followed, and not updating women on the progress of the investigation or trial. Respondents also reported that at times, they had to personally hunt down the perpetrators and that they were not given ample notice to prepare themselves for the court appearances.

This chapter has presented and discussed the responses of the respondents through face-to-face interviews, and focus group discussions on the South African Criminal Justice Systems' response to them. While there were varied responses, they all had elements of truth. Recommendations emanating from the findings of this study and conclusions will be discussed in Chapter 5.

CHAPTER 5**CONCLUSION AND RECOMMENDATIONS****5.1 Introduction**

The Human Rights Watch and the Women's Rights Project (HRWWRP) established in 1990 to research and investigate violence and discrimination against women in Sub-Saharan Africa, states "women victims of rape and assault in South Africa face a Criminal Justice System, which is too often unable or unwilling to assist them in their efforts to seek redress. The police are often callous or disinterested in the treatment of women and the court system is little better". Dorothy Q Thomas, Director of the HRWWRP, went on to add that "too often, the treatment they receive when they report rape or other abuse simply traumatizes them further, without offering them any hope of punishing their attackers". The question to be asked is, "how much has really changed 18 years later?" Bearing in mind that official statistics represent only reported crimes and are therefore grossly underestimated, a conviction rate of 8.1% i.e. 4,100 convictions from 50,481 reported cases in 1996, attests to the inability of the justice system to uphold the security, protection and dignity of abused women. Further problems relate to the inaccessibility of medico-legal services in black townships and rural areas.

The most recent statistics released by the Minister of Safety and Security (2006) reveal that the picture is in fact worse now. From a report from the Sunday Times it is clear that

women and children bear the brunt of crime in six categories namely, murder, attempted murder, rape, common assault, indecent assault, and assault with intent to do grievous bodily harm. Women and children account for 58.5% of the 558,325 cases reported in these categories indicating exceptionally high levels of violence being directed at them daily. This dire situation is compounded, when one considers that only one person out of every nine who is a recipient of violence/abuse, reports it to the police. (Sunday Times, 1 October 2006). Theoretically, the Criminal Justice System has been redesigned to meet women's needs, but evidence emerging from this research suggests a significant chasm between the two. Gender inequality contributes not only to the high levels of violence perpetrated against women, but also to the lack of seriousness with which violence against women is dealt with by the Criminal Justice System (National Crime Prevention Strategy, 1998). The National Crime Prevention Strategy (NCPS) recognizes the rights of females as victims of crime and the urgency with which South Africa as a country should respond to female victims. Research in South Africa indicated that in 2000, more than 52,000 cases of rape and attempted rape were reported, of which 73 percent failed to be successfully prosecuted and only 27 percent prosecuted. Although the criminal justice system represented by the police and courts does not cause rape, it plays no small part in aggravating the problem. Statistics in South Africa has revealed that rape has one of the lowest conviction rates of all serious crimes.

In this study, a careful reading of the focus group discussions was undertaken in order to establish recurring themes for analysis, while the quantitative data was analyzed by using a statistical programme, namely: Statistical Package for the Social Sciences (SPSS). This

chapter presented a summary of findings, limitations to the study, suggestions for further research, recommendations and conclusion.

In this chapter I began with a synthesis of the findings obtained through focus group discussions, and then proceed to the findings obtained from the interview schedules. As mentioned in Chapter 3, the purpose of the interview schedule was to ascertain information on the treatment of rape survivors by South African Criminal Justice System, and the purpose of the focus group discussions was to elicit on how rape survivors perceive the South African Criminal Justice System.

5.2 Summary of Findings

As indicated in chapter 1, the objective of the study was to explore the way in which rape survivors experience the South African Criminal Justice System. The research was located within the Port Elizabeth Rape Crisis Centre in Port Elizabeth, Eastern Cape.

The respondents' experiences were explored with the following critical questions in mind:

- How do rape survivors experience the South African Criminal Justice System?

The interview schedule answered critical question one and the focus group discussions answered critical question 2. The data from face-to-face interviews revealed the following:

- Victims or survivors of rape

All the respondents in this study are females who are raped by men. They are raped because of the issue of power as Susan Brownmiller states in her feminist theory in 1975 that men rape because they have power, and the society we live in is dominated by men.

