Perceptions of the conviction rate of reported adult female rape in Verulam, Durban

By

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DECLARATION - PLAGIARISM

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Signed

……

“I CANNOT TEACH ANYBODY ANYTHING. I CAN ONLY MAKE THEM THINK”

Socrates

DEDICATION

This dissertation is dedicated to victims of rape in South Africa

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ABSTRACT

As rape is ranked as one of the most prevalent crimes in South Africa, its causes and consequences have become the subject of a large body of research. However, statistics and research on what happens after a rape report are rare. An estimated 7 percent of sexual offence cases that were reported to the police in 2012/13 resulted in a conviction, suggesting that there are major problems in the system that are restricting victims from obtaining justice. With a paucity of research having been done on the process of a rape report to the conviction stage, it seems relevant that research on the outcome of rape reports deserves attention. Therefore, regardless of the relatively small scale of this research, it was at attempt to fill this void. Based on a qualitative research methodology, the study focused on establishing which factors hinder the achievement of a high conviction rate of rape perpetrators in Verulam, Durban. The research focused on reported adult female rape in a four-year period from 2009 to 2013. Fifteen criminal justice personnel participated in this study by answering a semi-structured, open-ended questionnaire. A 5 percent conviction rate within the study period was identified, illustrating that rape victims are the most marginalised victims in society. Content data analysis indicated that the requirements for a conviction largely consist of extra-legal factors such as corroborative evidence, having qualified personnel, consistency, and court attendance. What is not surprising is that 'rape myths' and stereotyped notions are very active in the system; for example, if a woman sustains physical injuries or reported the violation soon after it occurred, she is deemed to be a 'genuine' rape victim. The fact that accused persons abscond from court proceedings whilst on bail was one of the obstacles highlighted by the respondents. Avoiding this obstacle can be achieved through an assessment of the South African legal system. Another major obstacle identified was the issue of the lack of expertise within the criminal justice system (CJS). However, there is potential to improve the conviction rate and a promising suggestion is specialisation in rape cases, specifically in terms of rape investigation, prosecution, and magistrates adjudicating the matter. For a positive change in the conviction rates and ensuring that victims attain justice, the actual implementation of the recommendations put forward in this study is necessary. However, further research is crucial, particularly research that can offer explanations for victims failing to attend court proceedings and for withdrawing their cases.

TABLE OF CONTENTS

LIST OF TABLES

LIST OF FIGURES

Chapter 1

General Orientation

"As long as there is rape... there is not going to be any peace or justice or equality or freedom. You are not going to become what you want to become or who you want to become. You are not going to live in the world you want to live in." Dworkin

1.1 Introduction

The crime of rape has gained plausible recognition as an international human rights violation and has come to the forefront to constitute a crime against humanity, war crime, genocide and torture. Rape is considered to be a gendered social and public health issue that not only violates a woman's physical safety, but also her sexual and psychological integrity (Christofides, Webster, Jewkes, Penn-Kekana, Martin, Abrahams, Kim, 2003; Pithey, Artz, Combrinck & Naylor, 1999). The offence places women at a greater risk of the Human Immunodeficiency Virus (HIV) and other sexually transmitted diseases (STDs), pregnancy, social humiliation and long-term psychological trauma (People Opposing Women Abuse [POWA], 2010; Wood, Lambert & Jewkes, 2007; Du Mont & White, 2007; Steyn & Steyn, 2006; Ackermann & De Klerk, 2002; Pithey et al., 1999). With the seriousness of the crime and the implications imposed on victims, one would expect perpetrators of rape to be duly convicted and punished. However, the conviction rates of rape, both internationally and nationally, paint a different picture. For example, in 2005 Canada recorded a 14 percent conviction rate while Australia recorded a conviction rate that was less than 12 percent (Daly & Bouhours, 2009). In 2011/2012, England and Wales rape conviction rate stood at 6.8 percent (Office of National Statistics, 2013).

In South Africa rape is recorded under the umbrella crime of sexual offences by the South Africa Police Service (SAPS). However, there are no national statistical data on the outcome of sexual offence cases (Townsend, Waterhouse & Nomdo, 2014; Vetten, 2012; Waterhouse, 2008). An analysis of the SAPS 2012/13 annual report and the National Prosecution Authority (NPA) 2012/13 annual report indicates an average national sexual offence conviction rate of 7 percent (National Prosecution Authority [NPA], 2013a). Although not the most accurate means of calculating the conviction rate, it does provide a meaningful assessment of the criminal justice system (CJS). Research focusing specifically on rape and case outcome provincially has also shown low rates of rape convictions. A Gauteng study found a conviction rate of 4.1 percent of rape cases reported to the police in 2003 (Vetten, Jewkes, Sigsworth, Christofides, Loots & Dunseith, 2008). In 2001, the South African Law Commission Report (SALC) broadcasted a 5.45 percent conviction rate of adult rape in Durban for a two-year period between 1997

and 1999. These low sexual offence conviction rates and provincial rape conviction rates suggest major problems in the CJS. Moreover, the failure to punish perpetrators of rape portrays a weak justice system that constantly denies justice for victims. To make any contribution to an improved rate of rape convictions and to improve public confidence in the justice system, it is important to trace those elements that obstruct a higher conviction rate. Not only will identifying the problem areas that hinder a higher conviction rate serve to provide a platform for policy makers and interventionists to address the matter, but it can work as an all-round tool that could identify additional issues that affect rape victims during the criminal justice process.

