

# Case attrition in rape cases: a comparative analysis

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ARTZ\* AND SMYTHE\*\*

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## ABSTRACT

The past decade has seen a number of legal, practice and policy-based interventions made in order to ensure that the criminal justice system is more responsive to rape complaints. At their most instrumental, the aim of both shifts in practice and in the laws relating to sexual offences is to increase reporting and conviction rates in rape cases. One of the greatest problems with the criminal justice system's response to rape remains, however, that most reported cases do not in fact make it through the system to trial. This article reflects on two attrition studies conducted by the authors between 2003 and 2006, together examining the disposition of approximately 1600 rape cases across six urban police stations. The objective of these studies was to examine the processing, investigation and prosecution of sexual offences cases and to analyse the possible reasons for high attrition. This paper raises the complexities of calculating attrition as well as the extent to which international experiences and perspectives on rape attrition converge and contrast with South African ones. We also set out to develop some of the insights that we have garnered from our own attrition studies and thereby to alert scholars working in this area to the key practical and theoretical issues that arise in conceptualising and conducting an attrition study.

## 1. Introduction

The management and disposition of rape cases within the South African criminal justice system have been marked by continual shifts in focus, ideology and practice since the early 1990's. Attempts to make the criminal law and the criminal justice process more responsive to the needs and experiences of rape survivors, as well as the introduction of more appropriate procedural measures to correct historically discordant approaches to the management of rape cases, have resulted in an exhaustive process to change the law on sexual offences and the implementation of practical, systemic interventions specifically focused on rape survivors. This has included the establishment of designated sexual offences courts, multi-service 'Thuthuzela Care Centres' and inter-service level protocols to guide the management and disposition

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\* BA (SFU) BA(Hons) MA (UCT), *Director: Gender, Health and Justice Research Unit, Faculty of Health Sciences, University of Cape Town.*

\*\* BA LLB (UCT) JSM (Stanford), *Senior Researcher: Gender, Health and Justice Research Unit, Faculty of Health Sciences, University of Cape Town.*

of cases. These interventions have attempted to interweave with proposed reforms to the substantive and procedural aspects of the law in relation to sexual assault cases as contemplated in the rape law reform process surrounding the Sexual Offences Bill.<sup>1</sup> At its most instrumental the aim of both shifts in practice and in the laws relating to sexual offences is to increase reporting and conviction rates in rape cases. Paradoxically the measures by which criminal justice agencies gauge their success in dealing with cases is not always consonant with these objectives. The most obvious case in point is the stated wish of government to 'decrease rates of rape' (as reflected in decreased reporting). What is more, one of the greatest problems with the criminal justice system's response to rape is that most cases do not in fact make it through the system. Our studies have found over a number of years that at various stages within the criminal justice process, cases simply 'drop out of the system' — a phenomenon known as 'case attrition'. It is this phenomenon that is the subject of this paper.

Between 2003 and 2006, we conducted two studies which together examined the disposition of approximately 1600 rape cases across 6 urban police stations. The objective of these studies was to examine the processing, investigation and prosecution of sexual offences cases and to analyse the possible reasons for high attrition rates in these cases. Broadly, this research found that attrition tends to occur when police officers decide (whether legally empowered to do so or not) to accept or not accept a rape complaint, when decisions are made whether to investigate that case further or to refer it to the prosecution and when the prosecutor decides whether to accept and prosecute the case.<sup>2</sup> Drawing on both international and local attrition research — as well as our own experiences with attrition studies — this paper raises the complexities of calculating attrition as well as the extent to which international experiences and perspectives on rape attrition converge and contrast with South African ones.

## **2. Comparative studies on rape attrition**

Internationally, one of the first systematic attempts to identify problems with criminal justice responses to rape was conducted in the United States by the National Institute of Law Enforcement and Criminal Justice (hereafter 'the National Institute') in 1976. The intention of this research was to prompt the criminal justice system to take a more enlightened and sensitive approach to the investigation and prosecu-

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<sup>1</sup> Criminal Law (Sexual Offences) Amendment Bill [50-2003] and Criminal Law (Sexual Offences and Other Matters) Amendment Bill [2006].

<sup>2</sup> HM Crown Prosecution Service & HM Inspectorate of Constabulary *A report on the Joint Inspection into the Investigation and Prosecution of Cases involving Allegations of Rape* (2002).

tion of rape cases. The objective of the research was to collate, describe and analyse law enforcement practices in response to the crime of what it termed 'forcible rape'. The study conducted nationwide surveys of 150 police and prosecution agencies on aspects of policies and practices in the management of rape cases including the following:

- *Classification methods* — legal elements considered necessary or important for filing, charging and trying a reported crime as rape;
- *Factors involved in rape* — characteristics and circumstances frequently associated with rape cases (by jurisdiction);
- *Factors in decision making* — processing criteria important in decisions to charge 'forcible' rape and proceed to trial;
- *Staffing and procedures* — size, composition and division of labour among responding agencies;
- *Interactions with victims and witnesses* — agency procedures for obtaining information from victims/witnesses;
- *Victim services* — agency awareness, utilisation and judgement of the effectiveness of extra-legal services available to rape victims;
- *Adjudicatory processes* — appraisals of the value of corroborative evidence, of cautionary jury instructions, of the usefulness of plea negotiations and prior 'chastity' evidence; and
- *Innovative activities* — new and innovative policies or practices either instituted or planned in prosecutor agencies.

Although published almost 30 years ago, the design and results of this study are still important to rape law and criminal justice reformers who, over the years, have methodically attempted to isolate the procedural aspects of the law that contribute to justice delays, secondary victimisation and loss of cases from the initial reporting stage to the finalisation<sup>3</sup> of cases. It is disturbing to note that a number of the findings of the National Institute's study are reflective of problems with the processing of rape cases still found today in the South African criminal justice system. The study found that apart from the necessary elements of the cases (including penetration and lack of consent) the minimum requirement set out by respondents for accepting a rape complaint also included the threat of force (77.3% of cases), physical proof of penetration (50%), the use of physical force (38%) and evidence of resistance (24.7%).

The study also provided data on what prosecutors felt were important factors in the decision to file charges whether for forcible rape or for some lesser charge (such as sexual assault). Over half of the respondents agreed that the use of physical force, proof of penetration, promptness of reporting, extent of suspect identification, injury to vic-

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<sup>3</sup> Finalisation can include cases withdrawn by the victim, withdrawn by the police or prosecution, as well as cases brought to trial and convicted or acquitted.

tim, circumstances of initial contact, relationship of victim and accused, use of weapon and resistance offered by the victim were important factors. The disaggregated data is reflected in the table below.

