

***WITHOUT CONVICTION:
SEXUAL VIOLENCE CASES IN THE
GUYANA JUSTICE PROCESS***

GUYANA HUMAN RIGHTS ASSOCIATION

JULY 2005

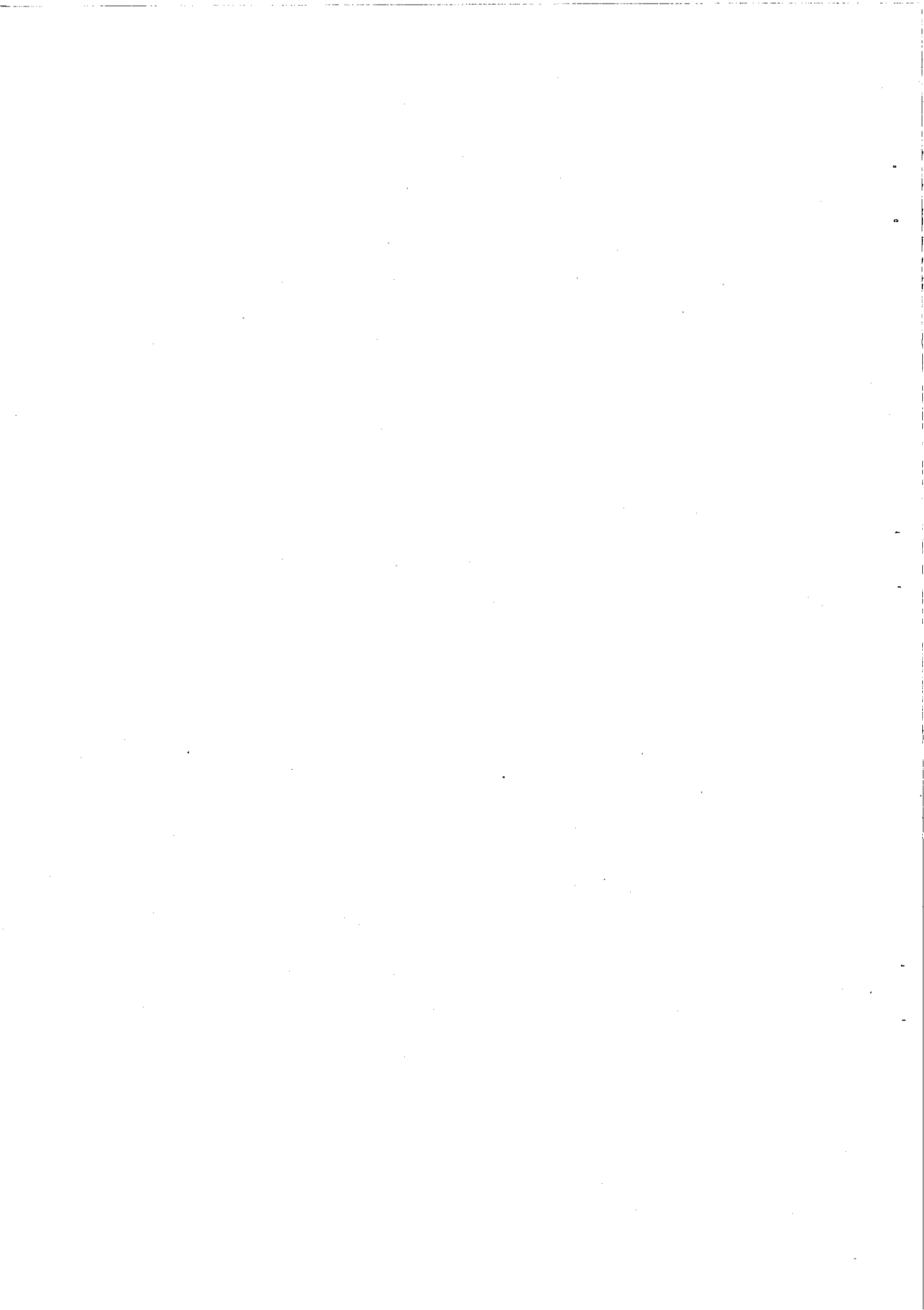


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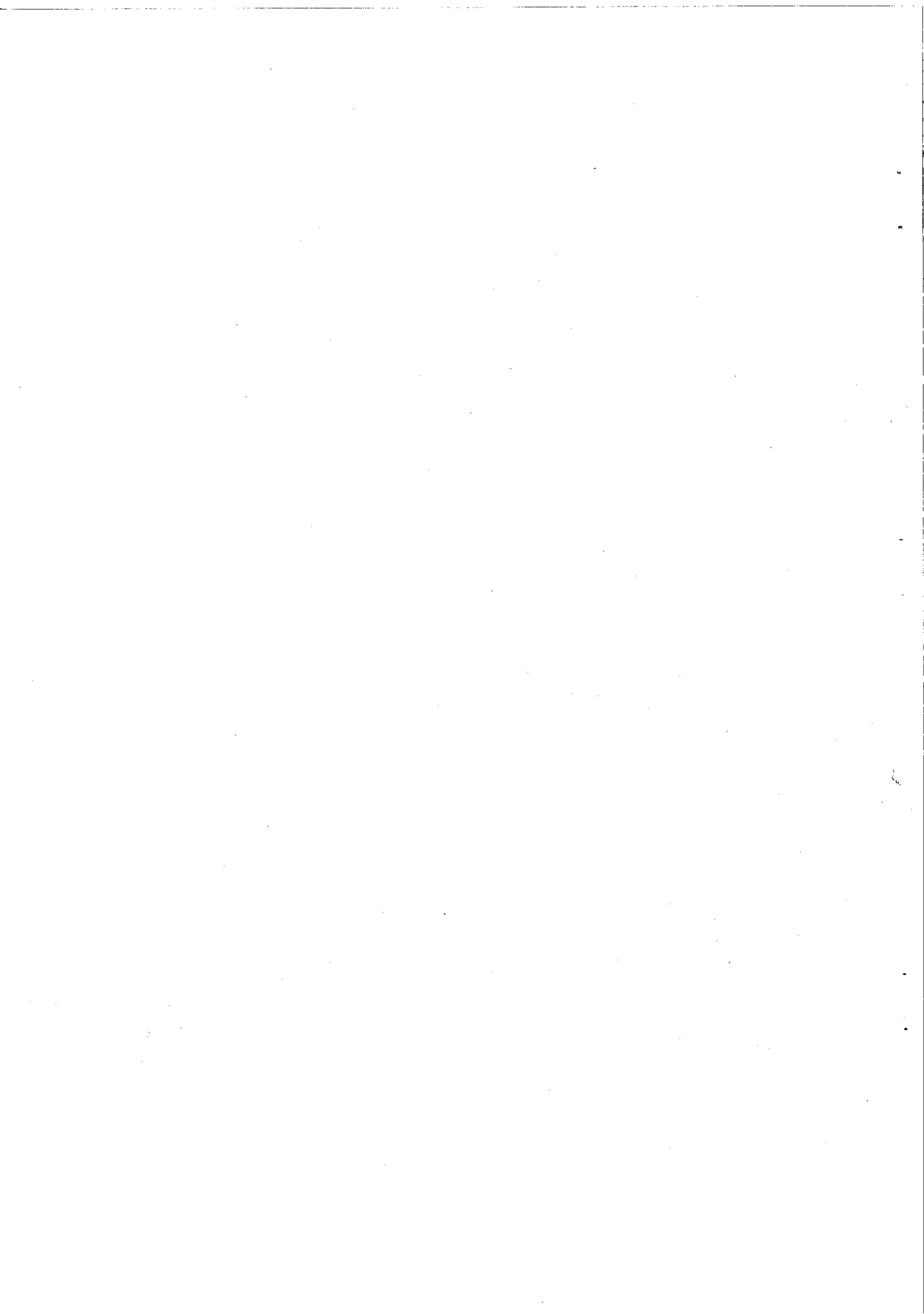
Preface

Incidents of sexual violence in Guyana are going through the roof. Conviction rates, on the other hand, are going through the floor. Women and girls of increasingly younger ages are the primary targets. That so few sexual violence cases reach a verdict in the courts has thus far not attracted much attention from Parliament, the courts, the police, nor the Bar Association. Legal reform attracts much rhetoric but no action. This legal and judicial torpor is not lost on men disposed to sexual violence who realize that they have nothing to fear from the law. After the ritual lamentation at the latest outrage carried in the press, complacency rapidly re-asserts itself.

Sexual violence against women in Guyana is escalating. While this significant rise in crimes of sexual violence is itself sufficient reason for alarm, even more disturbing is to discover how little protection the administration of justice provides against this growing menace. As indicated in the relevant portions of this Report, deficiencies and weaknesses in the justice system are partly accounted for by lack of qualified professionals, inadequate resources to train and remunerate officers and staff and outdated systems and practices, all of which still prevail in the Guyanese courts. Moreover, in addition to these features which generally undermine effective delivery of justice, victims of sexual violence have to contend with unreconstructed chauvinism. The culture of the courts has successfully resisted piecemeal attempts at reform, thereby ensuring the judicial process is an experience frequently as traumatic for the victim as the original sexual violence. Rather than the anticipated sympathy, victims are bewildered by the coldness and suspicion with which they are treated by the administrators of justice.

Not only do victims undergo a process of re-victimization, they are also unlikely to win their cases. Low conviction rates in crimes of sexual violence encourage those inclined towards sexual violence crimes in Guyana to operate with a strong sense of impunity. The likelihood of their being brought to justice is remote.

This Report aims to raise public awareness over the low level of legal and judicial protection against sexual violence available to women and girls. It also aims to educate the average citizen how the judicial system operates in practice. Its Recommendations hopefully provide an agenda and tools for advocacy for those interested in creating a more effective judicial response to sexual violence.



Introduction

The judicial process in Guyana for indictable crimes is divided into two parts. The first segment, known as the Preliminary Inquiry (PI), begins with a complaint to the police and ends with a determination by a magistrate whether the case should be committed to the High Court for trial. The second part of the process covers the period from committal to final verdict by a jury.

The attrition rate - that is, the number of cases which do not complete the course outlined above - in rape and carnal knowledge cases in Guyana is scandalously high. The fundamental problem is not why so few High Court trials end in conviction, but why so few cases make it to the High Courts and to trial in the first place. As a matter of urgency the society needs to know more about the factors leading to this unacceptable state of affairs. The challenge is to isolate the critical factors in order to combat them.

A third valuable area of information on this issue relates to the time cases take to reach conclusion and whether this influences a decision by the victim to withdraw from the process. Unfortunately, information with respect to withdrawals is not readily available and is also difficult to construct. Notwithstanding this drawback, the Guyana Human Rights Association (GHRA) wishes to record its appreciation to the Criminal Investigation Department of the Guyana Police Force who went to some trouble to make the raw statistics of complaints available to the GHRA.

Similar gratitude is extended to the High Court Registries in Demerara and Berbice for statistics relating to high court cases quoted in this Report. The interpretation placed on those statistics is, of course, entirely the responsibility of the GHRA. Anecdotal and comparative evidence has also been a useful guide and, in part, off-set the limitations of the statistical picture.

Apart from the sources of statistical information cited above, information which made this Report possible was gleaned from GHRA case files, monitoring of rape trials in Demerara and Berbice, interviews with police officers, members of the Judiciary, the Bar and the Office of the Director of Public Prosecutions, members of the Probation Service and counsellors. Interviews were also carried out with victims and their families focusing on their experience with the police and the courts for which the GHRA also wishes to record its appreciation. References for comparative purposes are made to similar traumatic experiences with the justice process in African and Indian jurisdictions, chosen with a view to the relevance of cultural attitudes and values to crimes of sexual violence. A third significant comparative aspect of the Report relates

to the UK, which, among other things, demonstrates that problems with rape trials are not a monopoly of the less developed world.

Inclusion of these references was prompted, not because of an assumption that similar conditions prevail in Guyana, but rather to highlight the fact that a significant range of issues related to sexual violence are not monitored or recorded in Guyana. The UK studies address such issues as where and when sexual crimes most frequently occur; statistics on whether the assailant is known to the victim; factors related to false allegations; and the prevalence of alcohol and drugs in sexual offences. These issues have never been studied in Guyana for reasons which relate largely to resources. At the same time we need to ensure limited resources are not invoked to disguise a reality in which such issues are not priorities. Particular prominence is given in this Report to the study *A Gap or A Chasm?: Attrition in Reported Rape Cases*, undertaken by the Child and Woman Abuse Unit of the Metropolitan University in London.¹

The section of this Report dealing with international human rights standards pertinent to criminal prosecution of sexual violence crimes is indebted to Amnesty International publications in its Campaign Against Violence Against Women². This material served as a guide to relevant international principles and practice for making practical recommendations to reform the criminal justice process in Guyana.

The motivation for producing the Report is to sound alarm-bells that the judicial process in Guyana provides neither protection for victims nor a deterrent for perpetrators of sexual violence. The Report refers to a range of studies and articles which analyse similar problems in different national contexts and have been of considerable help. The Report has been prompted by and limited to activist concerns rather than theoretical originality and has no pretensions to be exhaustive or academic on the experiences of rape victims with the law, much less on sexual violence in general.

¹ Kelly, Lovett & Child, *A Gap Or A Chasm? Attrition in Reported Rape Cases* Child & Woman Abuse Unit, London Metropolitan Univ., February 2005 pp136

² Amnesty International, *Stop Violence Against Women: How to Use International Criminal Law to Campaign for Gender Sensitive Law Reform* AI IOR/40/007/2005 May 2005

1. Statistical Picture of Attrition in Sexual Violence Cases in Guyana

STATISTICAL SUMMARY OF RAPE & STATUTORY RAPE REPORTS, TRIALS AND CONVICTION RATES 2000-2004

- Conviction rates compared to reported rapes 2000-2004 1.4% (9 of 647)
- Conviction rates compared to reported rapes in 2004 0.6% (1 of 154)
- Rape cases filed in the High Court tried in 2004 6 % (1 of 18)
- Reported rapes have risen by one-third 2000-2004
- 60% of rape reports failed to be converted to cases (i.e. charges laid) by the police in 2004, compared to 44% in 2000
- 3% of all rapes reported to the police went to trial in 2000-2004 (20 of 647)
- Statutory rape* (carnal knowledge) reports rose 16-fold 2000-2004 (2 to 34)
- 3 of the 31 statutory rape cases were tried in the High Court between 2000-2004, none ended in conviction
- Conviction rate in statutory rape cases 2000-2004 was zero
- By the end of the Preliminary Inquiry 79% of all cases were out of the system
- 97% of reported rapes fail to make it to trial during 2000-2004
- 100% of reported statutory rapes failed to make it to trial in 2000-2004

* Carnal knowledge of a girl below the age of 13 years

figure of 61%, for which 56 men were charged.⁵ *Table 1* indicates how the volume of sexual violence crimes compares with the larger picture of crime in general. These numbers can mislead the average citizen into believing a large number of cases are disposed of at each session. In fact the opposite is the case. A small fraction of cases are completed in any one session. The rest are carried over to subsequent Assizes and at a later point taken off the roster by the DPP if it is deemed there is no possibility of completing a trial.