1.2 Rationale for the Study

Statistics can be used to identify problem areas, and in the case of rape reports statistics have indicated that there are serious shortcomings in the CJS that require urgent attention. Although conviction rates do not indicate the full extent of crime, they do provide us with an idea of the progress of the CJS (Tredoux, Foster, Allan, Cohen & Wassenaar, 2005; Andersson & Mhatre, 2003). Measuring the number of convictions in relation to the number of crimes reported to the police incorporates evaluating the performance of a variety of state actors in contributing to successful prosecutions (Redpath, 2012; SALC, 2001). Some of these actors include the police who investigate a case, handle evidence and make an arrest; the NPA that conducts the prosecution; magistrates who manage the progress of cases; and the Department of Correctional Services. Thus, the increase in reported rape cases to the police cannot be used exclusively to measure the success of the police in preventing rape. Instead, it is arrest, prosecution and conviction rates that demonstrate justice towards the victim (Larcombe, 2011; Vetten, 2005). On the other hand, low conviction rates and inconsistent sentencing contribute to making sexual assault a "high reward, low risk activity" (Vetten, 1997). In other words, perpetrators are free to repeat the offence, which increases the number of rapes in South Africa (Tonn, 1984).

South Africa's 2012 victimisation survey indicated that 42.6 percent of sexual offence victims did not report their victimisation to the police (Statistics South Africa, 2012). These unreported incidences of rape are often referred to as the "dark figures" of rape. Kim, Martin and Denny (2003) argue that the lack of reporting rape to the police is attributed to the belief that the perpetrator will not be punished. Evidently, Kim and colleagues' (2003) point is demonstrated by the 2012 South African victimisation survey which showed that 32 percent of sexual offence victims believed that the police could not do anything about the fact that they had been violated (Statistics South Africa, 2012). Other factors affecting the reporting of rape to the police include the traditional lack of faith in the police, the low rape

conviction rates, and the trauma of a rape trial for the victim (Andrews, 1999). Clearly, the tendency of reporting rape to the police can be influenced by the level of confidence that the public has in the CJS (Hofer, 2000), with conviction rates being one of the indicators. This does not mean that the conviction rate alone determines whether a victim of rape will report the incident or carry out the report to the conclusion stage, as there are various other reasons that have been explored in other studies (Maier, 2012; Steyn & Steyn, 2008; Steyn, 2005). However, by exploring the conviction rate of rape, factors that disempower rape victims can surface, and this will create a platform for interventionists to delve further into the issues raised. An improved conviction rate can therefore serve as a contributing factor in improving the public image of the CJS and thus reduce the "dark figures" of rape.

As seen above, South Africa is not alone in the dilemma of low rape conviction rates, as with developed countries such as United States, Canada, Australia and England and Wales have reported conviction rates below 14 percent (Daly & Bouhours, 2009). In addition to these low rates of convictions, in no country is the conviction rate of rape found on top of the conviction ranking, for example, in South Australia and England and Wales, the conviction rate of rape is the third highest after robbery and murder (Daly & Bouhours, 2009). While in South Africa, the conviction rate of rape is at the bottom, with the highest conviction rates for drunken-driving, drug-related crimes, common assaults and housebreaking (Richter, Dawes & Higson-Smith, 2004; Hirschowitz, Worku & Orki, 2000). This suggests that there are several barriers influencing the successful investigation, prosecution and conviction of rape perpetrators. Furthermore, these rankings demonstrate that South Africa, together with first world countries, is experiencing challenges in the justice process and that there is an urgent need to address the issue in order to ensure that victims and the society obtain justice.

The World Health Organisation (WHO) (2002) has acknowledged that empirical data on most aspects of sexual violence are lacking and require attention. To my knowledge, very few studies have focused on the progress of rape cases and the factors associated with cases moving through the legal system in South Africa. This concern was also expressed by Artz and Smythe as far back as 2007 (Artz & Smythe, 2007). Townsend, Waterhouse and Nomdo (2014) point out that the unavailability of information on the attrition of cases from reporting to prosecution stage prevents the ability to address the problem areas. Moreover, the data that are available on the conviction rates of rape remain alarmingly low, with research consistently producing the same low rates of convictions over the years (Vetten et al., 2008; SALC, 2001). Artz and Smythe (2007) further noted a disturbing finding. They found that the process of rape cases through the CJS in more recent times is reflective of problems found almost 30 years ago in the United States. With the lack of any improvement, the system seems

to neglect giving a voice to the most vulnerable victims in our society, and this seems to have produced a society that is numb to the effects of rape and the victims who are constantly disempowered by the failures of the justice system. It is evident that introspection needs to be done at all levels and that new innovative approaches are required to address the problem areas. This study was therefore an attempt to contribute to the broader discussion of low rates of rape convictions by detailing practical problems found at each level of the process.

1.3 Aims and Objectives of the Study

Given the high rates of rape reports and the low rates of conviction, the study aimed to contribute towards an improved conviction rate for reported adult female rape in Verulam by means of providing an empirical understanding of the phenomenon, including the identification of challenges that hamper the achievement of a higher conviction rate.

The objective of the study was therefore to explore and describe the conviction rate for reported adult female rape in Verulam. This facilitated the identification of possible obstacles and opportunities in addressing the low conviction rates of rape perpetrators.