### Rank order of important factors in filing rape charges\*

RANK IN FILING DECISION	FACTORS	%
1	Use of physical force	82%
2	Proof of penetration	78%
3	Promptness of reporting	71%
4	Extent of suspect being identified	67%
5	Injury to victim	63%
6	Circumstances of initial contact	61%
7	Relationship of victim and accused	61%
8	Use of weapon	58%
9	Resistance offered by victim	54%
10	Witnesses to alleged rape	36%

\* Source: Adapted from the National Institute of Law Enforcement and Criminal Justice *Forcible Rape: A National Survey of the Response by Prosecutors: Volume 1* (1976) 18.

The National Institute's study is particularly important in alerting us to the manner in which criminal justice agents exercise their discretion to accept or reject a complaint of rape. The factors listed above remain, in our experience, the most relevant considerations in coming to a determination. Other significant studies, spanning a period of thirty years, support this contention and elucidate the modes and circumstances through which discretion is exercised. These include the work of British scholars Temkin (1997) and Kelly (2002) as well as the specific work on attrition in rape cases by Lea, Lanvers and Shaw (2003). International studies<sup>4</sup> alert us to the importance of poor administration,

<sup>4</sup> See J Barga and E Fishwick *Sexual Assault Law Reform: A National Perspective* (1995); K Polk 'Rape reform and criminal justice processing' (1985) 31 *Crime and Delinquency* 191; L Frohmann 'Discrediting victims' allegations of sexual assault: Prosecutorial accounts of case rejections' (1991) 38:2 *Social Problems* 213; W Kersetter 'Gateway to justice: Police and prosecutorial response to sexual assaults against women' (1990) 81 *Journal of Criminal Law and Criminology* 267; G La Free *Rape and Criminal Justice: The Social Construction of Sexual Assault* (1989); P Martin & R Powell 'Accounting for the "second assault": Legal organizations' framing of rape victims' (1994) 19 *Law and Social Inquiry* 853. For a good overview of comparative studies see L Kelly *A Research Review on the Reporting, Investigation and Prosecution of Rape Cases* (2002).

such as delays and postponements, lack of pre- and post-court support and courtroom intimidation, in promoting attrition and that policing and prosecutorial agencies still rely on stereotypes about rape victim credibility. These studies further suggested that under-enforcement of progressive rape statutes, in general, is still a problem in even the most developed jurisdictions.

Kelly's United Kingdom study finds that the reporting and investigation stage is the point at which the largest number of rape cases leak from the system. She argues that 'the initial responses of police officers, their skill and expertise as investigators and evidence gatherers, as well as their treatment of complainants are vital elements in criminal justice system responses (to rape cases)'.<sup>5</sup> She supports this contention with reference to Gilmore and Pittman (1993) who also argue that:

'... the best evidence which is essential to successful prosecution can only be gleaned from the best treated complainant ... . Intelligent and enlightened treatment of the complainant from the human perspective thus becomes the critical key in the success of the police function of law enforcement.'<sup>6</sup>

Studies on police investigation and prosecution of rape cases have found that police officers and prosecutors become particularly sceptical of rape victims when their stories do not coincide with what Susan Estrich (1987) has called the 'real rape' template.<sup>7</sup> As a result the credibility of rape victims is questioned. Temkin (1999) similarly found that the police and prosecution service still held a culture that anticipates high levels of false reporting and that the majority of cases are 'lost' due to their designation as false allegations by the police or because of victims withdrawing their statements. As early as 1983, Chambers and Miller found that there was little difference between cases where the victim withdrew and those that were termed false allegations by the police. In the latter cases, pressure by the police, in some instances, resulted in withdrawal and in others, if a woman indicated any agreement with the police officer's version of events that was taken as an admission of a false complaint.

Kelly's research in the United Kingdom found that a staggering 62% of cases reported to the police fall out during the investigation process, either because the perpetrator cannot be identified or found, or because insufficient evidence is collected. Of those cases that are referred to the prosecution, many are dismissed by the prosecution (*nolle prosequi*) without ever going to trial. In Kelly's study such cases amounted to 48%

<sup>5</sup> Kelly *op cit* (n4) 17.

<sup>6</sup> K Gilmore & L Pittman 'To report or not to report: A study of victims/survivors of sexual assault and their experience of making an initial report to the police' (1993) 10 in Kelly *op cit* (n4) 17.

<sup>7</sup> Kelly *op cit* (n4) makes a similar finding.

of all cases referred for prosecution. Similarly, four separate studies conducted in England and Wales<sup>8</sup> reported 'no crime-ing' or 'no further action' in 25% to 55% of all rape cases reported to the police, meaning that the police did not open a docket or proceed with an investigation in these cases. The most significant contributors to the early fall out of cases in this study were found to be 'false reports' or cases withdrawn by the victim. These studies also provided that between 30% and 41% of cases were referred to a prosecutor/court and that between six per cent and 19% of those cases resulted in a conviction.

A number of United Kingdom studies on rape attrition were also examined by Lea, Lanvers and Shaw (2003) who found that circulars for 'no crime-ing' (filing) were not followed by the police and that 56% of reported rape cases fall out at police level. Of the reported cases that are 'crimed' only six to 11% of cases result in conviction 'of some kind' (meaning only five to six per cent result in a conviction of rape and the remaining result in a conviction of a sexual assault of some kind). Harris and Grace (1999) found that of the 75% of cases that were 'crimed' by the police, 64% were detected, in 31% of cases the defendant was charged, 23% were prosecuted and six per cent were convicted of rape. The authors also found that the main reason for 'no further action' by the police was that the complainant did not want to proceed. They questioned whether this was due to the lack of police support or whether the 'evidence test' was too high. Cases discontinued by the Crown Prosecution Service (25% of the cases forwarded to them) were reportedly discontinued by prosecutors because 'the complainants would not cooperate' or there was not enough evidence to secure a conviction. The authors also reported that another significant attrition point in rape cases was during court proceedings. One of the biggest reasons for fall out at this point was the 'downgrading' of rape to indecent assault, followed by complainant withdrawal due to difficult cross-examination and the imbalance of resources available between defence and prosecution attorneys.

In 1993 Lynne Henderson wrote that

'two decades of feminist law reform efforts to hold men responsible for raping women have yielded disappointing results. Rape myths, woman-blaming, and resistance to taking rape seriously flourish, and successful prosecution of cases not meeting the stereotype of real rape, while no longer impossible, remains improbable.'<sup>9</sup>

<sup>8</sup> See S Grace, C Lloyd and L Smith *Rape: From Recording to Conviction* (1992); S Lees and J Gregory *Rape and Sexual Assault: A Study of Attrition* (1993); J Harris and S Grace *A Question of Evidence?: Investigating and Prosecuting rape in the 1990's* (1999), available at <http://www.homeoffice.gov.uk/rds/pdfs/hors196.pdf>, accessed on 18 July 2007; and St. Mary's (no year cited) in Kelly op cit (n4).