Table 1 Demerara Assizes October 2004 & June 2005

Year	Total Cases	S.V. Cases	Rape	Carnal Know.	Buggery	Indecent Assault	Incest	Individuals Charged
Oct 2004	125	76(61%)	41	19	8	3	5	60
June 2005	97	59 (61%)	33	14	7	5	-	56

Source: *Guyana Chronicle* 2/10/04, 5/6/05

Sexual Violence Reports

Information provided in *Table 2* indicates the number of reports of sexual violence crimes made annually to the police, divided into the major categories of rape, carnal knowledge (statutory rape) and indecent assault over the past five years. The volume of reports of rape has risen sharply by one-third (32%) between the years 2000 and 2004. Statutory rape complaints – by comparison - have escalated sixteen-fold (1600%) from 2 cases to 34 cases in the same period. Reports of other forms of sexual violence aggregated under the category of indecent assault have been more volatile, actually showing a decrease from 144 crimes in 2000 to 108 in 2004. We should also bear in mind that reported crimes - particularly in the area of sexual violence - are a fraction of those which actually take place. In the USA, under-reporting is estimated at one in eight victims. No reliable surveys have been undertaken in this area in Guyana.

Table 2 Sexual Violence Crimes 2000-2004

Year	Rape	Carnal knowledge	Indecent Assault
	Reports	Reports	Reports
2000	117	2	144
2001	117	24	114
2002	137	7	91
2003	122	12	112
2004	154	34	108
TOTALS	647	79	569

⁵ *Sunday Chronicle*, June 5 2005

Rape in Guyanese law is defined as sexual intercourse between a man and a woman without her consent. The technical definition of sexual intercourse is penetration – however slight – of the vagina by the penis. Statutory rape (or ‘carnal knowledge’) is carnal knowledge of a girl below the age of thirteen years. With the exception of incest, which is defined separately, all other sexual offences in Guyana are normally charged as ‘indecent assault’

Converting Complaints into Cases

While numbers of reports of rape by women and girls to the police climbed steadily, the number converted into cases fell significantly over the five year period under review. As indicated in *Table 3*, 56% of rape reports (complaints to the police) had been converted into cases (i.e. charges laid) in 2000. By 2004 this figure had fallen to 40%, the lowest conversion rate for the entire period.

A different but equally disturbing downward trend occurred with carnal knowledge. For the first three years of the period the police converted 100% of statutory rape complaints to cases. This included the year 2001 when an abnormally high number of reports/complaints were registered. All 24 reports led to charges being laid. However, in the final two years 2003/4, conversion rates fell dramatically to 58% and 76%. In both rape and statutory rape, but more notably in the former, the average figures for the period as a whole, disguise the downward trend from the year 2000 to 2004.

Table 3 Conversion Rate From Reports to Cases in Sexual Violence Crimes 2000- 2004

YEAR	RAPE			CARNAL KNOWLEDGE			INDECENT ASSAULT		
	Reports	Cases	%	Reports	Cases	%	Reports	Cases	%
2000	117	66	56	2	2	100	144	117	81
2001	117	81	69	24	24	100	114	106	93
2002	137	58	42	7	7	100	91	91	100
2003	122	74	61	12	7	58	112	80	71
2004	154	62	40	34	26	76	108	88	81
TOTALS	647	341	53	79	66	84	569	482	85

Source: Guyana Police Force

In the case of indecent assault, numbers of reports declined but not significantly, and conversion rates of reports to charges were high throughout the period. A police spokesman confirmed that the inclination to lay charges in indecent assault cases is higher than in the other two areas, confirmed by the remarkable fact that in 2002 every one of the 91 indecent assault complaints were converted into a case. The average conversion rate in indecent assault cases is double that of either rape or carnal knowledge, as is the individual average for almost every year.

The main reason not to lay charges is a determination by the police to NFA the matter (‘no further action’), either because they have been unable to identify/apprehend the suspect, other problems with investigation, or they have doubts about the credibility of

the complainant. Aside from these considerations, the complainant herself can withdraw from the judicial process.

Process of Attrition in Rape Cases

From statistics for reports and cases obtained from the Guyana Police Force, along with figures for cases filed and tried in the Demerara and Berbice High Courts, an attempt has been made to construct a continuum from initial report to final determination in trials for rape and carnal knowledge cases. The statistical picture is limited by the inability to disaggregate the figure for withdrawn cases more accurately between those for which the victim, the police or the DPP is responsible.

TABLE 4 JUDICIAL PROCESS IN RAPE CASES 2000-2004

(1) Year	(2) Reports	(3) NFA	(4) Cases	(5) Filed	(6) NP	(7) Trials	(10) Pending	(11) Withdrawals (3+6)
2000	117	51	66	8	2	3	3	53
2001	117	36	81	10	1	4	5	37
2002	137	79	58	10	2	0	8	81
2003	122	48	74	14	2	4	8	50
2004	154	92	62	18	1	1	16	93
Berbice				13	2	8	3	2
Totals	647	306	341	73	10	20	43	316

- NFA = No Further Action by Police
- NP = Nolle Prosequi - action withdrawn by Director of Public Prosecutions

TABLE 5: CONVERSION RATES IN PROCESSING OF RAPE CASES 2000-2004 (%)

Year	Reports/Cases	Reports/NFA	Cases/Filed	Filed/Trials
2000	56	44	12	38
2001	69	31	12	40
2002	42	58	17	0
2003	60	40	19	29
2004	40	60	29	6
Average	53	47	18	23

Table 4 shows the process of conversion from one stage to the next in terms of real figures, while Table 5 converts these figures to show conversion rates in percentage terms. Over the period 2000-2005 of the 647 rape complaints, 341 were converted in cases, while the remaining 306 were NFA'd for one reason or another. Table 5 shows an average of 53% of these complaints registered annually with the police were converted into cases. These average figures, while indicating that almost half of all reports annually do go forward, they disguise a trend in which the number of complaints set aside is rising. The annual figure for converted reports in 2000 was 56%,

which by 2004 had fallen to 40%. Conversely this means that 60% of rape reports were not converted in 2004.

Before turning to the next major stage of conversion, from rape charges laid (cases) to cases filed in the High Court, we need to be alerted to a statistical feature which affects the rest of the process. 13 cases were filed in the Berbice High Court over the five-year period (along with 60 from the Demerara High courts) but that cumulative figure is not broken down into annual figures. The consequence is two-fold: when dealing with average figures for the five-year period, the 13 cases can be added to the total of cases filed from the Demerara High Courts, but cannot be added into the individual years. A discrepancy arises, therefore, between an average derived from adding individual years and the over-all average derived from adding in Berbice figures. .

The great majority of rape cases were eliminated from the judicial process by the end of the Preliminary Enquiry (PI). In other words of 341 cases in which charges were laid over the five year period, only 73, or 21% were filed in the High Court (*Table 4*). As demonstrated in *Table 5*, this converts to an average of 21% of cases (including Berbice) being filed while an average of 79% were out of the system by the end of the PI. The cases filed calculation is arrived at as the number of cases which survive the PI to be filed in the High Court. Further withdrawals by the DPP at the High Court stage may also occur (listed as 'NP').

A similar pattern recurs with respect to the next phase of the process, namely the number of filed cases which make it to trial. In terms of real figures *Table 4* indicates that 73 cases were filed with the High Court over the five-year period, but only 20 actually went to trial. The final column of *Table 5*, demonstrates that this converts into an average annual number of 23% going to trial while 77% of filed cases do not. Once again this average figure disguises a trend which is more negative. The final year under review – 2004 - saw a mere 6% (1:18) going to trial, a loss of 94% of filed cases.

The term 'loss' when referring to filed cases which have not gone to trial may appear misleading when those cases, 43 in number, are actually listed as 'pending'. The reality is that a 'pending' case becomes progressively 'lost'. Thus cases listed as pending from the year 2000 are much less likely to come to trial than those pending for a year.

Disposal of Rape Cases in the High Court

The first striking feature of *Table 6* is the small number of rape cases filed in the High Court compared to the number of reports and charges laid by the police. This suggests a large number of victims withdraw during the Preliminary Inquiry in the Magistrates Court, a factor we shall discuss later in some detail. Year 2004 had more than twice the number of cases filed than in 2000, with interim years showing a small but steady increase. Cases withdrawn by the Director of Public Prosecutions remain steady at one or two across the period. Numbers tried, averaged three or four with the exceptions of 2002 and 2004 with zero and one respectively. The number of cases tried in each year would all in fact be higher, but for the problem of how to distribute the total of 8 Berbice cases across individual years.

Table 6 DISPOSAL OF HIGH COURT RAPE CASES 2000-2004

YEAR	FILED	NOL PROS	TRIED	ACQUITTED	CONVICTED	PENDING
2000	8	2	3	2	1	3
2001	10	1	4	2	2	5
2002	10	2	0	0	0	8
2003	14	2	4	2	2	8
2004	18	1	1	0	1	16
Berbice 2000-2004	13	2	8	5	3	3
Total	73	10	20	11	9	43

Table 7 AVERAGE CONVERSION RATES IN RAPE CASES FOR PERIOD 2000- 2004

Year	Reports (1)	Cases (2)	Filed (3)	Trials (4)	Convictions (5)
Totals 2002-2004	647	341	73	20	9
Conversion rates (%)		(1/2) 52	(3/2) 21	(4/3) 27	(5/3) (5/1) 12 1

Of the 73 rape cases filed during the period 2000-2004 the average conviction rate was 12%. However, taking convictions as a percentage of all 647 reports lodged over the entire period, the average conviction rate is 1%, as shown in *Table 7*. By taking the first and last year of the period, a clearer picture emerges of the real trends taking place with respect to successful convictions in rape trials. These trends are evident in *Table 8*.

Table 8 CONVICTION RATE IN RAPE CASES 2000 & 2004 (%)

Years	Convictions/ Trials	Convictions/ Filed (%)	Conviction/ Reports (%)	Convictions/ Cases (%)
2000	33 (1:3)	13	0.9 (1:117)	1.5 (1:66)
2004	100 (1:1)	6	0.6 (1:154)	1.6 (1:62)

Comparing conviction rates in the first and last years of the period examined reveals a deteriorating trend. Comparing the conviction rate to the number of cases filed in the High Court we note for the respective years a conviction rate in 2000 of 13% compared to 6% in 2004. In both years the actual number of convictions was one. It must be borne in mind that filed cases had survived a PI indicating that there was a case to be answered. Comparing conviction rates with cases produces a conviction rate of 1.5% for 2000 and 1.6% for 2004. Again, these very low figures relate to cases which the police on advice of the DPP had originally judged to have the ingredients for successful prosecution. Converted into a comparison of convictions to reports registered in each year the conviction rate stands at 0.9% (1:117) for the year 2000 and 0.6%(1:154) for the year 2004.

The average conviction rate in High Court trials for the period is 45% (*Table 6*). In Berbice the conviction rate (38%) is notably worse than in Demerara (50%). It is interesting to note that these figures point to almost half (45%) of those cases which go to trial ending in conviction. This suggests that if the case ever gets to trial, it has a much higher chance of a successful conclusion than at any other stage in the process. However, whether this assumption is correct depends on figures for the number of accused who changed their plea to guilty in the High Court in the hope of a lighter sentence.

Withdrawals

Withdrawal rates are shockingly high and are particularly influenced by large numbers of NFA decisions at the investigative stage because of evidence issues and concerns surrounding credibility of the victim. Once again, average annual figures (49%) suppress the fact that rates of withdrawal are rising from 45% of all complaints in 2000 to 60% in 2004. 'Withdrawals' as used in *Table 9* accumulates NFAs by the police and NPs by the Director of Public Prosecutions. In addition, a large number of the cases do not progress beyond the PI, some because of judicial decisions and others by virtue of the complainant withdrawing from the process for a variety of reasons which are discussed later. Unfortunately, it is extremely difficult to calculate with any degree of confidence the numbers who withdraw voluntarily. Statistics are not kept by the police on these matters and contact with victims is problematic for a variety of reasons.

**Table 9 WITHDRAWALS IN RAPE CASES
2000-2004**

YEAR	REPORTS	WITHDRAWALS	%
2000	117	53	45
2001	117	37	32
2002	137	81	59
2003	122	50	41
2004	154	93	60
Bebbice		2	
TOTAL	647	316	49

Process of Conversion in Carnal Knowledge Cases

The over-all picture depicted by *Tables 10 and 11* is that despite a growing number of reports being lodged by complainants in carnal knowledge crimes, few are brought to trial and convictions are unknown in the past five years.

**Table 10 PROCESS OF ATTRITION IN CARNAL KNOWLEDGE
(STATUTORY RAPE) CASES 2000-2004**

Year (1)	Reports (2)	Cases (3)	NFA (2-3)	Filed in High Court (5)	NP	Trials	Pending (9)
2000	2	2	0	1	0	0	1
2001	24	24	0	7	1	2	4
2002	7	7	0	4	0	0	4
2003	12	7	5	7	0	1	6
2004	34	26	8	12	4	0	8
Total	79	66	13	31	5	3	23

From a situation in which 100% of carnal knowledge complaints were converted into cases at the beginning of the period under review, this rate fell as numbers of reports rose sharply in 2003 and 2004. Nonetheless, the great majority of carnal knowledge reports (87%) are still converted into cases. Similarly, compared to the 21% of overall rape cases filed in the High Court, the equivalent figure for carnal knowledge cases (56%), is more than twice as high. Unfortunately, at this point the encouraging news ends. Only three cases have been brought to trial in the past five years, less than 10% of all carnal knowledge cases filed in the High Court. None of the three trials ended in conviction. A growing backlog of cases is accumulating at an increasing pace.