1.4 Research Questions

In line with the study's aims and objectives, the study sought to answer the following questions:

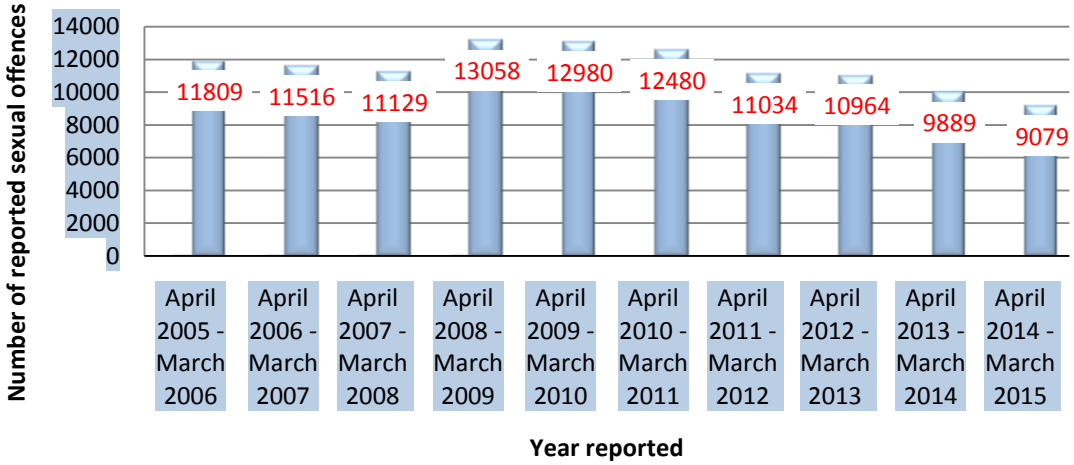
- What is the current conviction rate of adult female rape in Verulam?
- What is required to convict adult female rape perpetrators in Verulam?
- What obstacles prevent a higher conviction rate of adult females in Verulam?
- How can the conviction rate for reported adult female rape conviction rate in Verulam be improved?

1.5 Study Demarcation

According to Schwedt (1997), the place of study is based on three factors, namely availability, accessibility and theoretical interest. Study demarcation refers to the place the research is conducted. The study demarcation is essential to ensure that the area of interest will provide valuable information from which conclusions can be drawn (Vuma, 2010). Thus, the first step was to identify a problem area and with the KwaZulu-Natal (KZN) Province holding the highest recorded sexual offence rates for 2012/2013 (SAPS, 2013), it seemed appropriate to locate the study in KZN. Figure one below

demonstrates the number of sexual offences reported to the SAPS in the KZN Province over a ten-year period.

Figure 1: Number of sexual offences reported to the SAPS KZN Province over a 10 year period



Although Figure 1 above shows a decline in reported sexual offences in the KZN Province over the stipulated period, this does not necessarily mean that sexual offences have deceased. Victimisation studies have shown that more than 40 percent of victims do not report sexual offences to the police (Statistics South Africa, 2012). It may be that sexual assault cases have not been reported to the police for various reasons, such as the difficulty in accessing police stations, the lack of public confidence in the justice system, embarrassment, associated stigma, belief that the case will not be prosecuted, or the victims may have reported their experience of victimisation to other authorities (Alden, Lowdermilk, Cashion & Perry, 2014; Alderden, 1998). As mention earlier, the decline in reported sexual offence cannot be used to measure the success of the police in preventing rape, but the arrest, prosecution and conviction rates demonstrate justice towards the victim (Larcombe, 2011; Vetten, 2005). To illustrate this point, the Verulam SAPS Case Administration System (CAS) recorded a total of 526 cases of sexual offences between 2009 and 2013. However, more than half (55 percent) of the reported sexual offences did not go to court, with 35 percent going undetected and 19 percent being withdrawn by the victim. At the end of the four-year period, a total of 64 reported cases had resulted in a conclusion, with 7 percent resulting in a not guilty verdict and 5 percent being concluded with a guilty verdict. Thus, the town of Verulam had a conviction rate of 5 percent over a four-year period. The rate of rape convictions in Verulam adds to the theoretical interest of the factors proposed by Schwedt (1997), as identifying the

obstacles preventing a high conviction rate will be beneficial to the study area. While the importance of this study is evident, the requirements of a master's degree, limited resources and time constraints restricted the study to one area within the Province. As such Verulam, a town north of Durban in KZN, was chosen as the study area.

Verulam was the third settlement after Durban and Pietermaritzburg to be established in the formal British Colony of Natal (Ramdass, 2005). Verulam was founded in 1850 and became part of the eThekwini Municipality in 1996. The town comprises roughly 12 000 acres with a population of approximately 82 224, which equates to 2 percent of the municipal population (Redman, 2011). Verulam was proclaimed an Indian area in terms of the Nationalist government's Groups Areas policies (Ramdass, 2005). However, with the abolition of the Group Areas Act, the demographics of the population of Verulam have changed and are still changing, with many more Black people moving into the area (Ramdass, 2005). Verulam has numerous primary and secondary schools that cater for all races. The town contains both residential and industrial areas, including shopping centres, mosques, temples and churches. The town is surrounded by large farming areas, various built-up townships, and rural townships. Various developments and ongoing improvements to the town suggest that the town is slowly modernising. With Verulam being semi-urbanised, it would be possible to evaluate the results of the study for comparative purposes. For instance, the results could be compared with those of similar studies in fully developed or even rural areas, hence fulfilling the theoretical aspect of Schwedt (1997) study area selection factors. Additionally, Verulam is primarily an Indian area, thus this study will allow for a glimpse of the otherwise unknown Indian community.

Furthermore, the town's importance lies in its being the centre of the magisterial district of Inanda (Ramdass, 2005). The Magistrate's court is divided into a Regional and District court and is centrally situated in the town. The Regional court exclusively deals with criminal matters that are of a serious nature including rape, murder, serious assault and armed robbery (Department of Justice and Constitutional Development [DOJ&CD], 2015). The District court deals with both criminal and civil cases of a less serious nature and cannot try cases of rape, murder, treason, sabotage, or terrorism (DOJ&CD, 2015). Thus, based on the accessibility and availability of the magisterial regional court, as well as the Verulam SAPS, Verulam was selected as the study area.

1.6 Study Limitations

Access to rape case transcripts was denied due to the sensitive persona of rape. If access had been granted to the rape case transcripts, reviewing each case would have cost me up to six thousand rand. I therefore decided to obtain the assistance of personnel from the Verulam Magistrate's court, the Verulam SAPS, and defence attorneys in Verulam who had first-hand experience of rape cases. Ethical issues restricted the study focus area to the above personnel and did not centre on victims of rape. A more detailed discussion on the participants is provided in Chapter 4 of this dissertation.