<sup>9</sup> L Henderson 'Getting to know: Honoring women in law and in fact' (1993) 2 *Texas Journal of Women & Law* 41 at 41.

Research from the United States (see Loh,<sup>10</sup> Marsh et al.,<sup>11</sup> Caringella-MacDonald<sup>12</sup>, Polk<sup>13</sup> and Bachman & Paternoster<sup>14</sup>), Scotland, England and Wales (see Chambers & Millar,<sup>15</sup> Adler,<sup>16</sup> Gregory & Lees,<sup>17</sup> Harris & Grace<sup>18</sup> and HM Crown Prosecution Service & HM Inspectorate of Constabulary<sup>19</sup>) and Australia and New Zealand (see New South Wales Department for Women,<sup>20</sup> Henning,<sup>21</sup> Department of Justice (Victoria)<sup>22</sup> and Jordan<sup>23</sup>) document the ineffectiveness of rape law reform and suggest that little has changed. Attrition rates remain inordinately high despite statutory protection.

Contributing to perspectives on 'successful' investigation and prosecution of rape cases — and the resultant impact on official attrition rates — scholars point to evidence that laws are not being applied<sup>24</sup> and, where they are applied, that they are narrowly interpreted<sup>25</sup> and have thus been 'rapidly undermined'.<sup>26</sup> This is certainly the import of the Australian studies where admission of sexual history evidence appears to have been all but unaffected by far-reaching changes to laws restricting the admissibility of such evidence.<sup>27</sup> It is also suggested that criminal justice agents continue to place a stereotypical

<sup>10</sup> WD Loh 'The impact of common law and reform rape statutes on prosecution: An empirical study' (1981) 55 *Washington Law Review* 543.

<sup>11</sup> J Marsh *Rape and the Limits of Law Reform* (1982).

<sup>12</sup> S Caringella-MacDonald 'Sexual assault prosecution: An examination of model rape legislation in michigan' (1984) 4 *Women and Politics* 65.

<sup>13</sup> Polk op cit (n4) 191; Loh op cit (n10) 543.

<sup>14</sup> R Bachman and R Paternoster 'A contemporary look at the effects of rape law reform: How far have we really come?' (1993) 84:3 *Journal of Criminal Law and Criminology* 554. See also R Bachman 'Predicting the reporting of rape victimisation: Have rape reforms made a difference?' (1993) 20 *Criminal Justice and Behavior* 254.

<sup>15</sup> G Chambers and A Millar 'Proving sexual assault: Prosecuting the offender or persecuting the victim?' in P Carlen and A Worrall (eds) *Gender, Crime & Justice* (1987).

<sup>16</sup> See Z Adler *Rape on Trial* (1987).

<sup>17</sup> J Gregory and S Lees *Policing Sexual Assault* (1999).

<sup>18</sup> Harris and Grace op cit (n8) 196.

<sup>19</sup> HM Crown Prosecution Service and HM Inspectorate of Constabulary op cit (n2).

<sup>20</sup> Department for Women *Heroines of Fortitude: The Experiences of Women in Court as Victims of Sexual Assault* (1996).

<sup>21</sup> T Henning *Sexual Reputation and Sexual Experience Evidence in Tasmanian Proceedings Relating to Sexual Offences* (1996).

<sup>22</sup> Department of Justice (Victoria) Rape Law Reform Evaluation Project Report No 2 'The Crimes (Rape) Act 1991: An Evaluation Report' January (1997).

<sup>23</sup> J Jordan 'World's apart? Women, rape and the police reporting process' (2001) 41 *British Journal of Criminology* 679.

<sup>24</sup> Adler op cit (n16); Department for Women op cit (n20).

<sup>25</sup> Ibid.

<sup>26</sup> L Kelly *Routes to Injustice* (2001) 33.

<sup>27</sup> Department for Women op cit (n20).

and biased interpretation on rape complaints and on their assessment of complainants' credibility.<sup>28</sup> Szuszanna Adler's analysis shows, for example, that in the cases she studied the success of the rape complaint was consistently based on six predictors: the victim's sexual inexperience, her respectability, absence of consensual contact with the perpetrator prior to the rape, resistance and injury, early complaint and a lack of acquaintance with the accused. The way in which the responses of police, prosecutors and judges shape the construction of rape within the criminal justice system has been the subject of scathing critique, most notably in the form of Susan Estrich's landmark book, 'Real Rape'.<sup>29</sup> 'Real rapes', according to Estrich, are still those involving a weapon and injury, committed by strangers, outdoors.<sup>30</sup> These are the cases that criminal justice personnel take seriously. Kelly also speaks of the 'real rape template' adopted by criminal justice agents,<sup>31</sup> arguing that conformity to this template (which informs the victim's self-conception of the assault as a rape and her belief that the police will also see it that way) is one of the strongest predictors of whether a rape complaint will make it all the way through the system.<sup>32</sup>

Lisa Frohmann's 1997 study into prosecutorial discretion within two United States jurisdictions provides a useful insight into this aspect of criminal justice practice. Rejecting the notion that the credibility of victims can be assessed by some objective means, she seeks through her ethnographic study<sup>33</sup> of prosecutorial decision-making to 'uncover the inner, indigenous logic of prosecutors' decisions'.<sup>34</sup> She illustrates in this study the exercise of prosecutorial discretion through 'official typifications of rape-relevant behavior',<sup>35</sup> in respect of 'rape scenarios',<sup>36</sup> 'post-incident interaction',<sup>37</sup> 'rape reporting',<sup>38</sup> and 'victim's demeanor', used by prosecutors to inform their decisions as to whether the complainant is credible. In respect of each of these

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<sup>28</sup> J Horney and C Spohn 'Rape law reform and instrumental change in six urban jurisdictions' (1991) 25 *Law and Society Review* 117; La Free op cit (n4); J Temkin 'Plus ça change: Reporting rape in the 1990s' (1997) 37 *British Journal of Criminology* 507; S Estrich *Real Rape: How the legal System Victimizes Women who say No* (1987); Adler op cit (n16).

<sup>29</sup> Estrich op cit (n28).

<sup>30</sup> Ibid.

<sup>31</sup> Kelly op cit (n26) 10.

<sup>32</sup> See also Adler op cit (n16).

<sup>33</sup> Frohmann op cit (n4) 214. Frohmann 'immersed' herself full time for 9 months at one and 8 months at another branch of the district attorney's offices.

<sup>34</sup> Frohmann op cit (n4) 214.

<sup>35</sup> Frohmann op cit (n4) 217.

<sup>36</sup> Ibid.

<sup>37</sup> Frohmann op cit (n4) 218.