The majority of rape victims were between fifteen and twenty five years of age. The data collected also showed that the majority (86%) of victims of rape are young adults. Forty one (41%) percent of the sample has completed matric, twenty eight (28%) percent are still studying, and twenty three (23%) percent reported other while eight (8%) percent have diplomas. The majority of the samples are educationally empowered women. Karmen (2004) confirms the above and found in her research that younger and better educated persons are victimised more often than other individuals because of their lifestyle activities. Rape incidences were highest on week-ends beginning on Friday. Crime Information Analysis Centre (CIAC) of the SAPS, Quarterly Crime Report 3/98 indicates that bulk of rape cases occurred over weekends, with the highest proportion of cases occurring on Saturdays, followed by Sundays. The smallest proportions of cases were reported on Tuesdays and Wednesdays.

Fifty two (52%) percent said the police procedures were not explained to them and forty eight (48%) percent of the sample said they were. The National Policy Guidelines for Victims of Sexual Offences (SAPS) states that when a victim presents herself at the station to report a case of an alleged sexual offence, the officer must introduce

him/herself and explain his/her role in the investigation and take the victim to a quiet room away from the main duty desk. He also have to explain the roles of other people involved in a case. The National Policy Guidelines for Victims of Sexual Offences (SAPS) (1998) states these procedures clearly of what the police should do when attending to someone who has been raped. There are procedures that are to be followed by police officers when talking to the victim such as: identifying him/her by stating her/his rank and full name. Also, stating her/his first name (or name that the victim may use this when talking to him/her). The victim may feel more at ease on a first name basis, rather than the full rank and name of the officer. The National Policy Guidelines for Victims of Sexual Offences, South African Police Services (SAPS) Support to Victims of Sexual Offences, states "inform victim of police procedures". The majority of the sample eighty six (86%) percent was not given a copy of their statements. Sixty six (66%) percent of the sample were not taken to court while only thirty four (34%) percent were taken to court prior to the day of the trial. Of the thirty four percent who were taken to court prior to the day of the trial, seventy one percent did not have pre- trial consultations, and twenty nine percent did. The Discussion document commissioned by the Deputy Minister of Justice (1999), as well as the National Policy Guidelines for Victims of Sexual Offences (1998), state clearly that, the survivors must be prepared before going to court. This includes taking the survivor to the court to prior the day of trial and taking the survivor to see the prosecutor, for pre trial consultation. At the time of data collection forty four (44%) percent were still waiting to appear in court, thirty two (32%) percent waited between seven and twelve months, twelve (12%) percent waited between one and six months, ten (10%) percent waited between thirteen and eighteen months and two

(2%) percent waited between nineteen and twenty four months. The time period from when the rape is reported to the police to when the matter goes to trial is often very long - it may occasionally take case years to reach trial stage (Combrinck, 1998). This length of time may have a negative effect on the quality of the survivor's evidence. The survivor is usually not included in the investigation of the matter after providing her initial statement about the rape. This implies that potentially useful information (for example, communication between the accused and the victim subsequent to the rape) is not brought to the attention of the prosecution until the trial stage. The National Policy Guidelines for Victims of Sexual Offences (SAPS) (1998) states that the prosecutor must consult thoroughly with the victim before the trial commences. The prosecutor must ascertain what fears the victim has, and attempt to allay these fears. It is often useful to familiarize the victim beforehand with the court room itself, and the interpreter, if applicable. All the court proceedings must be explained to the victims so that they can fully understand them. The victims need to be treated with dignity and the utmost empathy and respect at all times.

Pithey, Naylor, Artz and Combrinck (1999) thus argue that a significant defect in the criminal justice system, is the fact that survivors are seldom given an opportunity to meet with the prosecutor before trial to discuss any or all of the following: The process and procedures of the trial, who the various role players in the court are and what they do; The structure and layout of the court room; where to go and what to do on arrival at the court on the day of the trial; the evidence the survivor will be expected to give and why (prosecutors often fail to explain to rape survivors why it is necessary, for example, to relate details of whether there was penetration of her vagina by the penis of the accused);

Potential differences between the police statement and the evidence that he or she will give in the courtroom, and what the consequences of such differences are likely to be; the sort of questions to be expected from the defence and what the purpose of cross-examination is; the nature of the other evidence to be presented by the prosecution (for example, medical evidence); the likely time frames of the trial; what the process will be if the accused is convicted; and the survivor's role in sentencing. Of those who had been to court, sixty seven percent were not satisfied with the sentence the offender received.