In order to address the research aims, participants were selected using purposive and snowball sampling techniques. This meant that the research findings cannot be regarded as representative of the population, as the information gathered was chosen from narrow and selective groups of participants. In order to gain valid findings, data triangulation in the form triangulation of data sources was used. In other words, both primary and secondary data were reviewed simultaneously to gain more valid findings. Validity of data can be assured when the researcher's findings are supported by other forms of data (Sapsford & Jupp, 2006).

As mentioned earlier, the existing research on rape is limited and not many researchers have focused on the criminal justice aspect of rape. In fact, very little literature on rape exists in South Africa, especially with regards to rape attrition. This paucity in the pool of research therefore limited the study to a small body of empirical data. Given the fact that rape is a worldwide phenomenon, international research was used to fill in the gaps that I found in South African research. Although the legal definition of rape varies in different states, the basis of the crime remains the same. Furthermore, the purpose of this study was to explore and describe the conviction rate of rape, thus differences in definition were not the central purpose; rather, the central purpose focused on the reasons for the current low conviction rate.

In terms of statistics, rape falls under the category of "sexual offences" in South Africa. Such offences include all types of sexual offences such as rape, sexual assault and sexual grooming. However, Bornman, Dey, Meltz, Rangasami and Williams (2013) indicate that rape makes up a high proportion of reported sexual offences. As mentioned earlier, South Africa does not have national statistical data on rape conviction rates, and for this reason this study estimated a rate by the use of annual reports from the SAPS and NPA. This is obviously not the most accurate means of calculating the conviction rates, as cases may take more than a year to be finalised. However, it does provide us with an idea of the performance of the CJS. Importantly, the rate emerging from this study is the rate of sexual offences in

Verulam and not rape exclusively, again providing us with a means of evaluating the progress of the justice system. However, a few provincial studies provide conviction rates of rape with specific reference to female adult rape, thus filling in the gaps encountered in this study.

1.7 Conceptualisation

Rape involves the physical forceful attempt at sexual intimacy with a person who does not consent to the sexual intimacy (Ellis, 1989). In this study rape refers to acts that reflect legal definitions. In terms of section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (RSA, 2007), "any person ("A") who unlawfully and intentionally commits an act of sexual penetration with a complainant ("B"), without the consent of B, is guilty of the offence of rape." The Act further sets out sexual penetration to include "any act which causes penetration to any extent whatsoever by - (a) the genital organs of one person into or beyond the genital organs, anus, or mouth of another person; (b) any other part of the body of one person or, any object, including any part of the body of an animal, into or beyond the genital organs or anus of another person; or (c) the genital organs of an animal, into or beyond the mouth of another person."

A conviction is a result of a person being found guilty of a criminal offence in a court of law (Sydney, 2004). In South Africa, three methods may be employed to calculate conviction rate: as a percentage of the number of trials; as a percentage of the number of cases referred to court; and as the percentage of the total number of rape cases reported to the police (Vetten et al., 2008). The NPA calculates conviction rate as the percentage of cases finalised with a guilty verdict divided by the number of cases finalised with a verdict. In other words, the NPA calculates conviction rates based on the percentage of the total number of cases heard in court that results in a guilty verdict, and not the percentage of reported rape. However, if we simply look at the conviction rate by means of cases that proceed to court, we are only judging the performance of the NPA and not the CJS as a whole. This is because prosecutors have a duty to prosecute if there is a *prima facie* case; in other words, where the evidence is of such a nature that the court should convict, there will be a higher conviction rate which will not be a true reflection of case outcome (Redpath, 2012). Vetten et al. (2008) argue that this inflates the conviction rate and ignores the pre-trial filtering of cases. Redpath (2012) notes that the most reasonable measure of the performance of the CJS is the number of convictions (successful prosecutions) in relation to the number of crimes reported to the police, on an annual basis. As a result, a report-based approach was adopted in this study as such an approach recognises the joint responsibilities of the police and the prosecution authority for ensuring that offenders are arrested (SALC, 2001). Thus, the term 'conviction rate' in this study refers to cases that were reported to the

Verulam SAPS between 2009 and 2013 divided by the number of cases which resulted in a guilty verdict in the Verulam Regional Magistrate's Court.

A report-based approach in research is often deemed to be a misrepresentation as cases may take more than a year to finalise (Vetten et al., 2008). The publicly unavailable internal report by the Interdepartmental Management Team of the government (2002) intended to inform the development of a national anti-rape strategy (Sigsworth, Vetten, Jewkes & Christofides, 2009) reported that it can take up to 18 months for a rape case to be finalised in South Africa (Artz & Smythe, 2007). Given the aims and objectives of this study, it was not necessary to track the outcome of each individual case as had been done by Vetten et al. (2008) and the SALC (2001). However, to avoid a misleading annual conviction rate, a four-year time frame between 2009 and 2013 was chosen as the study period. This study commenced in 2012, and the term 'current' refers to the four-year time frame between 2009 and 2013.

'Conclusion' rate was operationalised and applied to the study as the number of adult female rape cases reported to the SAPS in Verulam, divided by the number of cases finalised by the Verulam Regional Magistrate's court with a guilty and not guilty verdict in relation to the four-year period from 2009 until 2013. In other words, 'conclusion' rate refers to the percentage of cases that resulted in a not guilty and guilty verdict.