<sup>38</sup> Frohmann op cit (n4) 219.

aspects she shows how prosecutors draw on a store of subjective 'knowledge', through which they have constructed a 'typical' rape scenario against which complaints are measured.<sup>39</sup> Unfortunately Frohmann is satisfied with the finding that 'prosecutors develop a repertoire of knowledge...'<sup>40</sup> and does not delve into the 'inner logic' of this belief system. While expert knowledge is an important aspect of criminal justice work, it is also important to expose the underlying belief systems on which such 'typifications' are based. Frohmann's emphasis shifts in a second article,<sup>41</sup> based on the same data, to the 'organizational logic and structure' of pre-trial interaction between the prosecutor and a rape complainant.<sup>42</sup> In this article she emphasizes the important role that 'convictability'<sup>43</sup> plays in shaping prosecutorial decisions and argues that this narrow approach is self-reinforcing: prosecutorial assessments of the way in which decision-makers 'downstream' will evaluate the complaint (ultimately the jury or judge) inform their decision whether to send the matter to trial. However, this means that only a narrowly defined group of potentially convictable cases gets seen in court, reinforcing stereotypical perceptions of what amounts to 'real rape'. Prosecutors, she argues, take risks in sending cases to trial and should not be institutionally penalized for doing so.<sup>44</sup> In other words the measures of a 'successful' prosecution need to be carefully crafted in order to ensure that prosecutors are prepared to move beyond simply prosecuting those cases that are 'open and shut' and discarding the rest as too risky.

### 3. South African research on attrition

The comparative studies described above illustrate that the highest proportion of cases fall out at the early stages, with half or more cases dropping out even before referral to prosecutors. Similar to international findings on attrition, the results of our own research have also highlighted key attrition points in the criminal justice system. The first, and most difficult to investigate, is the decision of rape victims not to make an official report. The reasons for non-reporting have been well documented in South African literature on rape but the quantification of this problem — how many rape victims do not report — is almost

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<sup>39</sup> Frohmann op cit (n4) 217-19.

<sup>40</sup> Frohmann op cit (n4) 217.

<sup>41</sup> L Frohmann 'Complaint-filing interviews and the constitution of organizational structure: Understanding the limitations of rape reform' (1997) 8 *Hastings Women's Law Journal* 365.

<sup>42</sup> Ibid.

<sup>43</sup> Frohmann op cit (n41) 399.

<sup>44</sup> Ibid.

impossible to ascertain as these victims are often not likely to report the offence to anyone else. The inability of investigators to examine this phenomenon in South Africa is also compounded by broader sociological factors that affect reporting. These include gang or 'street' intimidation, neighbourhood or family duress on the victim not to report, the use of 'informal justice' mechanisms (community courts, street committees, traditional leaders) to arbitrate cases, the historical distrust of the police and the criminal justice system as well as the lack of policing structures and services in areas in the country. The lack of sympathy, both real and perceived, for rape victims within the criminal justice system provides an important reason not to report a rape complaint. Importantly, the blame does not only lie with the police, as poor treatment of complainants by the courts and the prosecution will inevitably have a 'down-stream' effect, impacting on the victim's decision to report.

The second stage of the process — including reporting, forensic medical examinations, statement taking, investigations/evidence gathering and arrest of accused persons — is also a key attrition point in our criminal justice system. The ability to find the accused, and in some cases the complainant, has a great impact on the ability of the criminal justice system to assist rape complainants. Without the accused the case cannot proceed. Other aspects of the investigation, including the ability of investigating officers to collect appropriate and relevant evidence for the prosecution of rape cases, is also questionable in the majority of cases. It seems as though Adler's six factors that predict successful prosecutions also apply in the South African context.

Research on rape, and legal responses to rape, in South Africa has been somewhat fragmented but has succeeded in illustrating the complexity of researching criminal justice responses to rape. Research has demonstrated the profound emotional impact of reporting rape and has shown that the treatment of survivors by the criminal justice system can have considerable residual effects. The use of police intimidation to elicit the 'real story' about the offence signifies to rape complainants that they are not competent to testify to their own experiences of violence. Rape victims have experienced the criminal justice system as emotionally disengaged and in dissociating from the victim, the criminal justice system becomes hard, officious and alienating. Continued reference to physical injury or the use of physical resistance has also been heavily criticised.

Stanton and Lochrenberg's (1996 and 1997) studies on the experiences of rape complainants with the criminal justice system provide a useful synopsis of this point. A summary of their findings is presented in the box below.

### Experiences of rape complainants with the criminal justice system

- Refusing to allow women to lay charges against her abuser or assailant, even though they are required by law to accept complaints;
- Using poor discretion in deciding what type of charge to lay against the perpetrator (i.e. where there is clearly a case of rape, the perpetrator is charged with indecent assault or assault with intent to do grievous bodily harm);
- Refusing to take a complainant's statement, until a female officer comes on duty;
- Not allowing complainants to give her statement in privacy, away from the charge office;
- Not allowing complainants to make supplementary statements;
- Making a complainant repeat her statement numerous times or to numerous officers;
- Not effecting arrests (using their discretion about the 'seriousness' of the offence or the dangerousness of offenders);
- Not proceeding with an investigation of a rape case;
- Not informing the complainant of arrest, bail, bail conditions or what to do in the case of breaches; and
- Not allowing a complainant to make her statement in the language of her choice.

The practice of 'filtering' rape cases through the criminal justice system was only recently identified as a serious concern within criminal justice practice in South Africa. The findings of a shocking 1998 CIETafrica study<sup>45</sup> illustrate how attrition works: it was shown that for every 394 women raped in the Southern Johannesburg Metropole, 272 (69%) reported the attack to the police; of these only 17 (six per cent) became 'rape cases';<sup>46</sup> one of the 17 was 'lost' in a manner considered fraudulent, five were referred to court for prosecution and one resulted in a conviction.<sup>47</sup> At each point at which cases have been shed from the system there has been attrition. Each of these points also clearly coincides with the points at which criminal justice personnel exercise most discretion. It seems that it is exactly this discretion that should be

<sup>45</sup> CIETafrica *Prevention of Sexual Violence: A Social Audit of the Role of the Police in the Jurisdiction of Johannesburg's Southern Metropolitan Local Council* (1998).

<sup>46</sup> It should be noted that some of the 'excluded' cases may result from relabelling of the offence to, for example, indecent assault. A substantial portion reflect however police decisions to close the matter or victims that decide (or are persuaded) to drop the case. Ibid.

<sup>47</sup> CIETafrica op cit (n45) iv. Based on this data, gathered through house-to-house surveys and statistical data collected by the police (CMIC data), a rapist in that particular jurisdiction had a one in approximately 394 chance of being convicted.

regulated if attrition rates are to decrease and we are to see increased prosecutions and convictions (assuming that increased convictions are a good indicator of effective justice).