**Table 11 SURVIVAL RATE IN CARNAL KNOWLEDGE
CASES 2000-2004 (%)**

YEAR	Reports/Cases	NFA/ Withdrawn	Cases /Filed	Filed/Trials
2000	100	100	50	0
2001	100	100	29	29
2002	100	100	57	0
2003	58	42	100	14
2004	76	24	46	0
Average	87	73	56	9

**Table 12 DISPOSAL OF HIGH COURT CARNAL
KNOWLEDGE CASES 2000-2004**

YEAR	No. Filed	NoI Pros	No. Tried	No. Acquitted	Convicted	Pending
2000	1	0	0	0	0	1
2001	7	1	2	2	0	4
2002	4	0	0	0	0	4
2003	7	0	1	1	0	6
2004	12	4	0	0	0	8
Total	31	5	3	3	0	23

Profile of Rape Cases

From many studies, surveys and analyses on sexual violence crimes it is possible to identify features which recur across boundaries of nation, race, class and culture. While the specific percentages may be unique to specific countries, the features in general are remarkably universal.⁶ Salient features drawn from studies undertaken in the UK, US, South Africa and India include:

- 1 in 4 women will be the victim of rape or attempted rape in her lifetime
- A high percentage of women (57%) did not think of the experience as rape: this rose to 69% when a person they were intimate with was involved; the rate fell to 38% when injury was involved. (A comparable US study undertaken in 1985 for *Ms. Magazine* found 75% did not identify the experience as rape)
- Marital rape is least likely to be identified as rape although it is often extremely brutal. (The same form of sexual violence is often found in cases of women who kill repeatedly abusive partners).
- Violence is more likely by well-known perpetrators than in stranger rape.
- Most common perpetrators were current or ex-partners.
- The vast majority of victims (91%) told no one at the time.
- Stranger rape is most likely to be reported, 'date' rape the least.
- 75% of reported rapes do not go to trial.

Such detailed studies of sexual violence are not available for Guyana. It is also particularly important to recognize that there is no reliable information as to under-reporting of sexual violence crimes.

⁶ The statements are summarized from various sources



2 Factors Inhibiting Successful Completion of Sexual Violence Cases In Guyana

In this Section of the Report we seek to identify the extent to which the experience of rape victims with the judicial process is a major cause of cases failing to reach conviction.

For many years the treatment by the courts of women victims in sexual violence crimes, as indicated earlier, has been tantamount to re-victimizing them. The changes proposed are not peculiar to Guyana. Indeed the shortcomings of the Guyanese legal procedures are reflected in similar practices in many parts of the world. While sexual violence is formally treated as a crime by the courts, the treatment is token and symbolic, calculated to leave the prevailing violent culture undisturbed. This sentiment was captured in the following quote.

*"The legal system has been undermined by discriminatory and patriarchal procedural and evidentiary rules... Underlying these views is the prevailing cultural view that while it is correct for society to formally outlaw rape and other crimes, governmental enforcement of these legal prohibitions threatens the prevailing male-dominated social order and the 'private' domestic sphere of relations between men and women"*⁷

Citizens in general in Guyana have little confidence in the administration of justice, as a consequence of perceptions of corruption in the legal process and distrust of lawyers and the police. Within that over-all reaction, specific factors influence whether a victim of sexual violence will take the matter to the police to set in train the legal process. These include

- fear of publicity and its possible impact on marriage prospects
- shame
- abusers are often close relatives/acquaintances
- fear of intrusive cross-examination
- fear they may not be believed.

In the Guyanese context also, in addition to these general reservations around sexual violence, other deterrents to reporting include:

- Have no faith the offender will be found guilty
- Fear of harassment from the offender
- Interference with evidence
- Fear the accused will bribe the police
- Interference with witnesses.
- Interference with juries.

2. Barbara Bedont & Katherine Hall Martinez, "Ending Impunity for Gender Crimes Under the ICC", *The Brown Journal Of World Affairs*, 1999 p.65

Although reporting rates are improving, high numbers of rapes are not reported for all of the reasons suggested above. As indicated earlier in the profile, a surprising number of women do not think of the assault on them as rape. This is particularly the case where coerced sex occurs in the context of a date or other circumstances in which the victim believes she encouraged the rape, or made a bad judgement or inadvertently encouraged the assault. These factors all contribute to a determination that this cannot be classed as rape and reduce the likelihood of making a report to the police.

Having surmounted these general perceptions and fears, the decision to go to the police, for a Guyanese woman, is likely to be a family consensus, rather than one she will take alone. Studies in the UK show that a determining factor whether a victim reports to the police or not, is the response of the first person to whom she relates her experience.⁸ If their response is supportive and encourages a report to the police it is likely to happen.

Initial Contact with the Police

Police stations in Guyana are not civilian-friendly. They represent extensions into the community of an organization yet to evolve from its militia origins. Police stations are more akin to barracks: bare, functional and impersonal. Furniture is at a minimum. Security is a major concern in recent years. The long counter separating the general public from the station staff, symbolizes the sense of siege between the police and the local community.

For the majority of rape victims this is their first visit to a police-station. Any semblance of confidentiality is lost in the effort to engage the attention of an officer usually seated at a desk some distance on the other side of the counter, which, whether successful or not, serves to inform everyone else in the station of the purpose of the visit. A number of rape victims never recover the loss of confidence inspired by this first encounter with the police.

Probation Services in Guyana are critical of insensitivity of the police with respect to the reception of complainants. It is, they claim, a major factor in the attrition rate in rape cases.

*"A common reaction to the experience of going to the police is to drop the case. The great majority of cases are dropped by victims unable to go through with the experience of being called a liar and disbelieved."*⁹

A victim's experience of the police, particularly at the early stages of the process is extremely influential on her decision to withdraw from rape trials.

⁸ A Gap Or A Chasm? op.cit p.43

⁹ Senior Probation Officer, Guyana Probation Service, Interview

"I was satisfied with the way the first officer received me, because I didn't know what to expect. I had never been in a police-station before. Afterwards on day two and day three, the other stations I went to did things better. They asked more questions and details. I don't think they were particularly sensitive to the issue. It wasn't that they were uncaring, but they asked what they had to ask and write what they had to write. I would recommend they should first take the victim into a room by herself. The same in all the stations, policemen come walking in and reading over the statement. People, police officers kept walking in and stuff like that. The place should be more private."¹⁰

Female Police Officers

A feature of early police experience in determining whether a victim will continue with her complaint is ensuring that police personnel dealing with victims at the earliest stage are competently trained. In this respect, it is not just a question of encountering female rather than male police personnel, but trained female personnel. Where the prevailing attitude is 'any woman will do', the experience of making statements and medical examinations, while less traumatic than if males were in charge, is not conducive to building confidence about staying with the judicial process.

"I don't think they particularly chose a woman police. She just happened to be there. Yes, it helped that she was a woman. I had no choice where they took the statement. I felt uncomfortable giving the statement because sometimes she would ask me things and I felt ashamed to talk to her. The later part of the statement was taken by males. The only thing with him he asked more questions – not like he didn't believe me, but he wanted to know more things. But then again I was embarrassed telling him some things because he was a guy. The ideal combination would have been a woman who asked more questions. The statement should be taken more privately."¹¹

Visiting the Scene of the Crime

Visits to crimes scenes in Guyana are hit and miss. In some cases the visit occurs promptly, in others it can literally take months, particularly if the alleged crime took place in a vehicle.

"I expected them to go straight to the crime scene the said day, because on TV you see the films where they go to the crime scene the said day, not a couple of days after, like here."¹²

"On one occasion it took the police three months to pick up a mini-bus driver even though they knew the number of the mini-bus."¹³

¹⁰ Guyana Rape Survivor, Interview

¹¹ Ibid.

¹² Ibid.

¹³ Senior Probation Officer, op. cit

Confrontation with the Accused

Identification exercises in Guyana are conducted haphazardly. Some take account of the traumatic consequences for a rape victim of coming into close proximity with her aggressor, by viewing the accused from an adjacent room. In others the victim has been required to physically touch the accused person.

"When I had my confrontation someone told me to report there and I was so scared. I was scared even though we were in the police-station. I was so scared of him. From the time I saw him something like ...my skin begin to raise. The police weren't conscious of this at all. When we had the confrontation we were in an office; the accused, his lawyer, the police, my mother and me. I was able to get through it because she (my mother) was there. I don't think I would have said anything if I had been there by myself with them. I was so scared.

I think they should do it different. I have seen on TV they have a set of persons like lined up in one room and the victim in another room with a special glass and they have numbers, 1, 2, 3, 4. They should have that."¹⁴

Strikingly similar sentiments over insensitive identification experiences were expressed by rape victims in the UK:

"Rose's experience is instructive. The policemen who rescued her from the garage ignored her pleas to be taken to a safe house, and insisted that the traumatised teenager accompany them on a drive through the Newcastle council estate where her attacker lived to find his flat before he could flee. Only after Rose became hysterical was she taken to a police station."¹⁵

Medical Examination

The concept of 'medical evidence' as understood in Guyanese medical circles is another casualty of chauvinism. Guyanese legal thinking on these issues is stuck in an exclusive obsession with the physical aspects of rape. The official police form, provided for medical personnel who examines rape victims, clearly expect the medical examiner to focus almost exclusively on whether penetration or not occurred. This 'scrap of paper', as it was referred to by a recent trial judge, not only prevents any detailed report from being provided, it projects an impression it is neither desirable nor necessary. Judicial thinking in progressive societies embraces a more comprehensive approach to sexual violence. Rape Protocols for use by medical personnel in South Africa, for example, more coincide with the "pages and pages" desired by one High Court judge¹⁶, rather than the cursory comments possible on the form currently in use in Guyana.

¹⁴ Guyana Rape Survivor, op. cit

¹⁵ *Sunday Observer*, "Scandal of justice revolution that betrayed victims", May 1 '05

¹⁶ Comment made in rape trial, March 2005

Whether the medical examination adds to the trauma is a matter of luck. The following two accounts contrast the experience of a Guyanese rape victim, with the markedly worse treatment experienced by a rape victim in the UK. While the dangers of hanging too much on isolated examples is obvious, it also reminds us that raising standards is often linked to attitudes rather than resources or levels of development.

*"I didn't have to wait long to see the doctor. He was in his house next to the hospital and came over soon. The experience was ..erm...I didn't really know what he was going to do. He made me lie down on this bed-like, I had up my foot and didn't see what he was doing. It would have been better if it was a woman. He showed concern, I think so. He talked nice and all of that, told me not to worry or take on. It wasn't too bad, just embarrassing. Nothing much surprised me about the exam in the sense I didn't know what to expect. He examined me for scars on my arms and things like that. The exam was generally OK."*¹⁷

"Rose was left alone for three hours while a female officer was found. They ignored me until I tried to go to the toilet, when an officer came rushing into the cubicle and shouted in my face to stop, because I was destroying evidence," she said. "I was already so traumatised that it shocked me into physical paralysis. I had to be practically carried back to the waiting room."

*After Rose had been interviewed she was taken to a safe house for an examination. Ten hours had passed since her escape from the flat and 21 hours since her attacker took her prisoner. She had not yet been allowed to sleep, wash or go to the toilet.*¹⁸

Counselling

Counselling services are not considered part of the routine services to be provided to any victim of rape. This is partly due to the fact that such services are sparse in Guyana. Since this situation is not likely to be remedied in the near future, alternative support services need to be considered. The victim who provided the following comment made some suggestions of the no- or low-cost activities which could be developed:

"Nobody recommended counselling 'till I went to Human Rights. The human rights people told us about Help and Shelter. The counselling experience was pretty good. She helped me through a lot. One person counselled me about the attack and a second prepared me for the court, asking questions the lawyer might ask and have me answer them. I think counselling helped me a lot. I had lots of sessions with both of them. Both sides were good experiences. They were done in private with me and my mother and I wouldn't recommend changes in this respect.

If I met other rape victims I guess that would help, yes. I would get to know if they feel the same way I feel about everything. May be good if we did something together, like go to the zoo or something, get to know them

¹⁷ Guyana Rape Survivor, op. cit

¹⁸ Sunday Observer, "Scandal of justice revolution that betrayed rape victims", May 1 2005

*more, not just the assault. We could do it on-line as well. I would like to see some web-sites where people post their experiences.*¹⁹

A somewhat similar sentiment is echoed by a rape survivor in the US whose testimony was utilized as part of a television advertisement for rape counselling services.

*"I would give anything for it not to have happened, but it has, and that's my reality," Kelly, 25, says in the television ad. "The first step of becoming a survivor is to talk about it. You find out that there's this little secret club that you never wanted to be a part of, but once you're there, you're glad that you're not alone."*²⁰

Broadening counselling approaches to include families, particularly parents of young victims or partners of adult victims of rape, is particularly important in cultures where rape carries severe social stigma. Guidelines for helping schools and colleges be sensitive to traumatic experiences their students may have experienced and the impact this may have on their behaviour and schoolwork, constitute other areas which at present are completely neglected in Guyana. Victims of rape frequently become labelled as 'trouble-makers' and encouraged to 'drop out' of school.²¹

Role of the Prosecutor

Offender- rather than victim-oriented judicial systems reduce the victim to an evidence-provider, a technicality to be managed and processed as the prosecution thinks fit. The essence of the criminal justice system is that crime can only be controlled through the punishment of offenders. Trials, therefore, are plotted to secure a conviction. The only person representing the victim is the prosecutor, whose paramount interest is not her welfare, but a conviction and, in practice, the victim is important only because she is the best source of information to secure one. The relationship of prosecutors to victims in Guyana is minimal and suffers from the following defects or limitations:

- No attempt is made to explain the court process or what is expected of the victim or her family, or what they should expect.
- Most prosecutors barely speak to victims at all, being excessively fearful of being accused of 'coaching' them with respect to testimony.
- Prosecutors allow excessively intrusive questions from defense lawyers to avoid appeals on the grounds of being denied the right to cross-examine.
- No information is given the victim regarding the accused, bail conditions, whether he is allowed to approach the victim, or how to complain if attempts to intimidate her or her family are made by the accused.

¹⁹ Guyana Rape Survivor, op. cit

²⁰ Taken from a US public service commercial

²¹ Tina Skinner & Helen Taylor Univ. Of Bath, UK Home Office On-line Report "Providing Counselling, Support and Information to Survivors of Rape: An evaluation of the 'Star' Young Persons' project" 2004 p.38

- No concern is shown of the difficulties that may arise from the victim having to attend court on numerous occasions, which may include losing her job, getting time off work, or loss of school hours.
- No attempt to discuss the process, court procedures, the role of the various officials.
- No attempt made to clarify what kind of evidence is important and essential and what is less important.
- Prosecutors do not pay enough attention to possible discrepancies between victim's evidence and police statements, due to poor capacity of officers to take statements.
- Victims should be told the likely time-frame for the Preliminary Inquiry.
- They should be told the purpose of cross-examination and what to expect.
- No concern is shown over the fact that victim and accused and his supporters wait in the same areas prior to trials.
- Victims are often unaware they must give evidence with the accused present.
- Victim never gets to tell her story, only to answer questions from the prosecutor.
- Prosecutors expected to carry too many cases, therefore, never properly prepared.
- Victims are never informed they may request *in camera* proceedings.