The Criminal Justice System (CJS) consists of various role-players, including the courts, police and correctional services. In terms of sexual offence matters, the CJS involved in investigating and adjudicating the matter requires various government departments and agencies such as the Department of Social Development, the Department of Health, the SAPS, and the DOJ&CD, including the NPA (Waterhouse, Rezant, Townsend & Nomdo, 2014). Due to time limitations, the study focused on persons functioning within the SAPS and NPA as the most significant criminal justice personnel.

In criminal justice system jargon, a distinction is made between 'detection rate' and 'conviction rate'. 'Detection rate' is a means of evaluating the performance of the SAPS. It refers to crimes that have been reported and recorded on the Crime Administration System (CAS) and investigated, with sufficient evidence being collected to arrest and indict the identified suspect before a court. 'Detection rate' also refers to charges referred to the court for prosecution, charges in which the NPA declines to prosecute, and charges investigated and found to be unfounded (SAPS Annual Report, 2012/2013). Detection rate is therefore a measure of successful investigations or, in simple terms, the success of the police (Leggett, 2003).

Another way to measure the performance of the SAPS is in the form of court-ready dockets. A court-ready docket can be used by the prosecutor because it contains information about a fully investigated case. The reference to 'a fully investigated case' means that no further investigation is required and that all evidence has been obtained. According to the SAPS Annual Report (2012/2013), a court-ready rate is determined by the total number of case dockets certified as "investigation finalised" on the CAS, divided by the total number of outstanding charges.

Attrition refers to the dropping or filtering of cases at various stages of the criminal justice process before a trial is concluded (Vetten et al., 2008; Susan, Lanvers & Shaw, 2003). Points of attrition may occur at any point, e.g., when a crime is reported, investigated or prosecuted. Various reasons exist for cases to drop out of the criminal justice process, including victims' decision to withdraw a report and prosecutors' decision to discontinue a case (Brown & Walklate, 2012). Identifying points of attrition allows us to single out the weak areas of the CJS and other possible problems that are associated with cases falling out of the system.

The study focused on rape cases involving adult females between the ages of 18 and 30 years old for several reasons. To begin with, women over the age of 18 years are allowed to exercise their own decision in terms of reporting, having a medical examination or continuing with a case to the conclusion stage. The law does not obligate any individual who has witnessed an offence of rape or who knows of an offence against an adult to report the incident to the police, as opposed to the rape of a child, mentally ill person or an elderly person (RSA, 2003). For example, the Child Care Act 74 of 1983 (Republic of South Africa [RSA], 1983) and the Aged Persons Amendment Act 100 of 1998 (RSA, 1998a) compel health care workers to report cases of sexual assault to the police in cases of children and the elderly. Contrary to the rape of children or the rape of males, women are more likely to be blamed for the rape incident (Collings & Payne, 1991; Waterman & Foss-Goodman, 1984). Victim-blaming ideologies, in which women are held accountable for their actions, characterise the experience in which rape victims are subjected to the entire criminal justice process (Cole, 2007). This study thus attempted to explore whether victim-blaming ideologies, or exercising one's own decision, contributed to low conviction rates. This was done by focusing exclusively on rape incidences of adult females between the ages of 18 and 30 years.

Existing data suggest that the perpetrators of adult female rape are less likely to be convicted than perpetrators of child rape. For example, Daly and Bouhours (2009) indicate that South Africa and New South Wales have higher conviction rates for child rape compared to adult rape. A study conducted in Gauteng revealed that two-thirds of the rape incidences (60.2 percent) that had been reported to the

police involved adult victims; however, less than half of these adult female rape cases (46.8 percent) resulted in arrests, with a trial commencing in one in seven (14.7 percent) cases, compared to one in five for girl and teenage cases (Vetten et al., 2008). As a consequence, child rape cases that go to trial are twice as likely to result in a conviction compared to adult rape cases (Vetten et al., 2008; SALC, 2001). Several studies also indicated that rape is more likely to occur among women aged 30 years and below (Bollen & Artz, 1999; Louw, Shaw, Camerer & Robertshaw, 1998). These findings are significant as they indicate a drawback in terms of adult rape charges and convictions. It was for this reason that the study operationalised adult female rape victims to be between the ages of 18 and 30 years.

1.8 Research Methodology

The study sought to understand, describe and explore people's feelings and experiences in human terms; thus a hermeneutics (descriptive-interpretive) research design was used together with a literature review of relevant primary and secondary sources.

Bhana (2009) indicates that the definition of rape is constituted by variables and that it is dependent on people's views of their experiences. Therefore, compared to a quantitative research approach, a qualitative and inductive research approach was more suitable for this study. Patton (1987) points out that a qualitative approach is particularly helpful in shedding light upon procedures and processes. Therefore, a qualitative approach was well suited to explore relevant aspects of procedure and practice employed by the police and the prosecuting authority in rape cases.

The study used a semi-structured questionnaire (Annexure B) that gave respondents the opportunity to use their own voice to express their ideas, opinions and feelings about the process that they had experienced. The data that were collected represented the first-hand experiences of respondents who were involved in the process of rape cases. Their voices were thus a valuable, detailed source that allowed me to make informed, valid recommendations for improvement of a clearly flawed system.

The research participants were selected purposively to ensure that relevant people participated in the study. This facilitated the procurement of valuable information that contained suggestions and recommendations for improvements. The snowball sampling technique was also adopted within purposive sampling. A more in-depth discussion of the research methodology is provided in Chapter 4 of this dissertation.

Ethical approval to conduct this study was granted by the Humanities and Social Sciences Research Ethics Committee of the University of KwaZulu-Natal (Annexure A). Permission was also granted by the President of the Verulam Regional Court (Annexure C) and the SAPS Head Office (Annexure D) to collect data from the selected participants. Verbal permission was also granted by the Commander of the Verulam SAPS to use statistics from the CAS. Although the intention of this study did not focus on statistical outcomes, the use of such statistics did provide some meaning.