But attrition does not work only in the reasonably linear broad strokes painted by CIETafrica, at each stage there are multiple opportunities for discretion to be exercised and incentives for exercising them in a particular way. It could be argued that victims are not 'acted upon' by criminal justice personnel but also exercise choice and agency in their own dealings with the system, thereby forming part of the attrition process. The CIETafrica study illustrates that the number of reported rapes is relatively high but only a small proportion of these cases actually make it to trial or result in conviction. Key factors contributing to attrition in rape cases included the victim's decision to report the rape, the likelihood of arresting the accused, the scope of the investigation, the dismissal of the case by the prosecutor and acquittal at trial. Other studies<sup>48</sup> have shown that factors increasing the likelihood of arrest includes the use of a weapon and/or the use of force, level of resistance used by the victim, and the existence or availability of other witnesses. If the victim appears ambivalent, 'difficult', intoxicated or confused about the facts of the case, police are less likely to vigorously pursue the case.

In South Africa, rape has one of the lowest conviction rates of all serious crimes. Vetten (2001) has suggested that low conviction rates, inconsistent sentencing and under-reporting make rape a 'high reward, low risk activity'. It has been calculated that only about ten percent of reported rapes receive guilty verdicts,<sup>49</sup> while Department of Justice figures show that of more than 54,000 cases of rape reported in 1998, less than seven per cent were prosecuted. Furthermore, gang-rape<sup>50</sup> — arguably one of the most common forms of rape in South Africa — remains one of the most difficult to prosecute due to systematic intimidation of victims and state witnesses.

On November 15 2002, the *Mail & Guardian*<sup>51</sup> published the findings of an internal report commissioned by the National Directorate of Public Prosecutions and undertaken by an inter-departmental management team<sup>52</sup> tasked with developing a national anti-rape strategy. The study reported the following:

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<sup>48</sup> See Kelly op cit (n4).

<sup>49</sup> South African Law Commission Discussion Paper 85 (Project 107) 'Sexual offences: The substantive law' (1999).

<sup>50</sup> Defined here as rape committed by more than one offender, and not exclusively rape committed by members of known gangs.

<sup>51</sup> Although only a secondary source of information, this is the only publicly available reference to this report and the contents within it.

<sup>52</sup> Including the Departments of Health, Safety and Security and Social Development (Welfare).

- Only 7.7% of reported rapes in 2000 resulted in convictions.
- 40% of all reported rapes in South Africa are child rapes (under 18 years). Out of a total of 52 975 rapes reported in 2000, 21 630 were cases reported by children under 18.
- Only 8.9% of these child rape cases resulted in convictions.
- There were convictions in 6.8% of adult rape cases.

It was also reported that it can take up to 18 months for a rape case to be finalised in South Africa and that between 1996 and 1998 the number of rape cases grew at 10 per cent a year and at 11% between 1999 and 2000. The study revealed that large numbers of cases are still being withdrawn (43%) at both the pre-trial (investigation) and trial stages, despite the fact that police investigators are under instructions<sup>53</sup> not to do so. Supplementary data by the Crime Information Analysis Centre of the South African Police Service reveals that:

- Forty-six percent (46%) of the withdrawals were at the request of the victim, followed by 36% by the Director of Public Prosecutions and 14% by the police.
- Nineteen percent (19%) of the withdrawals were either because the parties involved had reconciled or sorted the matter out 'amongst themselves'.
- In 17% of the cases the victim was not found and in 15% contradictory or inconclusive evidence had led to the withdrawal of the charges.
- Seven percent (seven per cent) of the withdrawals were as a result of 'false complaints' by victims.
- In more than 70% of rape cases the parties were known to each other.

Clearly, a high proportion of these cases are lost at the early stages of the criminal investigation. This may be due to the police designating cases as 'false reports' or as 'withdrawals by the victim'. Internationally, and increasingly in South Africa, research is also beginning to reveal that the two most important factors influencing outcome of a rape trial are the evidence of physical injury and admission to the offence by the perpetrator.

At least in part the decision whether to follow through with a rape case appears to be based on what the criminal justice agent anticipates will happen at the next stage of the criminal justice process: for the reporting officer, whether the investigating officer will have enough information to proceed with the investigation; for the investigating officer, whether the prosecutor will prosecute the case on the basis of the investigation; for the prosecutor, whether the court will find the offender guilty of the offence. Both investigating officers and prosecutors inevitably approach a rape complaint from a cost-benefit perspective that is ultimately focussed on the 'convictability' of the case and an evaluation of whether

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<sup>53</sup> South African Police Service National Instructions 22/1998.

the case has evidential difficulties. That is, given the resources to hand will the time, energy and money spent on investigation and preparation for trial, result in a realistic possibility of conviction?

## **4. Themes emerging from research on attrition**

### **4.1 Calculating attrition**

The complexity of establishing real attrition rates is compounded by a number of factors. For instance, depending on at what stage of the criminal justice process fall out is established, attrition rates might be calculated based on either the proportion of cases where there has been a conviction, based on the total number of rape cases reported to the police (referred to as the report-to-conviction rate) or on the proportion of cases convicted, out of the total number of rape cases brought to trial (referred to as the trial-to-conviction rate). The specialised sexual offences courts should expect to yield higher conviction rates due to the specialised nature of the prosecutorial and court practices in these courts. The goals of case disposition also vary between criminal justice agents. For instance, for police, low reporting of cases is considered a good indicator of policing (eg effective crime prevention) and a 'high' rate of referrals to prosecution is a good indicator of effective case disposition. For the prosecution service, high levels of referral of cases signal a poor indication of crime prevention (increased levels of crime).