These obstacles were summarized in the case of one rape survivor in the following way:

"My prosecutor needs more training. When I was there the last time, now, the magistrate ask him if he has any more questions and he said 'no'. Then this other girl, a clerk I think, she tell him what more to ask me and then he ask me. He needs to prepare more or something. On the whole I think the Prosecutor is sometimes on my side and sometimes no. They don't ask questions in a helpful way. Then again they don't listen properly like. The last time I was there I forget to say something. He should have picked that up and ask a question, so I could add it in. So when he don't do that, how does that make me feel? It's like he's not even paying attention to what I am saying. So how can I say he's on my side or not. He's just there doing his job, do this and this and this and then his job's done. I would recommend the prosecutor be better trained, clearing the court and they should also have this little mike, not a big thing, but something so people don't have to keep telling you to speak up, these are the main things that would make this process easier."²²

Police Prosecutors in Guyana are seriously deficient in training. While many have the potential and interest to be competent prosecutors, they are conscious of the deficiencies in training. This contributes to a lack of self-confidence and excessive deference to magistrates and defense lawyers. Moreover, they are frequently publicly chastised by magistrates, further undermining their confidence. In some cases

²² Guyana Rape Survivor, op. cit

magistrates take over the prosecutors' role due to their inability to formulate straightforward questions.

Preparing the Victim for the Court Process

Apart from the type of discussion recorded above, no officer of the court observes such normal human courtesies as, for example, explaining to victims and witnesses, most of whom are there for the first time, how to proceed.

*"The police told us we had to go to court. I was so scared. I had to go stand at the side. I hold on to my father's hand. If people had told me I didn't have to say anything that first time it would have helped."*²³

*The second time when I had to give evidence the Prosecutor called me on the 'phone. He was giving me questions and I was giving him answers. He told me like which words to use. It was helpful but he made me cry because it was like he didn't believe me. And then there was someone else in the background telling him something I couldn't make out. He knew I was crying and said "don't cry, don't cry" and told me "pray tonight". The guy in the background was like "this is a big case, she's lying if she say she ain't see the man penis. How she didn't see it. If she didn't see it, it means she lying then." The way he was talking like none of them believed me. He said he was on my side as a way of explaining what a prosecutor was. His friend was saying "if she ain't see the man's penis she should drop this thing". This made me feel like I want to cry, 'cos none of them believe me. This conversation was quite long. It left me feeling not very good about the case"*²⁴.

Court orderlies are normally police officers who show little interest in the proceedings or what effect they may be having on victims.

*"The police never raised with me anything about the process or what to expect. I wasn't too concerned at the time, I never think at all what to expect. I would have liked to know a bit later on They should have told me afterwards. The police woman at.... (police-station), she said 'if anybody ask you anything, you tell them what you have to tell them', that was the only information I was given. They should have someone prepare me for what's going to happen, like court, to prepare me for this."*²⁵

As a result of the lack of preparation for court, a victim and her family experience serious shock. Unlike the civilized world of television court-rooms, the closest most of them have been to the justice process, the reality is bewildering and frightening.

"When I went to court I was very scared, when I went into the box I was scared again. When I started to talk I was a bit relieved. When the lawyer started to talk he had a heavy voice, I don't like when people speak hard to me, the way he was asking his questions and making his own accusations.

²³ Guyana Rape Survivor, op. cit

²⁴ Guyana Rape Survivor, op. cit

²⁵ Guyana Rape Survivor, op. cit

I had no idea what it was really like and how it was going to be. The police woman asked questions one way but he was asking if I did this and did that. It would have been better if I knew how rough it was going to be, I would have been better prepared. Some people think if you prepare people properly you will want to back off, but I feel its better to know what its going to be like, rather than not really know what's happening and being scared in the box."²⁶

One strategy adopted by the police at the outset is to highlight the difficulties the complainant will encounter if she continues with the charge. Police defend this approach on the grounds that so few rape or sexual violence cases reach a positive conclusion that it is better the victim realizes what she is up against from the start.

While this approach cannot be dismissed as not having the interest of the victim at heart, it is not appropriate to adopt it from the very outset, when what the victim most requires from the police is some assurance and support with respect to the traumatic aspects of the attack. A more constructive introduction to the challenges to be faced is clearly preferable when the victim is in a frame of mind to consider them more calmly. The following comment was not made by a Guyanese police officer, but captures a sentiment commonly found here:

*"I must admit that one of the things that I do, and it's perhaps a wrong thing, but I think you've got to empower the victim. She's got to be the one that's got to make this choice and got to know what's she's up against...then it's her decision. When I talk about what the police can do, one of the things that I do is go into details about what court can mean, the things that can happen. I'm not painting a black picture, I'm painting a truthful picture, so that at no point along the line when they've been in court for three days can they say 'you never told me about this'."*²⁷

Adding to ignorance of what to expect, the rape victim also experiences unexpected coldness by all of the official actors in the Magistrate's court:

*"The Magistrate was OK, but the only thing was he kept telling me to speak up because I didn't speak heavy. That got me annoyed. I think he should have cleared the court. Its kinda embarrassing having strangers staring at me while I'm telling my story. I'm kind of thinking, 'what are they thinking of me now? And when the lawyer is making all kinds of accusations I wonder whether they believe him. And when we went into the next courtroom and I was telling my story, there was someone in the crowd I saw laughing away. That made me feel embarrassed. They should clear the court for everyone, not just young people, for all rape victims. Clearing the court would be good for victims. He wouldn't have to keep saying Raise your voice! Everyone would hear."*²⁸

²⁶ Guyana Rape Survivor, op. cit

²⁷ A Gap or A Chasm? Op. cit p.67

²⁸ Guyana Rape Survivor, op. cit

Victims are snapped at if they transgress arcane rules; constantly shouted at to speak up; to look this way and that and not to repeat themselves. No apologies are offered for interminable delays, victims and witnesses are treated as if their time is of no consequence. They are never included in consultations over new dates, are expected to be available whenever it suits the whim of lawyers regardless of cost, loss of jobs, schooling or inconvenience. Explanations are never offered why cases are abruptly adjourned either by defending lawyers, prosecutors, court orderlies or Magistrates.

In their defence, it must be said that magistrates frequently work extremely hard under conditions of work which most trade unions would reject out of hand. Apart from making a constant stream of judgements on disparate matters which could radically affect peoples' lives, magistrates often have to take up the slack for the prosecutor's incompetence. Facilities for taking a break are virtually non-existent, buildings are dilapidated and more in need of replacement than renovation, and all against a constant deafening background from surrounding traffic. Such circumstances cannot be ignored when assessing the lack of civility complained of by rape victims.

Lawyers not directly involved in the matter at hand have little respect for proceedings in both the Magistrates' and High Court. The very lawyers who should be listening to witnesses are frequently chatting and laughing with colleagues, interrupting occasionally to shout they cannot hear the witness. This seedy legal culture is no doubt a logical outcome of a professional driven by fees and posturing rather than specialization and scholarship. The New Amsterdam courts are an improvement, but even there, the likelihood of jurors actually hearing everything intended for their ears is highly unlikely because of sounds from other courts.

Intimidation of Witnesses

Interference with and intimidation of witnesses, in both indictable and summary matters, is allegedly widespread. A sense of impunity enables defendants to threaten, bribe, coerce or pressure witnesses away from the courts. Most of this behaviour is indirect and it is effective because people cannot, or believe they cannot – which is just as effective – look to the police force for protection. In the rural areas where people of influence hold greater sway, the range of options for deterring witnesses is wide. The victim, family and witnesses can be made to feel they are the cause of unnecessary trouble, acquaintances and neighbours are influenced to put pressure or isolate them, whisper campaigns assassinate their character.

"I sometimes feel that in the end nothing is going to happen because from the beginning the guy is like paying people off. When I went to that station the first time and met Mr. B, we were in his office and he made some enquiry about my statement. When he called the officer about the statement I made in the first station, he had it in his pocket. He asked him then, what's my statement doing in his pocket.

As a result of finding the statement in his pocket, that's why Mr. B ask a next officer to take a next statement of what happen from the beginning to the end. This never came out in court. In court they kept asking why all

these statements ? But no one ever come out and tell the truth. All this makes me feel bad.

Then afterwards he get a phone call and when he put down the 'phone he tell us that bigger people than him call him and tell him to drop the whole matter. Yes, so that doesn't give me a lot of confidence in the whole thing. And I just feel as if nothing is going to happen in the end.²⁹

While the first line of responsibility in this respect lies with the police, Judges and magistrates need to be more forceful in ensuring witnesses are not intimidated. The most effective weapon in their possession is revoking bail. Bail revocation should be exercised more often as a deterrent until standards in this area are substantially improved.

Delays in Trials

Nothing is more demoralizing for a rape victim, having psyched herself up for court, to wait for several hours only then to learn that the case is postponed. Once again, the effect on the victim never figures in the calculations concerning delays. Defense lawyers are routinely granted whatever delays they request. Prosecutors do not object and no one takes the effect on the victim into account. Repeated and fruitless trips to court also risk loss of jobs. Most of all they increase the likelihood of publicity about the rape getting out. All of these sentiments are captured in the following comment from a rape victim.

"When we go to court and nothing happens, this makes me lose confidence in the whole thing. They (the accused) know what time to go, we don't. The lawyer send somebody to say he can't go. The accused know this and he don't come. . We go and we don't know anything. We have to go from the beginning and wait. We have to leave work, take leave and then go back and nothing happened. I think we should be told.

Its getting frustrating because my boss wants to know why I have to take so much leave and he wants to send me off. It would help if we could get it over quickly."³⁰

Dread of Publicity

As indicated earlier, the decision to go forward with the legal process turns on a calculation whether this can be done without publicity. Guyanese courts resist the idea that *in camera* trials should be the norm for rape cases and impose an exacting calculation of the age of the victim before clearing the court. The sense of shame associated with being a victim of rape is intense in the rural areas of Guyana. This is captured in the following comments from a rape victim.

²⁹ Guyana Rape Survivor, op. cit

³⁰ Guyana Rape Survivor, op. cit

"The people don't know who live around us. I don't think I could handle it if everybody from where I live know what happen to me, because if they see you walking on the road they would be whispering to one another that she was the girl who get rape. The people who come to court are mainly family, so I'm OK with that."³¹

Media standards with respect to respecting the identity of rape victims relate universally to what they can get away with. With no price to be paid for breaching ethical standards, journalists, cameramen and photographers operate with impunity, often within the court buildings. The legalistic attitude of the print media is such that while not printing the name of the victim, they usually have no compunction about printing the name of the victim's mother or the name of the accused in incest cases. Since the City of Georgetown or village they come from is also routinely mentioned, the people the victim least wants to learn about her experience are those who can most readily identify her. The senior Probation Officer quoted previously in the Report confirmed such fears are not exaggerated.:

"Media revelations deter potential complainants. In one case the newspaper listed the name of the father of a girl in an incest case and the village in which he lived. The girl was taunted in the village with men saying 'gi' me a bit of what yu giving yu father'."³²

Sexual Crimes Against Small Children

A little publicised but major area of concern is the rape of small children and babies. Since the courts cannot get evidence by virtue of their age, these cases regularly collapse. The Probation Department staff are alarmed at the number of cases of this kind which are being set aside. While all sexual assaults on children are repugnant, it is difficult to appreciate the depths of depravity which small children are made to suffer. Even more inexplicable is the attitude of some magistrates. The following illustration of the problem was provided by a senior probation officer:

"Babies are being severely assaulted. One case last year involved a member of the GDF who raped and sodomized a 22-month old baby. The baby needed 3 operations and needed a colostomy because the anus was so badly ruptured. The soldier was placed on \$50,000 bail because the magistrate claimed 'it was a bailable offence', despite Probation Dept. objections to bail since the baby might still die from the surgery surgery. The Magistrate did not accept the objection and the man was bailed and disappeared. The army gets rid of people charged with serious offences. In reality, the army should be locking them up."³³

One solution to this kind of problem is for the police to step in and prosecute the cases on the basis of evidence led by the police themselves.

"Cases like this and others in which the victim cannot testify by reason of age, should be treated like domestic violence cases are often treated. In

³¹ Senior Probation Officer, op. cit

³² Ibid.

³³ Ibid.

*age, should be treated like domestic violence cases are often treated. In those cases, if, for example, police go to a house, there's a broken bottle, and the woman is black and blue, the police should charge and give evidence even though the woman is reluctant for fear of the consequences. The woman need not come into the court story at all. Similarly with small children, the police should give the evidence.*³⁴

New Approach to Sexual Violence Crimes Required

The criminal justice system was constructed to deal with male miscreants who transgressed the law. While not done consciously with gender in mind, every detail of judicial culture evolved in response to needs and requirements generated by the male population. By extension, this system was applied to women. Some aspects are relatively gender neutral, but the processing of sexual violence crimes is not. It is clear from the foregoing that reporting and investigating procedures with respect to rape and other sexual violence crimes need to be changed radically, not simply amended. The procedures as such are inappropriate, beginning with the need for survivors to go to police stations.

Recognition of the need for radical change has led to radical experiments. Rape crisis centres have been adopted in a number of jurisdictions, locating a specialized police office close to medical centres frequented by rape survivors is another. One of the most successful such schemes is operated by the Brazilian police force.

Since the 1980s when women's rights began to attract serious attention, Brazil has created more than 300 women's police stations. Variations of this approach have been adopted by a number of other Latin American and Asian countries. Apart from gender considerations, it was recognized that it is less expensive to have women's police stations than set up shelters³⁵. Women are not obliged to use them, they have a choice between the regular stations and the women's, which are frequently located in a separate areas or floors of regular police stations. The senior officer is a woman as are specially trained officers who take the women's complaints and the detectives who investigate them.

The women's stations deal with the full range of sexual crimes related to violence against women, but the majority of offences relate to assault and battery. The dominant focus on domestic violence has encouraged the creation of services for women and group therapy for domestic violence perpetrators.

Charges emanating from women's stations have challenged the traditional tendency of leniency towards male perpetrators of sexual violence, which led to matters being resolved in the magistrates court which should have been indictable offences.