1.9 Data Analysis

Data analysis involves the process of making sense of text and image data (Creswell, 2009). The data collected in this study comprised the subjective experiences of the respondents. In this context, the data analysis technique that would be used needed to facilitate the derivation of in-depth meaning from the collected data. The most appropriate technique consistent with a descriptive-interpretive paradigm was qualitative content analysis. The aim of content analysis in qualitative research is to examine the content in-depth (Sappleton, 2013) by describing the meaning of data in a systematic way (Schreier, 2012). The process of content analysis involves coding the frequency of information gathered by looking at the space allotted to each category and the strength or intensity each category presents (Bailey, 2008). The response to each question posed to the respondents were categorised into themes from which my recommendations were derived. A major finding relating to the obstacles preventing a higher conviction rate of rape included the lack of expertise and delays in the criminal justice process. A more comprehensive discussion of the findings pertaining to the data analysis is provided in Chapter 5.

1.10 Conclusion: Organisation of the Dissertation

This dissertation is separated into six chapters. Chapter 1 provides an overview and rationale of this study, pointing out that low rate of rape conviction is a serious problem that requires attention. The low rates of rape conviction suggest that the system is failing victims of rape and that this restricts victims from receiving justice. It is argued that an identification of the areas that cause the overall rate of convictions to be substantially low will possibly contribute to an increased rape conviction rate, thus attainting justice for victims and for society at large. Thus, an increase in the rate of rape conviction will boost the confidence that victims and society should have in the justice system and this, in turn, will reduce the "dark figures" of rape. That means that victims will feel confident in reporting their experience of criminal victimisation to the police. Moreover, the possible weaknesses in the system should be identified, which will provide a platform for policy makers and interventionists to delve further

into raised issues, resulting in necessary action. The aims and objectives and the main research questions were also outlined in this chapter.

Chapter 2 presents a discussion on the legislative framework surrounding rape, starting with international conventions and treaties. The definitions of rape are presented and a discussion on national legislation, policy and strategies that have been introduced in South Africa to combat crime follows. Overall, this chapter looks at whether legislation has had an impact on the rate of rape convictions and the challenges preventing the full and effective implementation of the law.

Chapter 3 summarises previous research that identified relevant issues pertaining to the low conviction rates for rape. This chapter also provides a theoretical framework in an attempt to explain the rate of rape convictions and the associated causes.

In Chapter 4, the selected research methodology that I employed is described and discussed. This chapter also explains the processes and methods that I employed to complete the study.

The last two chapters provide the findings of the study. Chapter 5 presents a discussion on the analysed data by comparing the findings to those of earlier research studies. Chapter 6 concludes the study report by illuminating the key findings of this study. Finally, some recommendations based on the findings are offered.

Chapter 2

Legislative Framework

"Violence against women is perhaps the most shameful human rights violation, and it is perhaps the most pervasive. It knows no boundaries of geography, culture or wealth. As long as it continues, we cannot claim to be making real progress towards equality, development, and peace." UN Secretary-General, Kofi Annan

2.1 Introduction

The first step to meet the aims and objectives of this study, as was emphasised in the preceding chapter, was to identify the legal framework surrounding rape. This chapter seeks to set out the legal framework of sexual offences and rape. The aim is to provide the reader with an understanding of legal remedies that are at the victim's disposal. The next chapter demonstrates whether these legal remedies are successful. Accordingly, this chapter follows a path that initiates from international establishments of women's rights that include treaty bodies, declarations and conference documents. A glance at the historical background of international establishments of women's rights and the crime of rape demonstrates that rape is a serious violation. It also puts into perspective how far we have come to end violence against women. It shows the obligations states have towards preventing, combating and punishing the perpetrators of the crime. This discussion is followed by elucidating national obligations towards women, including those that are found in the Bill of Rights (BOR) that is entrenched in the Constitution of the Republic of South Africa (Act 108 of 1996) (RSA, 1996). The discourse in this chapter filters down to South African legislation that deals with sexual offences and rape. The discussion is accompanied by references to policy frameworks and policy implementation strategies such as the establishment of specialised units. South African legislation and policy documents that set out the functions and duties of criminal justice personnel will be discussed. Overall, this chapter argues that even though a large body of legal apparatus exists, there are various discrepancies that prevent the full implementation of available resources. In this context, the discussion forwards implementation issues that prevent a higher rape conviction rate and that limits rape victims from receiving justice.

2.2 Sources of International Law

International law has played a significant role in acknowledging and protecting the rights of women. International law includes treaties; customary international law; the general principles of law as recognised by civilised nations; and legal jurisprudence, which includes judgements of international

tribunals, jurisprudence of nations and the teachings of respected academics; and resolutions and declarations made by United Nations (UN) bodies (Meyersfeld, 2010). Treaties are binding law for those states that ratified or agreed to accept them, while customary international law is those actions by states that demonstrate their implied consent to those rules (Brown, 2011). General principles of law include those laws that are common to many nations and that can be applied to international law, and judicial decision and scholarly writings are regarded as secondary sources of international law that are especially relevant as indicators of change in customary international law (Brown, 2011). UN resolutions and declarations consist of normative rules and principles of international organisations that contribute significantly to the process of customising legislation by conventions (McIntyre, 2007).

Treaty law is the most authoritative in terms of implementing and enforcing international law in national courts; however, treaties are not necessarily binding on those states that have not signed them unless the provisions of the treaty become rules of customary law or a principle of law that a state cannot refuse to be bound by (Meyersfeld, 2010). As such, focus will be given to treaty law in this discourse because of its authoritative nature, as well as to resolutions and declarations made by UN bodies because of their contribution towards customising legislation initiated by conventions.