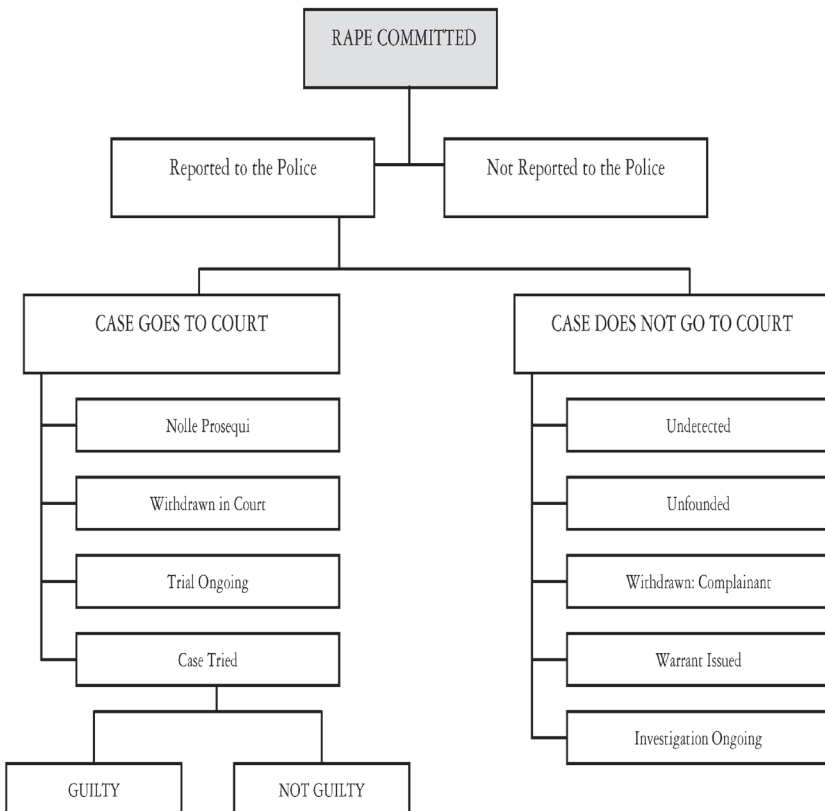
Conviction rates may even seem lower when the statistics include cases that were reported but not investigated (ie disposed of at reporting or early on in the investigation stage of the case). Or, they may be calculated with or without the number of convictions overturned on appeal. Rape conviction rates may also include rape and attempted rape or just rape. In relation to conviction rates themselves, there is no clear indicator — across offence types and in relation to sexual offences more specifically — of what constitutes a 'good conviction rate' within criminal justice practice or within theoretical works on attrition or convictions. We find ourselves asking whether an increase in conviction rates means that the actual criminal justice process is more effective or whether convictions are a good indicator of effective justice for rape complainants — bearing in mind the original emphasis on the Sexual Offences Bill being to effect fair, sensitive and appropriate justice, recognising the vulnerability of rape survivors within the court room.

### **4.2 Case disposition**

At each stage of the criminal justice process there are multiple opportunities for discretion to be exercised and incentives for exercising them in a particular way. Our analysis of rape cases has shown that there is con-

siderable variance from station to station and court to court, even within the same magisterial jurisdiction. Such a comparative analysis shows up disparities in rape case disposal that might not be apparent if one were to analyse only one station or the performance of only one criminal justice agency. For example, at one large urban police station, (Station A) analysed between January 2001 and May 2003, 33% of cases were filed as undetected, 16% filed due to the complainant, 21% were withdrawn in court and 16% filed nolle prosequi. Twelve percent were finalised in the regional court. Conversely, at another nearby station (Station B) four per cent were filed undetected, seven per cent due to the complainant, eight per cent were withdrawn in court and a massive 61% filed nolle prosequi. Seen in isolation of prosecutorial decision-making the police performance at the latter station seems very impressive. This is certainly true when one compares the 33% of cases filed as undetected at the Station A against the mere four per cent at Station B. On closer examination it appears that we might not in fact be looking at better performance and certainly not looking as far as victims are concerned. In order to understand this anomaly it is necessary to understand the ways in which cases may be disposed of.

### The South African criminal justice process



Rape cases within the criminal justice system are finalised in a number of different ways, as illustrated in the following diagram, which shows the progress of a case through the South African criminal justice system. Below we discuss the main categories for case disposition.

*(a) Filed as undetected*

In order for a case to be categorised as ‘undetected’, the police standing orders on closing of docket<sup>54</sup> specifies that the investigation should have failed to disclose the identity of the offender, although the police are convinced on the basis of prima facie evidence that an offence has been committed. In other words, undetected cases are those where a rape is believed to have occurred but the police have been unable to positively identify the offender. In police terms it constitutes a failed investigation. Given the high number of rapes in which the perpetrator is known to the victim, it is surprising to see one third of cases being disposed of in this manner at Station A. There is also a strong organisational incentive not to have cases disposed of under this category. This plays out most markedly as it did at Station B above, where investigating officers referred cases that were technically ‘undetected’ to the prosecution, who summarily classified them ‘nolle prosequi’.

*(b) Filed complainant*

The police standing orders for closing of docket allows for a docket to be closed as ‘undetected — complainant not traced’ where a complainant cannot be found after reporting the matter. This category accounts for around one in ten rape cases reported. According to the standing orders, this manner of closing cases should always be substantiated by witness statements (for example neighbours) that can substantiate that the complainant is untraceable. In our experience such substantiation is seldom forthcoming. Cases are sometimes also erroneously filed under this category in situations where the case is withdrawn at the request of the complainant. In terms of the standing orders an investigating officer may only withdraw a case of ‘no consequence’<sup>55</sup> upon an affidavit from the complainant requesting withdrawal. Given that rape is a serious offence it is arguable that no cases may be withdrawn at station level on this basis. Serious cases require prosecutorial approval before withdrawal in this manner. Police report anecdotally that high numbers of cases are withdrawn at the police station by the complainant and our analysis shows that this accounts for at most a

<sup>54</sup> South African Police Service Standing Orders (G)325.

<sup>55</sup> Undefined in the Standing Order.

third of reported rape cases. Again we see substantial station to station variability. The reasons for these withdrawals are complex and are the subject of further investigation by the authors. For example, gang-related intimidation of a complainant to withdraw a charge of rape is very difficult to ascertain. While multiple-perpetrator rapes can sometimes be defined as 'gang-rapes', it is also true that perpetrators acting alone may be members of, or associated with, gangs. Thus even trying to correlate multiple-perpetrator rapes with the withdrawal of cases does not give us a fair indication of the extent of gang intimidation. It is necessary that the complainant be asked specifically, at the time of making her statement, whether the perpetrator(s) is known to have or is suspected of having gang connections. This question should be repeated at the time that she is interviewed by the prosecutor, prior to a decision being made to withdraw or nolle the case. In this way it may be possible to ultimately establish trends in this respect.

There was some concern amongst the respondents interviewed during the course of our studies that from time to time rape cases were reported by complainants that were in fact 'false complaints'. This was perceived to be particularly problematic in one area, where a number of respondents suggested that young women were 'abusing the system'. These cases would be filed as 'unfounded'. It is not clear to what extent this is happening, although prosecutors suggest that they are effective in weeding out these cases during the initial consultation with the complainant. At the very least the perception that women are lying results in a culture of mistrust and the likelihood that victims reporting rapes in those areas will be treated with scepticism. It was also suggested that in some cases complainants and their families preferred to deal with the offence through more informal justice processes.