Of those who had been to court (namely sixty seven percent), the majority (seventy six percent) were not satisfied, and twenty four percent were satisfied with the sentence the offender received. A national victim survey that was conducted in 2003 by Rasool, Vermaak, Pharoah, Louw and Stavrou, (ISS), found out that just over half (51%), responded that they were satisfied with the way courts generally deal with perpetrators of crime, with almost as many (45%), expressing their dissatisfaction. The ones who were satisfied said the courts passed appropriate sentences, have high conviction rates and are not corrupt.

Artz (1999) states that the victim is on her own in the sense that: Little if any information is communicated to her as to the progress of the investigation of the case; She is not given information as to whether the accused has been granted bail; She is not given information about the conditions attached to a successful bail application on the part of the accused. In addition, the survivor is not given information about crucial steps in the progress of the case, for example – Her recourse if bail conditions are broken by the accused; Any other recourse she may have in law to protect herself from the accused if he

is out on bail, in terms of the *Witness Protection Act 112 of 1998*. The date of court appearances of the accused; Decisions made by the Director of Public Prosecutions or his delegated authority as to whether they are going to prosecute the matter or not; the date of the trial (Naylor, 1999).

The Sexual Offences Guidelines (SAPS) specifically state: “Always keep the victim informed of the progress of the case (e.g. bail proceedings, court hearings). Even if you do not have any positive progress to report, the victims will feel reassured that their case has not been forgotten, if regular reports are made to them”.

Generally, the participants were comfortable with the gender of the member who recorded their statements. However, there was a general feeling of not being happy with the officer attending to their cases as they perceived them as being either unco-operative, or disinterested. One police officer mentioned that that the survivor will have to wait for the next officer on duty, as it was a half hour before shifts would change. Participants also maintained that they were interviewed in full view of other complainants, instead of in a private room or a private space, such as an office, or a trauma room, which is a more comfortable room that often also has trained volunteers to assist. In a study done Rassool, Vermaak, Pharaoh, Louw and Stravrou (2003), in their research on Violence against Women, it was found out that, nearly three quarters (72%), of the women reporting abuse to the police made their statement to a male officer. Nearly all (68%), of these women would have preferred a female officer. Various SAPS policies (National Policy Guidelines for Victims of Sexual Offences (SAPS), 1998, Rape and Sexual Assault Policy) stipulate that whenever possible, policewomen should deal with rape complaints.

However, there are far fewer policewomen than reported rape cases. It is therefore seldom possible for a policewoman to deal with a rape complainant.

The National Policy Guidelines for Victims of Sexual Offences (SAPS), 1998 state that the police officer must write everything down that the victim is saying, and must show empathy (understanding), not sympathy (pity), towards the victim. Differences between the survivor's initial police statement and her evidence in court present a serious difficulty that has received little attention. Very often survivors who report rape do not speak English or Afrikaans. More often than not, the police statement is written in English or Afrikaans. This means that the survivor's account of what has happened to her needs to be translated by a police officer who is not a qualified translator, but happens to speak both the survivor's language and English or Afrikaans. The survivor is then required to sign the statement written in a language she does not understand, swearing it to be a true reflection of what happened. Another reason why statements differ from what survivors report to police is that the quality of statement-taking is extremely low. The version of the survivor as relayed to the police official taking her statement is frequently reflected inaccurately or altogether omitted from the statement. This is largely due to a lack of training on, and commitment to the issue of rape, as well as the general apathy in the SAPS (Pithey and Artz, 1998).

Pithey et. al., (1999) argue that, as a result of the lack of understanding and insensitivity to rape survivors and the limited space in most courts, many rape survivors often wait to testify in the corridors of the criminal courts where the accused, together with his supporters, also wait - leading to intimidation and a great deal of distress on the part of

the survivor. The rape survivor is then expected testify in a court room full of strangers who do very little to allay her fears. It is possible that at this stage the only person she may actually recognize is the accused. She is required to tell these strangers about the most intimate, traumatic event in her life in graphic detail, without any explanation as to why she is being asked such questions. Her testimony is limited to answering questions she is asked by the prosecutor or defence, and thus there are often details of the rape that are omitted, simply because she is not asked about them. She may be too ashamed to speak about such intimate matters. She may also be intimidated by the presence of the accused in the courtroom. The questions that she is asked by the accused legal representative, or by the accused himself, are often intended to – badger her; shame or humiliate her further; create an impression that she is lying; or imply that she is a morally questionable person. Because of inexperience and overwhelming case loads, prosecutors are often under prepared for trial, and therefore not familiar with the subject matter of the particular case (Artz and Combrinck, 2003).