³⁴ Interview with Senior Probation Officer

³⁵ Andrew Downie "A Police Station Of Their Own" *Christian Science Monitor* 20/7/05 p.1

A powerful argument for creating women's stations either as separate offices or adjuncts to existing police stations exists in Guyana. As indicated in the previous section, sexual offences constitute half of all crimes reaching the high courts. Moreover, the logical extension of separate police stations is establishing a court dedicated to addressing sexual violence crimes, a matter which is addressed later in this Report.

3 Rape Trials: Re-Victimizing The Survivor

Victims On Trial

Court procedures in Guyana are dominated by men, male traditions, male culture and male attitudes. While female legal practitioners appear to enter the profession in number equal to males nowadays, it will probably require another generation before they are sufficient in numbers and confidence to challenge rather than adapt to the prevailing legal culture. Sexual violence crimes are similarly overwhelmingly gender-based, i.e. assaults by men on women and girls.

In this regard, Guyanese courts reproduce a world-wide phenomenon. The experience of the average trial leaves most victims of violent sexual crimes feeling as if they were violated a second time. Re-victimizing of rape victims by the judicial process is the norm in many parts of the world. Victims of rape are frequently left more in need of counselling by court proceedings than by the rape experience.

"My case was powerful, with clear-cut evidence and witnesses, but if I was less eloquent, had been in a more confused situation or had made an allegation of rape in the past, God knows how I would have been treated or whether I would have won my case," said Zoe.

"The experience of the investigation and court process is not terribly dissimilar to the attack itself: there is the lack of control, the humiliation and the enforced submission. I needed far more counselling after I had gone through the police investigation and court case than I had after the attack itself."³⁶

This sentiment has been well captured in the following extract from India, which noted:

"..It is often stated that a woman who is raped undergoes two crises – the rape and the subsequent trial. While the first seriously wounds her dignity...destroys her sense of security and may often ruin her physically, the second is no less potent of mischief, insomuch as it not only forces her to re-live through the traumatic experience, but also does so in the glare of publicity in a totally alien atmosphere, with the whole apparatus and paraphernalia of the criminal justice system focused upon her.....Forcible rape is unique among crimes, in the manner in which its victims are dealt with by the criminal justice system. Raped women have to undergo certain tribulations. These begin with their treatment by the police and continue through the male-dominated criminal justice system. Acquittal of many de facto rapists adds to the sense of injustice. In effect, the focus of the law upon corroboration, consent and character of the prosecutrix and a standard of guilt beyond reasonable doubt have resulted in an increasing alienation of the general public from the legal system... who think that the courts are not run as well as one would expect"³⁷

³⁶ *Sunday Observer*, "Scandal of justice revolution that betrayed rape victims", May 1 2005.

³⁷ The 84th Report of the Law Commission of India, 1980, p.56

This assessment of the situation in other court systems will strike a familiar chord with those unfortunate enough to experience justice in sexual violence cases in the courts of Guyana. The combination of factors militating against female victims of sexual violence enjoying their right to equality before the law is remarkably consistent, widespread and predictable across cultures and levels of development. While statistics in Guyana are difficult to compile, those noted above support the contention that the administration of justice systematically discriminates against females in cases of sexual violence. Rectifying entrenched discrimination of this nature justifies a vigorous strategy of reverse discrimination, until such time as the culture of the courts respects the rights of women. An indication of how entrenched the chauvinistic approach remains finds expression in Section 31(1) of the Criminal Law (Procedure) Act which provides that a judge may at any time on the application of the prosecutor or accused or at his own instance order that the jury shall be composed of men only!³⁸

Victims of crime normally evoke sympathy and support. Rape is the exception. The justice system put no other victims of crime under such scrutiny. The rape victim rather than the offender is scrutinized. Protection of males from false allegations of rape goes far beyond the standard of 'innocent until proven guilty', permitting almost limitless admissibility of character evidence against the victim. Apart from the traumatic experience of making a statement, the rape survivor

*"still has to undergo the humiliating experience of the seizure of her clothes, preparation of vaginal smears and pubic hair tests for the presence of spermatozoa, as these remain a necessary part of the evidence to be adduced by the prosecution. In addition the rape survivor has to undergo gruelling and offensive cross-examination on every detail of the incident. The woman's word is not enough to shift the burden of proof...Further the prosecution has to prove that it was the accused specifically who committed the offence, involving the trauma of identification and confrontation between victim and accused. It is only after the establishment of all these facts that the presumption of lack of consent arises."*³⁹

In this respect, no other crime demonstrates the entrenched chauvinism of the judicial system better than rape.

*"Legal method determines for example, that while a woman's sexual history is of relevance to the question of rape, the man's is not. The rape trial hinges on the establishment of consent or non-consent, making the experience of the woman completely irrelevant....The trial is Kafkaque for the woman who has experienced terror and/or humiliation but is treated as a by-stander to an event she apparently willed upon herself and for which she is seeking unjustified and malevolent revenge."*⁴⁰

It is particularly evident in the organizational and procedural aspects of trials. The victim as a person disappears. She never gets to tell her story. The rape trial begins with

³⁸ Laws of Guyana Chapter 10:01

³⁹ Rakesh Shukla *Flaw in the Law: Custodial Law, Inadequate Evidence and Acquittal*. p.2

⁴⁰ Smart C, *Feminism and the Power of Law* Routledge London 1989 p.4 quoted in Moul, Kelly p.8

the prosecutor chopping up the woman's story into legal categories which will secure arrest and conviction. Her experience, in this respect, is organized for her in a manner best suited to secure this goal.

"Those aspects of her character and especially of her sexual history which do not conform to the 'ideal' rape victim are inconvenient for this purpose and weaken her position as a victim."⁴¹

The cross-examination then consists of testing every detail of the victim's story and character. Victories for the defense in this process swing the pendulum of proof back in her direction. Each failure to negotiate these tests erodes her status as a good victim and strengthens the notion she is a cheat, a liar, or a vindictive woman. Only when this process is exhausted is the accused required to defend himself. To this extent the presumption of innocence until proven guilty of the accused is applied in reverse to the victim.

Probation Officers commented on the effort required to overcome this phenomenon:

One case, to my knowledge, has reached completion with a guilty verdict in the High Court in the last fifteen years for rape. It was a case of a fifteen year-old girl. It succeeded because of the extra-ordinary preparation the Probation Dept. was able to undertake with the victim. The girl was so convincing as a witness, the accused changed his plea to guilty the next day to avoid a very lengthy sentence. But this is the only case I can talk about."⁴²

A Culture Resistant to Change

Reforms to ensure a more balanced presentation of evidence to the jury are resisted by the prevailing judicial culture. Law reform failure in this area is explicable in terms of the powerfully ingrained and persistent cultural perceptions lawyers, police and jurors bring into the courtroom relating to rape.⁴³ The two most persistent strands in this culture are the myth of what is known as 'real rape' and, secondly, the idea that women frequently lie about rape. 'Real rape' is the enduring myth that rape is only committed by strangers, with weapons and involves violence and injury. While definitions of rape have been rendered more flexible, reporting procedures are more victim-friendly, and police officers and medical personnel more often female, these improvements have had negligible influence on entrenched macho attitudes of an adversarial courtroom culture.

Gender prejudices routinely distort and take out of context evidence deemed relevant to proving consent. This is graphically captured by the following comment: While false or malicious reports do occur – and we shall return to this issue later – evidence suggest they are a much smaller fraction than the police claim. (In the UK, 9% of reports are determined to be false, no Guyanese figures exist.) By contrast, the high conversion

⁴¹ Kelley Moulton *Observation of the Workings of the Wynberg Sexual Offences Court* Univ. Of Cape Town Dissertation, 2000 p.11

⁴² Senior Probation Officer, op. cit

⁴³ A Gap or A Chasm? op. cit p 93

rates noted earlier in statutory rape and indecent assault cases suggest the police find these complainants more believable than rape complainants.

"The fact you are not torn limb from limb, splattered against a wall, maimed for life implies that you did not fight. The implication that you did not fight is submission. You submitted. And submission implies consent? That is absurd...you fight and you could be killed, you could be maimed, but if you don't fight, don't expect the courts to believe you."⁴⁴

In practice, a claim of rape is only acceptable to the courts when the victim conforms to the following specifications:

"Only a sober young woman, who does not have a bad reputation, who has not behaved sexually provocatively and who has said no in the right way can be raped and only then by a young man who is sober and 'deviant' and with whom she is not in love."⁴⁵

The issue of consent is a major cause of injustice in rape cases. Great weight is placed on whether the victim's reactions were passive, impulsive, provocative, or collaborative, Did she resist, did she fight, has she consented before and so on. In particular, the extent to which the courts still rely on whether the woman sustained external injuries as evidence of resistance, was married (and therefore "habituated to sexual intercourse"), had been drinking (or worse on drugs), is particularly disconcerting. All of this points to a fundamental assumption that the woman can control the situation if she really tries hard enough. The point is rarely made that the ability to control a situation is linked to how predictable that situation is. The element of unpredictability in violent attacks is significantly under-estimated as a factor rendering women powerless over their sexual and physical integrity.⁴⁶

Non-Judicial Remedies for Rape

A little understood aspect of rape are the complaints made by a category of women who registered a complaint more because they felt someone should know what happened to them, than they wanted a judicial process to be set in train. For such women, lack of sensitivity or professionalism in the administration of justice is not necessarily the issue. An investigation is neither what they sought, nor feel they can sustain. This also raises the issue of developing a non-judicial response to rape which allows such women to come to terms with what has happened to them, bring it to closure and allow them to get on with their lives.

Although 'withdrawal' from cases technically refers to the complaint, in a very real sense for many women it is a withdrawal of trust and confidence in the judicial system

⁴⁴ Donna Smart "No Real Harm Done: Sexual Assault in the Criminal Justice System" quoted in Amnesty International, op. cit p.34

⁴⁵ A Gap or A Chasm? op. cit p.81 quoting from Jeffner S "Different Space for Action: The Everyday Meaning of Young Peoples' Perception of Rape" Faculty Seminar Univ. of North London May 2004

⁴⁶ Mount Kelly op.cit p.10

and, in some cases, a form of withdrawal even from the society which created the conditions for the assault in the first place.⁴⁷

Contrary to such feeling, prevailing opinion in Guyana suggests that all victims of rape feel the legal process is worthwhile when a rape offender is sent to prison for many years. Whether or not this is in fact true, the reality is that obtaining convictions in sexual violence crimes in Guyana is a remote possibility. Effective deterrents are virtually non-existent. The victim is left to conclude that the system is on the side of the offender. In such circumstances, the urge for families to take matters into their own hands and resort to retributive action to settle scores the courts are incapable of addressing is compelling.

As an alternative, at present the only meta-legal solution to the inefficiency of the courts is for families of victims to accept financial payments from the accused and drop the case. Resort to financial settlement is frequently less about money, than fear of publicity and of involving the victim and her family in more pain in a process which, at the end of the day, has only an outside chance of success. In the eyes of the general public, accepting money is seen as venality, callously putting a price on a daughter's virtue, particularly when the sum is derisory.

While widely frowned upon as encouraging criminality such settlements constitute the only form of retribution likely to be exacted against perpetrators at the present time. Moreover, such payments avoid the risk of publicity from an unethical and callous media which heavily outweighs any satisfaction to be derived from a successful prosecution.

While support for striking a balance towards victim-oriented justice is slowly growing, there is a danger it will also encourage a harsher 'law and order' approach rather than a genuinely victim-centred process. Victims require a more efficient, competent, humane judicial system, not a harsher one. Rather than on victims, such an approach will focus on harsher penalties, harsher bail conditions and more oppressive treatment of offenders, all disguised under the cause of securing victims' rights.⁴⁸

Abolition of Preliminary Inquiries in Rape Cases

An immediate consideration prompted by victim-oriented approaches to justice is to abolish Preliminary Inquiries in favour of a paper-based assessment in matters related to sexual violence offences, particularly rape. Most modern judiciaries have taken this step some time ago. The purpose of a Preliminary Inquiry is to establish there are sufficient grounds for a trial by jury in the High Court. It is not a trial in itself. This needs to be explained constantly to persons unfamiliar to the justice system, since PIs have acquired all the trappings of a trial. As a mechanism for determining grounds for a trial, the PI has become grotesquely cumbersome, time-consuming and inefficient. For survivors of sexual violence assaults, it is also traumatic. A casual observer of a PI

⁴⁷ A Gap or A Chasm? op. cit p.62

⁴⁸ Lala Camerer "A Victim movement for South Africa" *Policing The Transition* April 1996 p.5

would never arrive at a conclusion that this procedure is simply an exercise in evaluating evidence.

This process could be replaced by one in which both sides submit written statements to a magistrate followed by an assessment which would include scheduling a meeting with representatives of the prosecution and defence, based on which a determination either to move to the High Court or dismiss would be made.

The advantages of a process of this nature would be firstly to eliminate the trauma and re-victimizing of complainants; secondly, reduce the time involved and thereby reduce also the number of cases abandoned or terminated; thirdly, allow specialized training for prosecutors; and fourthly, reduce the cost in both time and money to complainants and the State.

In the circumstances of Guyana, such a process would also require mechanisms to monitor the danger of corrupt practices being introduced into a process which is more administrative and less available to public scrutiny than a PI.

4. International Standards of Criminal Justice

International Criminal Court (ICC)

Reform of sexual offences legislation in Guyana has been discussed for several decades, but has not moved beyond piecemeal tinkering. A common flaw in such initiatives has been the failure to locate reform of criminal law within the appropriate framework of international standards. Nowadays, however, reform of the Guyana Constitution in 2001 requires Guyana's international human rights commitments to be taken into account by the judiciary, thus opening the possibility, even requirement, of law reform with a more international dimension.

The most authoritative international instrument for reforming national sexual offences legislation is the Rome Statute of the International Criminal Court. Guyana is a signatory to the ICC, implying acceptance of its rules and procedures. With respect to the issue of sexual offences, this Statute has benefited from the experience of the International Criminal Tribunal for Yugoslavia (ICTY) and the International Commission Tribunal for Rwanda (ICTR). Experiences of gross and multiple violations of human rights provided the background against which both Tribunals developed new approaches to a range of criminal offences. Both Tribunals as a result of their concern with war crimes, broke new ground in re-interpreting crimes of sexual violence, especially rape. This Section of the Report reviews key definitions and rules of procedures adopted by the ICC in relation to crimes of sexual violence, which are suited to incorporation into national systems of justice. In this respect the ICC provides a guiding framework for the modernization of criminal justice on a sound basis of human rights principles.