### *(c) Nolle prosequi*

A prosecutor may decline to prosecute an alleged offence when he/she does not believe that there is a reasonable prospect of instituting a successful prosecution. In other words, there is no prima facie case on the basis of which to pursue prosecution at that time. A case may be dismissed nolle prosequi at any stage before the accused pleads to the charges. Once the accused pleads, he/she is entitled to a verdict or acquittal. Where there is substantial involvement from the prosecution in the process of investigating the case we would expect to see relatively high levels of cases filed under this category relative to cases filed as 'undetected' or 'unfounded'. These categories, along with cases withdrawn in court and those in which a warrant has been issued for the arrest of the perpetrator, should always be read together to provide a complete picture of cases not successfully finalised.

Reasons given for the nolle prosequi of cases in our sample include: complainant's request, admission of consent by the complainant, complainants disappearance, perpetrator unknown, insufficient evidence and that the complainant or perpetrator had died. It can be seen from this list that there would be a substantial overlap with police categories.

*(d) Warrant issued in a District Court*

If the identity of the perpetrator is known, but his whereabouts are not, the police standing orders provide that a case may be filed as 'undetected — warrant issued'. Should the perpetrator resurface at a later stage he may be arrested on this warrant. This usually accounts for only a small number of cases but is of concern at stations where it accounts for more substantial numbers, as it means that a substantial number of perpetrators who are known to the complainant are not being arrested because they allegedly cannot be found.

*(e) Withdrawn in a District Court*

Bail applications are heard in the District Magistrates Court and, for the most part, cases are withdrawn at this level for further investigation. This is one area where statistics can be fudged, and indications that a case has been 'referred to court' (that is, successfully investigated) must be seen against the fact that at some stations as many as one third have in fact been withdrawn (at the District Court), for one reason or another, without having been captured on the system.

*(f) Cases finalised at the Regional Court*

At the Regional Magistrates Court cases may result in convictions or acquittals. Many are however withdrawn by the prosecution under section 6(a)<sup>56</sup> or 6(b)<sup>57</sup> of the Criminal Procedure Act 51 of 1977. Of particular concern are 'stopped prosecutions' under s 6(b), being cases that have attracted substantial resources in terms of investigation and prosecution, only for the prosecution to withdraw the matter during trial. Finally, cases falling under minimum sentencing provisions<sup>58</sup> for rape will be referred to the High Court for prosecution. Such referrals

<sup>56</sup> Section 6(a) refers to the authority of a prosecutor to withdraw a charge before the accused pleads to that charge, in which event the accused is *not entitled to a verdict of acquittal* in respect of that charge.

<sup>57</sup> Section 6(b) refers to the authority of the prosecutor to, at any time after an accused has pleaded (but before conviction) stop the prosecution in respect of that charge, in which event the court trying the accused *must acquit the accused* in respect of that charge.

<sup>58</sup> In terms of the Criminal Law Amendment Act 105 of 1997.

may give an indication of the type of rape being perpetrated in a particular area, comprising about 25% of cases finalised in one particularly gang-ridden area.

### 4.3 Police discretion

Police discretion has been harshly criticised for playing a significant role in determining the 'validity' and 'seriousness' of crimes of sexual violence. In this sense they are the gatekeepers of the criminal justice system. Police use their wide discretionary powers to establish whether an incident is 'criminal' or warrants investigation in ways that replicate traditional interpretations, often based on stereotypical assumptions, of what constitutes 'real rape' and what is considered 'criminal' activity. This is sometimes based on what the police perceive to be acts that occur 'naturally' within intimate or social interactions and on what they perceive constitutes a genuine incident of rape. These myths, as Kelly has argued, are 'non-factual presumptions that serve (intentionally or unintentionally) to deny, minimise or misrepresent what we know from both research and accounts of victims and perpetrators' about rape.<sup>59</sup>

Comparative studies on attrition have shown that the manner in which police discretion is exercised is crucial to the effective management of sexual assault cases. An investigation into attrition rates should therefore consider the 'modes of discretion' used by charge officers, investigating officers and prosecutors in rape cases to 'unfound' (drop, because of lack of merit) or to continue (investigate and bring to trial) rape cases. Our research found that the following elements of case disposition are particularly relevant in examining attrition:

- The factors and elements used by police and prosecutors to determine whether the case is 'unfounded' or worthy of investigation and prosecution. For example, what they believe they are expected to do by law in terms of substantive definitions and evidentiary procedures.
- The factors important to criminal justice agents in deciding whether to arrest, investigate or prosecute in a rape case. This includes factors considered to be important in producing successful judicial outcomes.
- Investigation and prosecutorial methods, strategies or policies applied and considered useful in processing rape cases.
- Factors that limit or hamper effective investigation and prosecution of rape cases, including infrastructural/ material, procedural, circumstantial and personal obstacles.

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<sup>59</sup> Kelly op cit (n4) 4.

In developing the factors relevant to attrition careful attention should be paid to the discretionary powers of criminal justice agents. There are a range of predictors — or determinants — of positive or negative police and prosecutorial action relating to rape cases which can be found in the analysis of case dockets, court transcripts and court judgments and can be validated through empirical research results. These include:

- The assumption of risk (and reasonability of perceived risk) taken by the victim.
- Assumption of provocation or consent.
- The level of caseloads and the extent of investigation.
- Characteristics of the victim (race, co-operativeness, socio-economic position, known substance abuse, community status, 'credibility').
- Reporting factors (length of time after assault and reasons for reporting).
- Criminogenic or crime related factors which influence the disposition of a case, such as 'expected' levels of rape and violent crime in a certain geographical area, considered 'normal' by police officials or statistics.
- Corroborating evidence (the extent and constitution of, even if not a legal requirement).
- Likelihood of finding or arresting the offender, particularly within the first 48 hours of the offence.
- Level of resistance offered by victim/use of force by perpetrator.
- Injury to the victim (including what constitutes 'injury' and whether injuries were genital or other physical injuries sustained during the commission of the offence).
- Voluntary versus involuntary interaction with the accused ('willingness' to consent or participate and to what extent) or nature of the prior relationship with the accused.
- Results of the forensic/medico-legal examination.
- Plausibility of the rape (circumstantial evidence).
- Aggravated versus non-aggravated circumstances.
- Danger of the offender to the community or to the victim.
- Perceived intention in laying a charge of rape.
- Consistency of statement(s).
- Possibility of 'alternative resolutions' (for example victim-offender mediation).

In addition, the length of time between the reporting of a sexual offence and the arrest of the accused is critical to effective response and management of rape cases. Our research found that the sooner the arrest of the accused is effected, the more likely it is that the case will be prosecuted. The reasons for delay between the reporting of the

offence and the arrest of an accused are numerous. The most obvious reason for the police not being able to make an arrest is the complainant's inability to identify the perpetrator(s). However, our research has shown that the police sometimes do not take down enough information about the perpetrator at the time of taking the statement from the complainant and that they are sometimes reluctant to venture into particular geographical areas that they consider 'dangerous'.