In terms of international law, states that are bound by the provisions of treaties are required to take all legal and necessary measures to afford women with effective protection against gender-based violence, including: (a) enactment of effective legal measures such as penal sanctions, civil remedies and compensatory provisions to protect women against all kinds of abuse; (b) preventive measures, including public information and education programmes to change attitudes concerning the roles and status of women; and (c) preventive measures, including refugee, counselling, rehabilitation and support services for women who are the victims of violence or who are at risk of violence (Pithey et al., 1999). Governments are therefore required to respect, ensure, and protect women's international human rights, and when they fail to do so states will be held accountable for neglecting the rights of women (Cook, 1994). International law is therefore the foundation for legal remedy for women that not only recognises the rights of women, but also suggests ways to prevent future abuse and provide assistance to abused women.

2.3 South Africa's Obligations under International Law

Apart from international law offering a legal foundation for violence against women, in terms of section 39 of the South African Constitution, South African courts are required to have regard for all sources of international law when interpreting the BOR, including general treaties, customs, general principles of

law, the writing of jurists, and the decisions of international and municipal courts recognised by Article 38 (1) of the statutes of the International Court of Justice (Dugard, 1994). However, the court's inquiry is not limited to treaties that South Africa is a party to, as confirmed by Justice Chaskalso in the case of *S v Makwanyane and another, 1995 (3) SA 391 (CC)*, who states that public international law would include binding and non-binding law. In other words, the court may inquire into treaties that South Africa is party to or rules of customary international law that have been accepted by the courts (Combrinck, 1998) as well as treaties that South Africa is not a party to, such as the European and American Convention on Human Rights (Mubangizi, 2004).

International law is not confined to an interpretation of the BOR, but also extends to the interpretation of legislation. Section 233 of the Constitution of the Republic of South Africa (Act 108 of 1996) (RSA, 1996) states that "when interpreting any legislation, every court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law." This means that, when interpreting legislation, regard must be given to international law, and such interpretation needs to be consistent with international law. The standards set by international law not only play a significant role in South African courts and legislation in terms of violence against women, but women rights activists and non-government organisations (NGOs) also use it as a benchmark for assessing government efforts to prevent, eliminate and redress violence against women (United Nations Division for Women, 2006). The next section will look at treaty bodies, declarations and conference documents relating to women. South Africa is bound to redress violence against women by ratification of these documents as well as to other documents that South Africa is committed to.

2.4 Women's Rights under International Law

The promotion of women's rights as a human right began when the United Nations (UN) established the Commission on the Status of Women (CSW) in 1946 (Meyersfeld, 2010). The CSW defined and elaborated the general guarantees of non-discrimination against women which resulted in a number of important declarations and conventions relating to the human rights of women (UN Women, 2009). For example, the Declaration of the Elimination of Discrimination against Women (the Declaration) (United Nations General Assembly, 1967) was adopted in 1967 (Freeman, Chinkin & Rudolf, 2012), and this document adopted a liberal approach to women's rights. This Declaration established international standards that articulated the equal rights of both men and women. The Declaration declared discrimination against women as an offence against human dignity (article 1) and states that appropriate measures shall be taken to established to offer equal protection of rights to men and

women (article 2). Article 2 further provided that the principle of equality was to be embodied in the Constitution and that appropriate measures should be taken to ensure equal rights for women to that of men in particular areas such as nationality (article 5), education (article 9), and marriage (article 10). Governments and NGOs were urged to promote the implementation of the principles of the Declaration (article 11). However, this Declaration was not a treaty, and therefore it did not have binding force. Thus, to give binding force to the Declaration, the Convention of Elimination of all Forms of Discrimination against Women (the Women's Convention) was adopted by the General Assembly in 1979 and entered into force on 3 September 1981 (United Nations General Assembly, 1979).

The Women's Convention is regarded as the "definitive international document on the human rights of women" (Pithey et al., 1999). It addresses gender-based discrimination that has the effect or purpose of impairing the enjoyment of human rights. The Women's Convention presents the foundation of equality between women and men by obligating state parties to take appropriate measures to ensure, for example, access to and equal opportunities for women in political and public life, including the right to vote and stand for election (article 7), education (article 10), employment (article 11), and health (article 12). The Women's Convention consists of a Preamble and 30 articles and recognises that discrimination is related to gender (Johnson, Ollus & Nevala, 2007). Article 1 of the Women's Convention defines discrimination against women as "any distinction, exclusion or restriction" based on sex, "which has the effect of impairing or nullifying the recognition, enjoyment or exercise by women, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." State parties are required, in terms of article 2 of the Women's Convention, to embody the principle of equality in national constitutions or other appropriate legislation, to adopt legislation and other measures to prohibit discrimination against women, to establish equal legal protection of rights, and to take appropriate measures to eliminate discrimination against women. The UN Women (2009) recognises the Women's Convention to be the only human rights treaty that affirms the reproductive rights of women and that targets culture and tradition as influential forces shaping gender roles and family relations.

As of January 2013, 196 states ratified the Women's Convention (United Nations Human Rights Watch, 2013). By ratifying the Women's Convention, states committed themselves to taking appropriate measures to end discrimination against women in all forms, including incorporating the principle of equality of men and women; abolishing discriminatory laws and practices; establishing institutions to ensure effective protection of women against discrimination; and ensuring the elimination of all forms of discrimination against women by persons, organisations or enterprises (UN Women, 2009; Mandy,

1995). While many states have signed and ratified the Women's Convention, two key deficiencies have been identified by Meyersfeld (2010): 1) the number of reservations that have been entered in relation to its seminal provisions; and 2) the omission by the Women's Convention to address violence against women. The latter has to some extent been remedied by the Committee on the Elimination of All Forms of Discrimination against Women: General Recommendation Number 19, as will be discussed below. A reservation is a "unilateral statement made by a state whereby it excludes or modifies the legal effect of certain provisions of the treaty" (Meyersfeld, 2010). This means that when states are allowed to enter reservations to its own obligations, it can affect the benefit of the treaty for the individuals in question. Although the 1969 Vienna Convention on the Law of Treaties provides that reservations may not be made "incompatible with the object and purpose of the treaty," some states such as Algeria, Bangladesh and Egypt have entered reservations against the Convention's core provisions such as nationality, legal capacity, and equality in the family (Meyersfeld, 2010; Freeman, 2009; UN Women, 2009; Cook, 1994). Thus, while a treaty may prohibit discrimination against women, member states may actively and openly discriminate against women (Meyersfeld, 2010). States entering into their own obligations may therefore effect the protection of women.