What follows in this Section are proposals based on the Rome Statute for changes in the legal conduct of rape trials and the culture of the courts to ensure respect for the dignity of rape survivors and to confront the entrenched chauvinism of the courts. In addition to providing definitional guidance, the Rome Statute of the International Criminal Court also provides a framework of standards on procedural aspects of trials of sexual violence. Where provisions of the Rome Statute cannot be incorporated verbatim into Guyanese court procedures, they should be utilized as guides to assess procedures in national courts.

The arguments in this Section have benefited substantially from recent publications by Amnesty International published as part of AI's campaign to "Stop Violence Against Women".⁴⁹

⁴⁹ Amnesty International *Stop Violence Against Women: How To Use International Criminal Law to Campaign for Gender-Sensitive Law Reform* AI IOR/40/007/2005 May 2005

Reform of Sexual Violence Offences Statutes

A number of specific process issues need to be addressed to ensure that national court procedures with respect to crimes of sexual violence conform to internationally accepted standards. We shall briefly outline the most important standards recommended for incorporation into national court systems. These include:

- Definition of 'rape'
- Evidence of Prior Sexual Conduct
- Corroboration of the victim's testimony should not be explicitly required in crimes of sexual violence.
- Participation in Legal Proceedings
- Giving evidence by video-link or in a closed court
- Protection, counselling and support for victims of crimes of sexual violence.

The above listed elements for a fair trial in sexual violence cases will be examined in light of the *Elements Of Crimes*, the official administrative guide to procedures of the International Criminal Court.

Definition of Rape

There are two ways of addressing this problem. The *Elements of Crimes*' definition of rape states in Article 7(1)g-3:

" (1) The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of anal or genital opening of the victim with any object or any other part of the body"

*(2) The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent".*⁵⁰

This approach to defining rape follows the traditional common law approach of seeking to identify all variations of sexual penetration as precisely as possible. Penetration is replaced by 'invasion', the definition is gender neutral, focus is shifted to the perpetrator by threats and coercion and the need for overwhelming force is dropped.

At the same time by focusing on the circumstances of the act, rather than whether the victim consented to it, this definition shifts the focus away from the victim. The more mechanical aspects of paragraph (1) and the focus on force and coercion in paragraph

⁵⁰ Amnesty International op. cit p.17

(2) were drawn from the ICTY case of *Prosecutor v Furundzija*⁵¹. A second ICTY case, *Prosecutor v Kunarac*, also generated a new dimension of the rape definition, which while not directly incorporated into the *Elements Of Crimes*, is worth mentioning. A concern arose whether 'force' or 'threat' adequately covers the issue of 'sexual autonomy', particularly where the person subjected to the act was vulnerable, deceived or in a situation of dependency or trust. To address this dimension of the definition the following language was developed "*Whenever the person subjected to the act has not freely agreed to it, or is otherwise not a voluntary participant.*"⁵²

A final influence on international thinking on the definition of rape, which is not incorporated into the *Elements of Crimes* of the ICC, but which attracted much international support is to be found in a landmark case from the Rwanda Tribunal. *Prosecutor v Akayesu*. This definition of rape reads "*A physical invasion of a sexual nature committed on a person under circumstances which are coercive*".⁵³

The Akayesu definition has the attraction, for the national courts system, of encompassing the three elements of 'physical invasion', 'sexual nature' and 'coercion' in a simple statement, in contrast to the detailed or mechanistic approach of the *Elements of Crimes* approach.

The current definition of rape used in Guyanese courts requires penetration of the vagina by the male penis. This traditional definition, 'though still widely used, is considered to be too restrictive in more progressive judiciaries. In Guyanese jurisprudence, other forms of sexual penetration and use of instruments or other body parts to penetrate are treated as 'indecent assault', normally attracting lighter penalties.

South Africa, among several judiciaries, is considering replacing the phrase "*without her consent*" in rape charges, with that of "*in coercive circumstances*", thereby shifting the focus of the judicial process from the person of the victim to the circumstances under which the act took place.

Amnesty International has pointed out that rape and other sexual violence crimes can constitute acts of torture, particularly when committed by agents of the State i.e. police, soldiers or prison officers, or by others with their consent or acquiescence:

*"This means that all states parties to the Convention on Torture have an obligation to enact laws and regulations that make clear that rape perpetrated or condoned by a state official is an act of torture, and give domestic courts the power to exercise jurisdiction over anyone suspected of such a crime regardless of nationality".*⁵⁴

⁵¹ *Prosecutor v Furundzija* case No IT-95-17/1-T ICTY Trial Chamber Dec.10 1998 paras 264-269

⁵² *Prosecutor v Kunarac* Case Judgement No IT-96-23 (ICTY Chamber 22 February 2001),

⁵³ *Prosecutor v Akayesu* Case No ICTR-96-4-T (ICTR Chamber I 2 September 1998) paras 507-508

⁵⁴ Amnesty international op. cit p.32

Evidence of Consent

Trials of sexual violence allegations focus almost exclusively on whether the victim consented to the alleged act. Physical resistance is the over-riding criteria for proving consent. Gender prejudices routinely distort and take out of context evidence deemed relevant to proving consent.

With respect to the use of force and consent the ICC has stated:

"...The evolving understanding of the manner in which rape is experienced by the victim has shown that victims of sexual abuse – in particular girls below the age of majority – often provide no physical resistance because of a series of psychological factors or because they fear violence on the part of the perpetrator...Moreover the development of law and practice in that area reflects the evolution of societies towards effective equality and respect for each individual's sexual autonomy"⁵⁵

In order to understand the prejudice towards women victims, three principles of evidence are set out in Rule 70 :

- (a) Consent cannot be inferred by words or conduct of a victim in circumstances where force or threat, or a coercive environment undermines a victim's ability to give voluntary and genuine consent.
- (b) Consent cannot be inferred where the victim is incapable of giving genuine consent.
- © Consent cannot be inferred by reason of silence or lack of resistance on the part of the victim to the alleged sexual violence.⁵⁶

Moreover, any attempt to lead evidence in the ICC which shifts the focus away from coercion and back to the discredited 'consent' approach must pass certain tests on admissibility of the evidence. These *in camera* procedures are contained in Rule 72 :

1. Where there is an intention to introduce or elicit, including by means of questioning of a victim or witness, evidence that the victim consented to an alleged crime of sexual violence, or evidence of the words, conduct, silence or lack of resistance of a victim or witness as referred to in... (Rule 70 above) notification shall be provided to the Court which shall describe the substance of the evidence intended to be introduced or elicited and the relevance of the evidence to the case.
2. In deciding whether the evidence is relevant or admissible, a Chamber shall hear *in camera* views of the prosecutor, defense, and the victim or his/her legal representative, if any, and shall take into account whether the evidence has a sufficient degree of probative value to an issue in the case and the prejudice that such evidence may cause.
3. When the court determines that the evidence is admissible, the record shall state the specific purpose for which it is admissible.⁵⁷

⁵⁵ *Amicus Curiae* in the case of *MC v Bulgaria*, European Court of Human Rights, 2003 163-166

⁵⁶ Amnesty International, *op. cit.* p.34

⁵⁷ *Ibid.*

The importance of the inclusion of force and coercion into the definition of rape is that the consent cannot be inferred into the behaviour or words of someone subjected to such factors. With the focus on establishing force or coercion, the ICC rules require a special explanation from the prosecution before they are allowed to shift the focus to the victim's behaviour, rather than that of the perpetrator.

Other attempts to re-define sexual violence without explicit reference to the issue of consent, are supported by Article 7(9) of the Rome Statute of the international Criminal Court. "This Article includes rape, sexual slavery, enforced prostitution and enforced sterilization in the definition of sexual violence.

"Such definitions which move away from forms of non-consensual penetration and take into account other forms of sexual violence would also lessen the burden of proof on women who in many cases find it difficult to establish forced sexual intercourse in the absence of visible marks of physical violence."⁵⁸

Evidence of Prior Sexual Conduct

A major bone of contention in trials relating to sexual violence is the extent to which the prior history of sexual activity of the victim is used against her to infer either a predisposition to consent to the alleged act, or to undermine the credibility of her character. The International Criminal Tribunal on Yugoslavia was the first international court to ban such evidence, a position which has been incorporated into the Rules and Procedures of Evidence of the ICC in Rules 70 and 71.

Rule 70: 'Principles of Evidence in Cases of Sexual Violence' states:

(d) Credibility, character or predisposition to sexual availability of a victim or witness cannot be inferred by reason of the sexual nature of prior or subsequent conduct of a victim or witness.

Rule 71: Evidence of Other Sexual Conduct

In light of the definition and nature of the crimes within the jurisdiction of the Court and subject to article 69 paragraph 4 a Chamber shall not admit evidence of the prior or subsequent sexual conduct of a victim or witness.*

** Article 69(4) reads: The Court may rule on the relevance or admissibility of any evidence, taking into account, inter alia, the probative value of the evidence and any prejudice that such evidence may cause to a fair trial or to a fair evaluation of the testimony of a witness, in accordance with the Rules of Procedures and Evidence.⁵⁹*

⁵⁸ Amnesty international "India: Justice, the Victim; Gujarat State Fails To Protect Women From Violence" Jan. 2005 p.58

⁵⁹ Amnesty International, supra p. 36

In keeping with the civil law approach noted earlier with respect to definitions, a free evaluation of evidence is preferred by the ICC to the numerous rules and exclusion of many classes of evidence which characterizes a common law approach. For this reason the ICC requires prior rulings to ensure the probative value and prejudicial potential of the proposed evidence.

Corroboration of Evidence

Corroboration of a woman's evidence as a legal requirement implies that all women are inherently untrustworthy. Many jurisdictions still require corroboration. Medical testimony from a registered practitioner confirming evidence of violence is a standard requirement. Put otherwise, this requirement assumes women lie about being sexually assaulted. As indicated above, there is no evidence that women lie more frequently than men, nor that they lie more frequently about sexual assaults than other crimes. Corroboration is not required in other crimes. In common with other procedural and evidential rules, this requirement reflects the entrenched chauvinism of legal systems. Even in developed societies that have dismantled discriminatory structures in most other areas of public and private life, the courts have managed to retain prejudicial gender rules.

Eye-witnesses to sexual violence are rare, therefore corroboration is difficult to provide. In light of this, Rule 63 of the *General Provisions relating to Evidence* at the International Criminal Court state:

(4) Without prejudice to Article 66 (3) a Chamber shall not impose a legal requirement that corroboration is required in order to prove any crime within the jurisdiction of the Court, in particular crimes of sexual violence.*

Article 66(3) provides " In order to convict the accused, the Court must be convinced of the guilt of the accused beyond reasonable doubt" ⁶⁰

Because of its potential for prejudicial and discriminatory influence, the Guyanese judicial process should expressly provide in court procedures that corroboration is not required for any crime, particularly crimes of sexual violence.

Giving Evidence in Closed Court

Giving evidence in open court is the most traumatic aspect of sexual violence trials for victims. It is by far, the most significant factor influencing the attrition rate in rape trials in Guyana. Apart from the trauma of retailing intimate details before a crowd of strangers, the fear of publicity such openness generates acts as an equally effective deterrent in going to court. While giving testimony in open court is bad enough when it happens once, in the Guyana context, the victim has to undergo the experience twice, at

⁶⁰ Amnesty International supra p.37

a minimum and can expect to do so three or four times in cases of long delays, and when changes of magistrates or defence lawyers occur.

Again the International Criminal Court has established procedures for giving testimony in less stressful circumstances, which national courts would do well to emulate as options for all witnesses in sexual violence trials – not only children. Effectively, the options for implementing such a system are: closing the court to all but persons essential for the trial; a video link, in which the witness is questioned from the courtroom, but is herself in another part of the court building, or even outside of the court completely and, thirdly an audio link between the court-room and the victim.

Adoption of such procedures by the ICC was anticipated at an international Colloquium organized by Interights for Senior Commonwealth Judges held in Georgetown, Guyana in 1999. The Proceedings of that Colloquium make reference to paragraph 20 of the Victoria Falls Declaration⁶¹, in which it was stated that judges and lawyers have a duty to familiarize themselves with the growing international jurisprudence of human rights and particularly with the expanding material on the protection and promotion of the human rights of women.

The trend is that anyone who may provide comfort and support at the trial of a case involving violence against women should be encouraged to do so provided the proceedings are not disrupted.

Justice Kenneth Benjamin of the Antigua and Barbuda High Court in his presentation at the Georgetown Colloquium⁶² referred to the conduct of proceedings involving sexual offences *in camera*. He observed that with the absence of spectators from the public gallery, female complainants have been noticeably less hesitant and more forthcoming than previously. He however stressed that caution must be exercised so that the public's perception of open justice is not jeopardized.

In his view, Judges ought to allow the presence and attendance of a close or other relative or companion of the accused person to forestall negative public impression of one-sided justice.

Justice is a two-edged sword and that negative impression may also be generated by the exclusion of someone supportive of the female victim. Justice Benjamin recognized that the dissipation of the negative public impression is contemplated by the discretion conferred upon the Court by the law relating to the exclusion of members of the public.

The Caricom Model legislation on Violence Against Women in the Areas of Sexual Offences urged that provision for *in camera* hearings should be encouraged since this in

⁶¹ Commonwealth Secretariat, Victoria Falls Declaration of Principles for the Promotion of the Human Rights of Women (1994)

⁶² Interights, "Caribbean Regional Judicial Colloquium for Senior Judges *Recommendations and Strategies for Action on the Human Rights of Women and the Girl Child*" Georgetown April 11-14 1999

turn encourages more victims to report offences and attend the trial of offenders. The model legislation provides for the public to be excluded during such hearings but an exception is made so that the judge may permit the presence of any member of the public whose presence is requested by the complainant or the accused. Clause 21(2)⁶³.

The English Courts have long recognized that the judge has a duty to provide a procedure at trial which reduces the strain on child witnesses and allowance is made for the presence at the trial of anyone who can provide comfort and support to the witness. Safeguards for the interests of the accused are also put in place.

Given the old-fashioned court buildings in Guyana, not to mention the financial circumstances, the only practical option for immediate implementation here is to close the courts and hold hearings *in camera*.

Implementing such steps immediately in the national courts is fully supported by Article 68 of the ICC *Rules of Evidence and Procedure* :

Rule 68: Protection of the victims and Witnesses and their Participation in the Proceedings.