5.3 Recommendations

This study offers the following recommendations arising from the findings:

- Protocols of how to manage rape must be communicated to police officers through work-shops frequently and on an on-going basis.
- Police personnel should be made aware through workshops, of the policy documents that discuss victim's rights and the consequences of violating these rights.
- Investigating officers must communicate the progress of the case to the

survivor's, right up to the time of sentencing.

- Police officers must transform their attitude, either implicitly or explicitly, in suggesting that victims are responsible for the rape.
- Trial procedures must be adhered to strictly, especially in terms of preparing the survivor adequately for the trial.
- Victims should be consulted when sentencing is decided upon.
- Victims should be given information on the progress of the case.
- Victims should attend mock trials at least a few times prior to the actual trial to eliminate fears and anxiety.
- Victims should be provided with support measures which aim to assist them by providing advice, emotional support or trauma counselling
- Personnel in the CJS must be sensitized to the emotional and physical needs of rape survivors to circumvent rude or other disrespectful or harsh treatment toward them.
- Convene meetings with the national Commissioner of SAPS and report the results.
- Convene a press conference where the various stakeholders e.g. SAPS, Department of Justice; Department of Education, CPF's etc. are present to report on the findings.
- Disseminate the results through newspaper reports, radio and television media.
- Share results with PIJF where magistrates, prosecutors and judges are present for them to cascade the information to structures within the CJS.
- Share results with educational authorities on planning safer schools curriculum

- Share results at CPF meetings and use recommendations as a way to reduce vulnerability

Strengthen the community and Criminal Justice System against rape:

- Through public education and messaging
- Through community mobilisation against rape
- Through strengthening families, parenting and the teaching of Life skills programmes

Prevent Sexual Violence:

- Through visible and sensitive policing
- Through a tougher Criminal Justice System
- Through victim empowerment
- Through making places safer
- Improve rehabilitation of Sexual offenders

Communication Plan for the Department

- Disseminate the results through newspaper reports, radio and television
- Inform the PIJF of the results for them to disseminate to prosecutors, magistrates and judges
- Deliver papers at various crime prevention workshops and meetings
- Share results with educational authorities on planning safer schools curriculum

- Share results at CPF meetings and use recommendations as a way to reduce vulnerability

5.4 Conclusion

This research suggests that the SACJS continues to trivialise rape regardless of the NCPS, and despite of national and international pressures to treat women with dignity and respect. My research further demonstrates that the inequalities of the previous CJS are being perpetuated. This research also resonates with the following sentiments of *The Human Rights Watch Women's Rights Project (HRWWRP)* which claims that “women victims of rape and assault in South Africa face a Criminal Justice System that is too often unable, or unwilling, to assist them in their efforts to seek redress. Members of the police are often callous or disinterested in the treatment of women and the court system is little better”. Dorothy Q Thomas, Director of the HRWWRP, added that “too often, the treatment they receive when they report rape or other abuse simply traumatizes them further, without offering them any hope of punishing their attackers”. This research asks, “How much has really changed 18 years later?”

The National Policy Guidelines for Victims of Sexual Offences (Justice) (1998), explicitly states that, prosecutors should place before the court evidence relating to the impact (physical, emotional or financial), the crime has had on the victim's life. Where the available evidence pertaining to aggravating circumstances has not been placed on record during the trial, this must be done after conviction. When the merits and complexity of a matter before court demand expert witnesses, they should be called to

testify. An example is the problems encountered on treating sexual offenders such as rapists.

Although the Criminal Justice System has been redesigned to meet women's needs, evidence emerging from this research suggests a considerable chasm between the two. Gender inequality contributes not only to the high levels of violence perpetrated against women (National Crime Prevention Strategy), but also to the lack of seriousness, with which violence against women is dealt with by the Criminal Justice System.

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Dear Potential Participant

I am Nyameka Daniel from University of Fort Hare, Department of Criminology in Alice, Eastern Cape. I am doing my Masters in Social Science (Criminology) through thesis writing. You are requested to take part in this study. The main objective of the study is to determine how the South African Criminal Justice System responds to rape survivors and how this is experienced by the rape survivors. It also aims to ascertain the way in which the South African Criminal Justice System deals with survivors of rape, and to explore how rape survivors experience the criminal justice system. The central purpose of the study is to generate the understanding of how the South African Criminal Justice System (SACJS) deals with the rape survivors. In addition the study attempts to identify any gaps that may exist in reporting a rape case.