#### 4.4 The medico-legal nexus

There appears to be, at least to some extent, competing imperatives between the medical management of sexual offences and the legal management of sexual offences. The medico-legal examination often forms a crucial aspect of rape cases and therefore requires detailed attention to injuries and complaints made by the survivor at the time of the examination. From a medical perspective, the primary objective of the medico-legal examination is the comprehensive medical care of the rape complainant. From the criminal justice side, the primary objective of the medico-legal examination appears to be timely and effective criminal justice management of sexual offences cases. For doctors, and other medical practitioners, the medical management of the rape survivor is their primary duty. In the Western Cape, for instance, a comprehensive protocol is used for examining and treating the rape survivor in that it ensures that the examination of the survivor includes clinical, psychological and forensic components in the examination and treatment of survivors. This is administered in addition to the standard J88 form used for medico-legal examinations. The medical practitioner is responsible for following a specifically designed 'rape examination protocol' and for filling out the J88 (the medical document, explaining the victim's injuries, that forms part of the case docket).

There seems to be some contention about the prioritisation of the protocol over the J88 where, in practice, there is a tendency to emphasise the completion of the protocol — which remains part of the patient's private medical record — leaving the J88 as somewhat of an after thought. As the Western Cape protocol has been used to develop a national protocol for the examination of rape survivors, the conflicting imperatives need to be addressed. The use of the medical protocol (the rape protocol) would not be appropriate for trial purposes and therefore a comprehensive description of injuries needs to be documented in the J88, in addition to the examination notes taken for the protocol. Doctors and other medical practitioners conducting the medico-legal examination need to be informed about the importance of the J88 as a critical court document that assists the prosecution in establishing the nature of the injuries and the possibility that the

injuries are consistent with injuries resulting from a sexual assault. Doctors also require further training on how to testify in court (that is, what is relevant and helpful in court and how to explain to the court, in simple terms, the nature of the injuries inflicted on the complainant) and should be made aware that they are not required to 'confirm' that a sexual offence has taken place but to provide the court with an explanation of the likelihood that the injuries are a result of a sexual offence. Other problems revealed by our research included lengthy delays before rape complainants are examined and the prioritisation of other trauma cases over sexual assault cases in public hospitals.

#### 4.5 Quality of investigations by the South African Police Service

The quality of investigations by the police is universally cited, and locally confirmed, as a major factor in attrition of rape cases. The accessibility of investigating officers, high case loads and the extent to which investigating officers are 'qualified' to investigate rape cases are contributing factors to the quality of rape investigations. Information regarding the status of a case, including of an arrest, are difficult to establish. Statement-taking by the police is also problematic, with the content analysis of police statements revealing that:

- The contents of the statements are sketchy, sometimes not even documenting the complainant's name and residential address, the name or description of the suspect or witnesses, the place where the incident took place, when the incident took place or a brief description of the events.
- Some police do not know the legal elements of what constitutes a sexual offence and therefore do not know what to look for or ask for from a rape complainant.
- The statements contain information and details that are irrelevant.
- The language used in the statements is poor (for instance, poor translation from Xhosa to English and the inappropriate use of terms such as 'he raped me' when the offence was an indecent assault).

Clearly, the poor quality of statement taking and investigations will affect the likelihood of cases being referred for prosecution. Initial 'skeleton' statements need to be followed up by more in-depth statements after the medical examination of the complainant. The first statement should contain sufficient evidence for arrest and should constitute the 'framework' for the case. In terms of the follow-up statements by the investigating officers, the National Policy Guidelines for Victims of Sexual Offences are clear and instructive in this regard. Prosecutors naturally have to instruct investigating officers for specific clarification from the original statement and sometimes get additional rather than

supplementary statements from complainants. Though this practice might be considered problematic by prosecutors — leaving the door open for defence attorneys to attack the complainant in cross-examination with regard to the difference between the two statements — it is still regarded as good practice within international policing practice with respect to rape.

#### 4.6 Prosecutor-guided investigations

Local intervention programmes established by the state (including specialised sexual offences courts and rape care centres) as well as attrition research have demonstrated that investigations guided by prosecutors not only bridge the historic gap between police investigations and evidence, improving prosecutor preparedness for trial, but ensure that investigating officers are instructed by an informed officer of the court on what evidence is useful and required for the prosecution and conviction of a case. It is an investigative model that can limit, or at very least, provide oversight to the decision-making processes of the police in the reporting and investigation of rape cases. In practice, prosecutor-guided investigations would mean that the police would work with prosecutors to ensure that the contents of statements were adequate, the type of evidence collected during the examination correct and the kind of information imparted to rape complainants appropriate. It would mean that investigations were interactive and followed correct procedure from the outset. It would also ensure that the police become more practiced in the elements of rape, criminal procedure and the expectations of the court. Most importantly, it would ensure that rape victims underwent only one process of investigation, where the prosecutor of the case was introduced from the outset and could, more closely to the time of reporting, explain the investigation, the use of physical and other medico-legal evidence and the reasons for multiple interviews from the outset. There is, however, a fine line between 'prosecutor-guided investigations' and 'prosecutor-driven investigations', which essentially amount to 'prosecutorial investigations'. Our analysis of cases above also shows that when it comes to the disposition of cases, allowing prosecutors to make the decision to close a case, rather than leaving this decision with the police, does not ensure that more cases are taken to trial. We are therefore not advocating that police defer to the prosecution service when it comes to these decisions. In rape cases, the aim of prosecutor-guided investigations would be to ensure early involvement of prosecutors and, in a large measure, to pre-empt the need for returning dockets to the South African Police Service because of inadequate investigation. Early prosecutorial involvement should therefore address attrition by ensuring better

investigations and reducing the further traumatising of victims during the criminal justice process.

## **5. Conclusion**

Although attrition in rape cases has formed the subject of a number of international studies, it has received scant attention in South Africa. In this article we have set out to develop some of the insights that we have garnered from our own attrition studies and thereby to alert scholars working in this area to the key practical and theoretical issues that arise in conceptualising and conducting an attrition study. Not least of these concerns is the complex institutional relationship between the police service, the prosecution and medico-legal services. These relationships are mediated not only by different institutional incentives (for example, when it comes to the way in which performance is measured) but also by different functional responsibilities (the investigation or prosecution of a crime versus the comprehensive care and treatment of a patient, who also happens to be a crime victim). These disjunctures complicate both the exercise of criminal justice discretion and, subsequently, any study of how this discretion is exercised. As such, they are key to understanding attrition of rape cases in the criminal justice system. They also alert us though to ways in which we can decrease attrition through greater cooperation between the institutional role-players responsible for ensuring that victims who report a rape to the criminal justice system see justice done.