2, As an exception to the principle of public hearings provided for in Article 67, the Chambers of the Court may, to protect victims and witnesses or an accused, conduct any part of the proceedings in camera or allow the presentation of evidence by electronic or other special means. In particular, such measures shall be implemented in the case of a victim of sexual violence or a child who is a victim or a witness, unless otherwise ordered by the Court, having regard to all the circumstances, particularly the views of the victim or witness.

Rule 67 Live Testimony by means of Audio or Video-link Technology
*1 In accordance with Article 69 (2), a Chamber may allow a witness to give viva voce (oral) testimony before the Chamber by means of audio or video technology, provided that such technology permits the witness to be examined by the Prosecutor, the defence and by the Chamber itself, at the time that the witness so testifies.*⁶⁴

Closed courts in such circumstances also conform with the basic principles of the ICC that

*"the Court shall take into account the needs of all victims and witnesses...in particular children, elderly persons, persons with disabilities and victims of sexual or gender violence."*⁶⁵

In camera proceedings are intended to provide a measure of comfort for the victims of sexual violence. In addition to removing strangers, the spirit of closing the court also encompasses allowing, at the request of the victim or witnesses who have to provide traumatic evidence, a person to be present who they find re-assuring. The strength of

⁶³ Caricom Secretariat, *Model legislation on Violence Against Women in the Areas of Sexual Offences Clause 21(2)*

⁶⁴ Amnesty International supra p.38

⁶⁵ ICC Rules of Procedure & Evidence, Rule 86: General principle cf. *Amnesty International* p.40

international support for the presence of such persons has been elevated almost to the status of a right for all victims of sexual violence, not only minors.

Participation in Legal Proceedings

Under existing court rules, victims in sexual offences cases never have the opportunity to state their case. As indicated elsewhere in this Report, the victim's evidence is packaged as the prosecutor deems best. However, the victim's interests may differ from those of the Prosecution and she has a right to ensure that court procedures respect those interests. The absence of anyone charged with protecting the interests of the victim leads to gross violations and situations of considerable stress to survivors".

"I asked for a lawyer, beside the Crown, and was refused. I also asked for a closed court and was refused...I felt like I was on trial. My character was degraded, exaggerated... It's not fair how you only get a Public Prosecutor and the men have top barristers who tear you to shreds for a hefty pay packet. The system's all wrong. I wasn't even granted any compensation and I was pregnant when the assault took place. I would go to court again"⁶⁶

No provision exists in our jurisdiction for victim statements to be made to the court. A major step forward in this respect would be legal representation be made available as a routine matter for the victim. Article 68 of the Rome Statute offers a guiding framework:

Art. 68 Protection of the Victims and Witnesses and their Participation in Proceedings:

3. Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to, or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance with Rule of procedure and Evidence.⁶⁷

Protective Measures, Counselling & Support for Victims

Unlike national systems of justice, the International Criminal Court has within itself a Unit which provides support services for victims. In national jurisdictions such services are rarely offered – if at all – by a variety of State and NGO agencies, usually with no internal coordination. In view of the number of victims and witnesses who decline to cooperate with a system they view as hostile, some consideration should be given in Guyana to emulating the model established by the ICC. The respective Article of the Rome Statute reads as follows:

⁶⁶ Patricia Esteal, *Voices Of Survivors* 1994 p.185 quoted in Amnesty International, supra p.40

⁶⁷ Amnesty International supra p.40

Article 43 The Registry

6. The Registry shall set a Victims and Witnesses Unit within the Registry. The Unit shall provide, in consultation with the Office of the Prosecutor protective measures and security arrangements, counselling and other appropriate assistance for witnesses who appear before the Court, and others who are at risk on account of testimony given by such witnesses. The Unit shall include staff with expertise in trauma, including trauma related to crimes of sexual violence.⁶⁸

While the advantages of a Unit integrated into the Supreme Court are attractive, the possibilities in the near- to medium-term future in Guyana are remote. A more practical route in these circumstances is to raise levels of coordination between police, counselling and medical services as a first step. However, the longer-term goal must be to incorporate such services into the administration of justice in a more integral manner and a prompt declaration to this effect would be of considerable assistance in sensitizing all actors in the judicial process to the need for a new judicial culture.

Reparations for Gender-based Violence

Article 75 of the Rome Statute expressly provides that the Court can order a person to provide reparations to the victims of their crimes. Despite the fact that reparations to victims for acts of sexual violations may be well-founded in principle as an obligation of States this has not been translated into statute law in the Guyana context. It is important that victims be provided with the legal basis for seeking reparations either through criminal or civil procedures. Such legislation should provide for a full range of reparations, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

⁶⁸ Amnesty International supra p.41

5. Conclusions & Recommendations

The Judicial Process

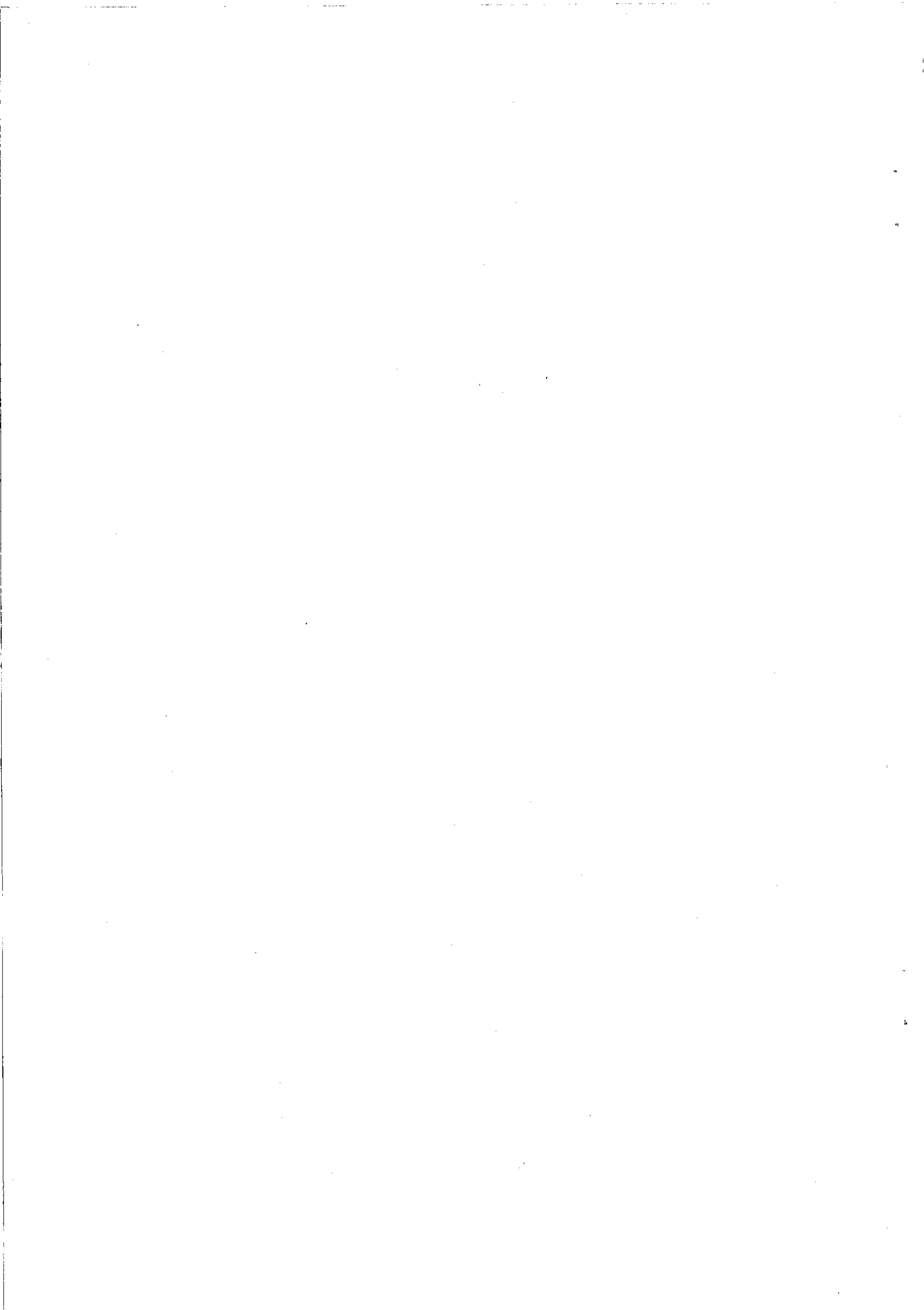
- Urgent consideration must be given to creation of a special court dealing with sexual offences since they constitute well over half of all cases before the high courts.
- A paper-based process should replace the Preliminary Inquiry in sexual assault matters with adequate safeguards to ensure its honesty and transparency.
- A brain-storming exercise is urgently needed to re-think the entire process of rape investigation and prosecution, particularly the issue of consent defenses involving representatives of all sectors involved with criminal justice, namely police, prosecutors, attorneys, probation officers, health officials, academics, judges, scientists, counsellors and the voluntary sector.
- Policy and advice on investigating and prosecuting sexual violence cases involving small children is urgently required.
- Development of an obligatory national medical protocol for clinical examination of all victims of sexual violence should be a high priority.
- Efforts must be made to coordinate survivor-oriented forensic, medical, counselling, support, information, and case-tracking services.
- A review of the effectiveness of courtroom advocacy, both in the magistrates and High Courts is urgently required. Such an exercise would most appropriately be initiated by the Office of the DPP.
- In order to address sexual violence in Guyana effectively the following profiles need to be constructed: relation of aggressor to victims; age of victims; false allegations; financial settlements; influence of alcohol and drugs; when and where sexual assaults are most prevalent; factors influencing withdrawal; factors influencing NFAs.
- A public education campaign needs to be launched on the meaning of consent and to expand the concept of 'real rape'.

Recommendations relating to Police Procedures in Rape Cases

- Creation of specialized women's police stations to deal exclusively with crimes involving gender-based violence must be a priority.
- Training in effective use of forensic evidence which is always collected but never used in rape trials.
- Guidelines for the police on the timing and nature of providing information to victims with respect to legal processes.
- Investigation must change from focusing on credibility of victims to evidence-gathering and case-building.
- Too many cases in Guyana are lost at the investigative stage due to small technical details and evidential issues such as unclear statements, lost evidence and failure to apprehend the offender, pointing to the need for more intensive training of all ranks in these matters.
- Over-estimation of false allegations.
- Guidelines for police on timing and nature of information given to victims to encourage victims to continue with process.
- Police should provide an alternative, more considerate environment than police stations where a victim may make a report of sexual violence. Statement-taking by specially trained –preferably women – officers should be considered at an integrated facility where rape victims also receive health, legal and counselling services.

Counselling

- Campaigns are needed targeted at schools and training institutions, youth groups, children's homes and hostels to sensitize them to the traumatic experiences of young people who have been sexually assaulted or raped. It is particularly important that educational institutions appreciate the impact such experiences may have on students' behaviour and their schoolwork and to avoid them being labelled 'trouble-makers' and pushed to drop out.
- Evaluate whether one-on-one counselling should continue to be viewed as the sole response to what survivors need at the expense of alternative programmes, especially in light of the suggestions of young women with respect to peer support, group work and use of safe internet sites and chat rooms.
- Providing an informal space, facilitating a network and arranging outings which would allow young women to meet other survivors of their own age would help survivors recover self-esteem and confidence.
- Major emphasis is required to recruit and train more professional counsellors, rather than the current heavy reliance on volunteers.
- Expanded counselling and guidance services for parents, guardians and others responsible for survivors are urgently needed.
- Official medical, legal and social agencies with responsibilities for services encompassing sexual violence crimes should provide far more support and information to the general public on how to access such services.
- In view of the high prevalence of HIV/AIDS, all survivors of rape should be counseled and offered appropriate prophylaxis.



APPENDIX 1

Counselling Services & Alternative Programmes⁶⁹

Paucity of Counselling Services in Guyana

While this Report concentrates mainly on the deficiencies of the judicial process on attrition rates in rape cases, it is important within the limitations of the Report, to assess other factors which may also be influential. One limited goal of this Appendix in this regard is to explore the extent to which the availability of counseling services impacts on attrition rates. A second goal is to identify alternative ways of substituting for at least some of the support and guidance services which ought to be provided by counselling services.

Counselling services in Guyana are extremely limited. The few professional counsellors are overwhelmed by the demands on their services. These include, in addition to survivors of sexual crimes, victims of domestic violence, marriages in difficulty and individuals needing help. As awareness of the extent of sexual violence crimes expands and their numbers increase, the demands for counselling services rise proportionately. Unfortunately, even if counselling services were a priority on financial resources, there is no short term solution to the inadequate numbers of counsellors. In the Guyanese context, therefore, there is some urgency to find creative solutions to substitute for the traditional one-on-one counselling arrangements, at least in the short term.

Impact of Counselling on Attrition Rates

No studies have been undertaken of the impact of counselling on attrition rates in Guyana. However, a UK study on the 'Survivor Trauma After Rape' (STAR) Services in 2004 which focused on the effectiveness of counselling and tracking services provided to young rape victims offers some useful insights into how to assess this matter elsewhere. In that study, of the total of 129 cases of 14-16 year olds who availed themselves of the STAR Services 15% declined to proceed but almost half (46%) were NFA'd by the police or the Crown Prosecution services. 17% of the original cases at the completion of the trial process ended in a 'guilty' verdict and 5% in a 'not guilty' verdict.⁷⁰ The study reports that 31% of cases that proceeded to a final verdict used the

⁶⁹ This Appendix summarizes the main findings pertinent to Guyana of an extremely useful study of the effectiveness of support services support services to young rape victims in the UK. Tina Skinner & Helen Taylor *Providing Counselling, Support and Information to Survivors of Rape: An Evaluation of the STAR Young Persons' Project*, Home Office Report 51/04 UK 2004

⁷⁰ Ibid p.19

counselling services, compared to 4% of cases in which the victim had not used the STAR counselling services. Although the figures suggest a strong relationship between use of the counseling and case tracking services provided by the STAR project, it was not possible to determine which way the causal relationship worked: whether victims used the services because they intended to stay the course or they stayed the course because they were involved with the STAR programme.