Everything that will be said from this interview will remain between the two of us and your name will not be mentioned. The researcher will use pseudonyms. You are free to pull out from this research anytime you feel like as it is on voluntarily basis.

Thanking you in advance.

N Daniel
Researcher

INTERVIEW SCHEDULE

Section A

1. Age

15 -25	
26 -35	
36 – 45	
46 – 55	

2. Occupation _____

3. Educational level

Pre-matric	
Matric	
Diploma	
Degree	
Other	

4. Marital Status

Single	
Married	
Divorced	
Widow	

Section B

5. Which day of the week did the incident take place?

Monday	
Tuesday	
Wednesday	
Thursday	
Friday	
Saturday	
Sunday	

6. Whom did you first report the incident to?

Police	
Family	
Friend	

Relative	
Other	

Why?

7. How long did you wait before you reported the incident to the police?

Immediately after the incident	
1 week	
1 month	
1 year	
5 years	

Why?

8. Did you know that you can report a rape case by telephone or in person?

Yes	
No	

9. How did you report it?

In person	
By telephone	

Why?

10. Who addressed your complaint at the police station?

Male	
Female	

11. Were you comfortable with the gender of the member who recorded your statement?

Yes	
No	

12. Did the police officer introduce him/herself?

Yes	
No	

13. Were the police procedures explained to you?

Yes	
No	

14. Were you asked for your name and address?

Yes	
No	

15. Were you asked you if you were ready to lay a charge?

Yes	
No	

16. Were you informed that you could lay a charge later if you were not ready?

Yes	
No	

17. Did you know whether the investigative officer was contacted?

Yes	
No	

18. Once you explained what happened to you, what was the initial response of the officer?

19. Did the members make arrangements for you to visit the doctor?

Yes	
No	

20. Were you informed why you had to see the doctor?

Yes	
No	

21. Who was responsible for taking your statement?

22. Did they give you your copy of the statement?

Yes	
No	

SECTION C

24. How long did you wait before your case went to court?

25. Were you taken to the court prior to the day of the trial?

Yes	
No	

26. Did you have a pre-trial consultation?

Yes	
No	

27. Was the meaning of the “in camera” explained to you?

Yes	
No	

27. How did you feel about going to court?

28. Were you informed of the progress of the case, for example, bail proceedings, court hearings?

Yes	
No	

29. Were you informed that there may be reporters at the trial?

Yes	
No	

30. Were you satisfied with the sentencing?

Yes	
No	

SECTION D

31. Are you aware of any Victim Support Centres provided by the State?

Yes	
No	

If yes, did you access the Victim Support Centres?

Yes	
No	

If no, why?

32. Do you think the state provides adequate support to rape survivors?

Yes	
No	

33. What kind of support do you think the state should provide to survivors of rape?

34. What was the most difficult issue for you to deal with in relation to the criminal justice system?

35. What was most comfortable for you when dealing with the criminal justice system?

36. Do you think the criminal justice system favors the needs of victims or perpetrators?

Yes	
No	

Why?

37. Drawing on your experience, what changes would you like to see n the criminal justice system?

SECTION E

38. Have you ever been involved in the study of this nature?

Yes	
No	

39. Do you know of other rape survivor involved in the study of this nature?

Yes	
No	

40. Do you think that this type of study is valuable?

Yes	
No	

Why?

SECTION F

41. Kindly rate your experience with the following service providers.

	Fair	Good	Very good	Excellent
Police				
Magistrate				
Prosecutor				
Defence lawyer				
Court Orderly				
Doctor				

SECTION G

42. What intervention programmes do you think the state should provide to rape survivors?

42. What other comments do you have on the South African Criminal Justice System?

FOCUS GROUP DISCUSSIONS

Describe your experience with the police?

Did you feel intimidated or uncomfortable at anytime during the interview?

Were you comfortable with the number of questions or the types of questions asked?

Were you informed of your rights as a victim?

Did the police officer at anytime imply that you were responsible for the incident?

How long did you wait before your case went to court?

Were you satisfied with the court procedures?

Were you satisfied with the sentence that the offender received?

How would you describe your feeling during the trial?