Impact of Counselling on Young Rape Survivors

Rape impacts differently on all survivors. Terms to describe their feelings, used by young survivors in the STAR project, included

*"disbelief, isolation, disgust and embarrassment, as well as panic attacks and anxiety, bad dreams, flashbacks, depression, stress, lack of concentration, low self-esteem, self-blame and fear of men. Some also had physical manifestations, such as crying, chest pains, feeling sick, and self-harm including very heavy drinking, drug problems, eating disorders and attempted suicide."*⁷¹

Victims were often scared to leave their homes for fear of bumping into the offender or the offender's friends. They also worried about being talked about and laughed at. Even where a positive relationship existed between the victims and her parents, the survivor might be burdened by the thought of the upset their parents were suffering. Just as the feelings described a whole gamut of reactions, survivor's needs are equally wide-ranging. The STAR study, however, found some marked commonalities. Most benefited from an opportunity to talk and be listened to by someone, and to have people 'there for you' and to be comforted and respected, not 'quizzed'. They needed to feel secure both from the offender and with the person they talk to. Helping their families 'understand' what they are going through arises as a frequent concern and it was important for the young women that their parents supported rather than lectured to them.

It was very important to young survivors to know what was going on and to take control of their lives. They wanted control over who knew about their assault and guidance on how to move forward.⁷²

A very successful part of the STAR services provided to young victims was the case tracking service in which staff kept them informed of developments in their case and what they could expect to happen. This service was provided as a social rather than a police service, which added to its attractiveness by removing the foreboding associated with inter-action with the police.

The most successful counselling relationships provided by the STAR services seemed to be those that worked at the pace of the young person and focused not only on the rape incident but on the person as a whole. Some techniques worked better than others

⁷¹ Ibid p.22

⁷² Ibid p.23

with different people. Some found drawing helpful and making lists of feelings. Others planned for the future or changed the décor of their rooms. Counsellors who worked in the programme emphasized the importance of developing a programme that enabled the young person to look at themselves in a logical, positive and respectful manner, develop longer-term plans that could help them cope with their emotions and move forward at a pace and in a direction the young person was happy with.⁷³

Supporting Parents

Parents need to be supported for four main reasons, according to the STAR study. They have a right to support

- i. for their own emotional well-being.
- ii. because young women worry a good deal about their parents.
- iii. for guidance on how to respond to and help their child.
- iv. to remain in a better position emotionally to help their child.⁷⁴

Parents expressed the need for an information pack and felt that support groups could be beneficial and a system of parent-to-parent telephone support. The more confident parents are about supporting their child, the more beneficial child-directed services are likely to be.

The sex of the counsellor was important and made a difference to young rape survivors who frequently noted they felt 'uneasy', 'uncomfortable' or 'unsafe' in the presence of men.

Peer Support

Most participants and their families believed the additional support of peers with 'similar experiences' would be beneficial. Reasons advanced for this belief included being able to talk more easily to their own age, breaking down the isolation of thinking 'you are the only person who has been through it' and to share coping strategies. Ways of arranging peer group support which were suggested included face-to-face support groups, internet peer support, exchanging 'phone numbers, a 'buddy' system or going on outings together. Most thought they would be ready for this kind of support some time after the event rather than soon afterwards. Similarly, there was much interest in a safe internet site. They found the idea of writing much more attractive than talking.

⁷³ Ibid, p.29

⁷⁴ Ibid, p.33

APPENDIX 2

South African Wynberg Sexual Offences Courts

South African experiences with special sexual offences courts is a strategy with instructive lessons for far wider application than South Africa.

Since the early 1990s rates of sexual violence crimes in South Africa have been a source of public outrage, giving that country the unenviable record of being the world leader in this area. Compared to the epidemic of sexual violence crimes detection and conviction rates were derisory. In Johannesburg, for example, of the 54,000 rape cases reported in 1998 only 3,500 made it to the courts. 75 per cent of rapes are gang rapes and victims and their families are frequently terrorized by gang members after the rape. 58 children a day were estimated to be victims of rape or attempted rape in 2001. 72% of pregnant teen-agers were reported by the Center for Disease Control to have had coercive sex.⁷⁵

Against this background an experiment was launched in 1993 with the Department of Justice setting up the first specialized Sexual Offences Courts in Wynberg. The experience has been sufficiently positive that 36 Sexual Offences Courts are now established. The aims of the courts are:

- to raise conviction rates in cases of sexual violence through effective prosecution
- provide a victim-sensitive court procedure, thereby reducing secondary victimization
- drastically reduce the time taken to complete cases
- skills development of all actors in the multi-disciplinary prosecution of sexual offences.

The courts have taken initiatives with respect to:

- creating a more private setting to interview victims
- establishing a police presence in a specialized hospital unit where police statements are taken and victims do not visit police stations
- ensuring only specially trained sexual offences prosecutors handle these cases, a large proportion of whom are women.⁷⁶

⁷⁵ S. Africa *Daily News* Jan. 16 2003 p.4; Christian Science Monitor, Centers for Disease Control

⁷⁶ S. Africa Ministry For Justice and Constitutional Affairs *Reaction to SAHRC Report*

These courts take testimony from children in brightly painted playrooms established in the court buildings, where questions are relayed to children through retired school-teachers, hired to supervise the children, while the jury watches via close-circuit television. Thoko Majokweni of South Africa's National Prosecuting Authority says:

*"This home-grown solution has been very effective....Conviction rates in these courts are much higher. But it's not just about that. It's about making sexual assaults a priority and changing attitudes about how a victim is affected and treated by the legal system."*⁷⁷

Ms. Majokweni went on to state:

*"Although the new courts still only deal with a fraction of the country's sexual assault cases, most are achieving convictions in 75% to 90% of the cases they bring to trial...The average time to trial is six to nine months in the rape courts compared to a year and a half or more for traditional courts."*⁷⁸

The following commentary on the Wynberg Sexual Offences Court experiment summarises why this approach is so appropriate to the crisis we find ourselves facing in Guyana:

"What may seem like a reactive measure, one that focuses on the symptoms rather than the cure, mobilizing around the victims of crime, may prove to be one of the most effective measures for curbing growing crime rates in South Africa. Sympathetic policing tactics, reinforced by continual training on how to treat crime victims, are a first step towards restoring the widespread loss of faith in the criminal justice system, which will make citizens more likely to report crimes and co-operate with the police.

*Providing victims who go to court with the necessary information and awareness of procedures will serve to reduce secondary victimization, which will in turn affect broader societal perceptions of courts as places where justice is seen to be done. A victims support service coordinator i.e. a court social worker whose activities include preparing and informing sexual offences victims of court procedures is present at the world's first sexual offences court in Wynberg, Cape Town, but this type of service needs to become commonplace in South Africa's courts."*⁷⁹

⁷⁷ Christian Science Monitor 2004

⁷⁸ Ibid p 2

⁷⁹ Lala Camerer "A Victim movement for South Africa" Policing The Transition April 1996 p.7

APPENDIX 3

Questionnaire Used With Rape Victims/ Survivors

1. *About You* – age (at time of assault), ethnic origin, disability, relationship profile, employment status.

2. *Reporting to the police*

Do you feel the police were sensitive enough when you first approached them ? Should you have been dealt with in a more private manner ? Were you satisfied with the police at this stage ? Did anything surprise you about your first experience of the police ? Any suggestions for improving the initial police response ?

3. *Giving A Statement to the Police*

Did the sex of the officer make a difference ? What were your feelings about making a statement ? Anything surprising about this part of the process ? Do you have any suggestions for improving this part of the process ?

4. *Confronting the Accused*

How did you feel when you saw the accused ? How did the police have you identify the accused ? Were you satisfied with this ? Any suggestions for improving this aspect of the process ?

5. *Forensic Medical Examination*

Did you have a medical examination ? What were your feelings before the examination ? What was the sex of the examiner ? Did this make a difference to you ? Did the examiner explain at all what s/he was doing ? How do you rate the experience ? Were you satisfied with the examination ? Any suggestions for improving examinations ?

6. *Counselling and Welfare Services*

How are you coping at the moment ? Did you find counselling helpful ? Did the sex of the counsellor make a difference ? Would it help to meet other young women/girls who have been assaulted like you ? Would you be interested in internet contact with other victims ?

7. *Court Proceedings*

Were you given any information about the court process by the police ? Has your case been heard in court ? Do you know what the current situation is with your case ? Did anyone prepare you in any way for the court process ? How would you describe the over-all experience of going to court ? What would have made the court experience easier to bear ?

8. *Expectations*

Do you ever think the stress isn't worth it ? Do you ever feel regret you got involved with the legal process ? Do you feel confident it will turn out right in the end ? Is there any one thing which stands out more than anything else which you would wish to change ?

APPENDIX 4

(Extracts)

PROTOCOLS FOR CLINICAL EXAMINATION OF RAPE SURVIVORS

Source: *Clinical Management of Rape Survivors: A Guide to Assist in the Development of Situation-Specific Protocols*, WHO & UNHCR, Feb. 2002

Annex 2 Sample Consent Form

Name of Facility _____

Note to the health worker: read the entire form to the survivor, explaining that she can choose any (or none) of the items listed. Obtain signature or thumb print with witness signature.

I, _____, authorise this health facility to perform the following (print name)

(Mark with an X all that apply)

Collect evidence, including hair combings, blood sample, photographs, body fluid samples, scraping of fingernails, and collection of clothing.

Conduct a medical examination, including pelvic examination.

Provide evidence and medical information to the police and/or courts concerning my case; this information will be limited to the results of this examination and any relevant follow up care provided.

Signature: _____

Date: _____

Witness: _____

Annex 3
Sample History and Examination Form

1 of 4

CONFIDENTIAL

CODE:

Medical History and Examination Form – Post Sexual Violence

1. GENERAL INFORMATION

First name:		Last name:	
Address:			
Sex:	Date of birth:	Age:	
Date / time of exam		In the presence of:	
<i>In case of child include: Name of school, name of parents and/or guardian</i>			

2. THE INCIDENT

Date of incident:		Time of incident:	
Description of incident (survivor's description):			
Physical violence	Yes	No	Describe type and location
Type (beating, biting, pulling hair, etc.)			
Use of restraints			
Use of weapon(s)			
Drugs/alcohol involved			
Penetration	Yes	No	Not sure
			Describe (oral, vaginal, anal, type of object)
Penis			
Finger			
Other (describe)			
Ejaculation	Yes	No	Not sure
			Location (oral, vaginal, anal, other location).
Condom used			

If the survivor is a child, also ask about: Has this happened before, how long, who is the perpetrator, is (s)he still a threat, etc. Also ask about bleeding per the vagina or per rectum, pain on walking, dysuria, pain on passing stool, signs of discharge, etc.

3. MEDICAL HISTORY

Contraception use				
Pill		IUD		
Injection		Other (specify)		
Menstrual history				
Last menstrual period		Menstruation at time of event Yes /No		
Evidence of pregnancy Yes /No		Number of weeks pregnant _____ weeks		
After the incident, did the survivor	Yes	No	Yes	No
Vomit			Rinse mouth	
Urinate			Change clothing	
Defecate			Wash/bathe	
Brush teeth			Use tampon	
History of consenting intercourse				
Last consenting intercourse within a week prior to the assault		Date:	Name of individual:	
Existing health problems				
History of female genital cutting, type				
Allergies				
Alcohol, medication, drug use				
Vaccination status	Vaccinated	Not vaccinated	Unknown	Comments
Tetanus				
Hepatitis B				
HIV/AIDS status	Known		Unknown	

4. MEDICAL EXAMINATION

3 of 4

Appearance (clothing, hair, etc., obvious physical or mental handicap?)		
Mental state (calm, crying, anxious, co-operative, etc.)		
Weight:	Height:	Pubertal stage (pre-pubertal, pubertal, mature):
Physical findings <i>Describe systematically, and draw on the attached body pictograms, the exact location of all wounds, bruises, petechiae, marks, etc. Document type, size, colour, form and other particulars. Be descriptive, do not interpret the findings.</i>		
Head and face		Mouth and nose
Eyes and ears		Neck
Chest		Back
Abdomen		Buttocks
Upper Extremities		Lower Extremities

5. GENITAL AND ANAL EXAMINATION

Vulva/Scrotum	Introitus and hymen	Anus
Vagina/Penis	Cervix	PV/PR
Position of patient (supine, prone, knee-chest, lateral, mother's lap)		
For genital examination:		For anal examination:

6. INVESTIGATIONS DONE

Type and location	Examined/sent to lab	Result

7. EVIDENCE TAKEN

Type and location	Sent to.../stored	Collected by/date

7. PRESCRIBED TREATMENTS

Treatment	Yes	No	Type and Comments
STI prevention			
Emergency contraception			
Wound treatment			
Tetanus prophylaxis			
Hepatitis B vaccination			
Other			

8. COUNSELLING, REFERRALS, FOLLOW UP

General psychological status	
Survivor plans to report to police OR has already made report Yes ___ / No ___	
Survivor has a safe place to go Yes ___ / No ___	Has someone to accompany Yes ___ / No ___
Counselling provided:	
Referrals	
Follow-up required	
Date of next visit	
Name of health worker conducting exam/interview: _____	
Title: _____	Signature: _____ Date: _____

Annex 8
Minimum Care for Rape Survivors in Low-resource Settings

Checklist of supplies

	Available
Protocol	
Written medical protocol translated in language of provider	Available
Personnel	
Trained (local) health care professionals (on call 24 hours/day)	
A "same language" female health worker or companion in the room during examination	Available
Furniture/Setting	
Room (private, quiet, accessible, access to a toilet or latrine)	
Examination table	
Lighting, preferably fixed (a torch may be threatening for children)	
Access to an autoclave to sterilise equipment	Available
Supplies	
"Rape Kit" for collection of forensic evidence, including:	
▪ Speculum	
▪ Tape measure for measuring the size of bruises, lacerations, etc.	
▪ Paper bags for collection of evidence	
▪ Paper tape for sealing and labelling containers/bags	
Supplies for universal precautions	
Resuscitation equipment for anaphylactic reactions	
Sterile medical instruments (kit) for repair of tears and suture material	
Needles, syringes	
Cover (gown, cloth, sheet) to cover the survivor during the examination	
Sanitary supplies (pads or local cloths)	Available
Drugs:	
▪ For treatment of STIs as per country protocol	
▪ Emergency contraception pills and/or IUD	
▪ Pain relief (e.g. paracetamol)	
▪ Local anaesthetic for suturing	
▪ Antibiotics for wound care	
Administrative Supplies	Available
▪ Medical chart with pictograms	
▪ Consent forms	
▪ Information pamphlets for post-rape care (for survivor)	
▪ Safe locked filing space to keep confidential records	

Annex 4 Pictograms

Annex 5 Sexually Transmitted Infections (STIs) Protocols

- Examples of WHO recommended treatments for adults
- Examples of WHO recommended treatments for children & adolescents

Annex 6 Protocols for Post-exposure Prophylaxis (PEP)

Annex 7 Emergency Contraception Protocols