In 1982, the Women's Convention established the Committee on the Elimination of All Forms of Discrimination against Women (the Committee) (United Nations General Assembly, 1982) as a monitoring body responsible for ensuring the proper and effective implementation of the Convention. In terms of article 18 of the Women's Convention, states are obligated to submit a report on the implementation of the Women's Convention within one year of entry into force and thereafter every four years or on the request of the Committee. The report allows the Committee to monitor the progress of the status of women in those countries that are party to the convention (Inter-parliamentary Union, 2003). In 1989, the Committee became aware of the high incidences of violence against women in all countries (UN Women, 2009). However, the Women's Convention did not explicitly include language on violence against women (Htun & Weldon, 2012; Advocates on Human Rights, 2010). While article 2 is interpreted as covering violence against women, the Women's Convention does not specifically prohibit violence against women, nor does it display any clear responsibility on state parties to take action to reduce it (Blum & Kelly, 2001; Pithey et al., 1999; Combrinck, 1998; Cook, 1994). Thus, to rectify the omission of gender-based violence, the Committee adopted General Recommendation Number 19 in 1992 to address gender-based violence as a form of discrimination (Advocates for Human Rights, 2010; Penn & Nardos, 2003).

General Recommendation Number 19 (United Nations General Assembly, 1992) provides a definition of discrimination under the Women's Convention to include gender-based violence, such as violence that is directed against a woman because she is a woman, or that affects women disproportionately. Violence against women includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty (paragraph 6). General Recommendation Number 19 also confirms that gender-based violence impairs or nullifies the enjoyment of fundamental human rights of women, including the right to life, not to be subjected to degrading treatment or punishment, equal protection by the law, liberty, family, physical and mental health, and favourable working conditions (paragraph 7). It further provides the responsibilities of states for violence against women perpetrated by both public and private acts. Paragraph 9 confirms that states may be responsible for private acts if they fail to act with due diligence to prevent violations of rights; investigate acts of violence; punish acts of violence; and provide compensation.

The Recommendation requests state parties to take appropriate and effective measures to end all forms of gender-based violence, whether such violence is perpetrated by a public or private act. Such measures include undertaking research to identify the nature and extent of attitudes, customs and practices that perpetuate violence against women and the kinds of violence that results from it (paragraph 24). This includes compiling of statistics and research on the extent and causes of violence and the effectiveness of measures to prevent violence against women.

By adopting General Recommendation Number 19, the Committee formed the basis for the prohibition of violence against women in the Convention, and obliged states to report on the measures they are taking to combat violence against women (Pickup, William & Sweetman, 2001). General Recommendation Number 19 forms the basis for the Declaration of the Elimination of Violence against Women and is seen to have brought violence against women to the forefront of international law (Meyersfeld, 2010).

In 1993, the General Assembly adopted the United Nations Declaration on the Elimination of Violence against Women (Violence Declaration) (United Nations General Assembly, 1993a). The Violence Declaration is regarded as the first international human rights document exclusively intended to deal with violence against women and the first to arrive at an internationally agreed definition of violence against women (Johnson, Ollus & Nevala, 2007; Penn & Nardos, 2003). Although it is a nonbinding treaty, it sets out a common international standard that states should abide by (Pithey et al., 1999; Combrinck, 1998). The Preamble of the Violence Declaration declares that violence against women is the result of the "historically unequal power relations between men and women, which have lead to

domination over and discrimination against women by men and prevention of the full advancement of women." This subordination of women is regarded as the principle cause of domestic violence (Advocates for Human Rights, 2003).

The Violence Declaration consists of a Preamble and 6 articles. Article 1 defines violence against women as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life." The Declaration enables women to enjoy fundamental human rights such as the right to physical and psychological integrity and safety (Penn & Nardos, 2003). Article 2 articulates specific instances in which violence may occur, including when it occurs within the family, the general community, and when violence is condoned and perpetrated by the state. Article 4 mirrors the measures set out in General Recommendation Number 19 that oblige states to make the justice system accessible to injured women, and require states to take any necessary measures to eliminate violence against women and to exercise due diligence to prevent, investigate and punish acts of violence against women. Furthermore, article 4 obliges noncompliant states to ratify the Convention and further compels states to include information regarding violence against women and the measures taken to implement the Violence Declaration in their submission of reports as required under relevant human rights instruments (Combrinck, 1998). However, the Violence Declaration's authority is limited as it does not have binding power; nonetheless, it provides a solid foundation from which states are to take action to eliminate violence against women at all levels (Meyersfeld, 2010).

The World Conference on Human Rights held in Vienna in 1993 recognised that violence against women is an abuse of women's human rights. The Conference ended with the adoption of the Vienna Declaration and Programme of Action (Vienna Declaration) (United Nations General Assembly, 1993b) in 1993. For the first time, many governments officially recognised that women's rights are human rights (Reichert, 2011). The Vienna Declaration's fundamental significance is the recognition that the human rights of women are an inalienable, integral and indivisible part of universal human rights (paragraph 18). It was also recognised that gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are acknowledged as incompatible with the dignity and worth of a human person and thus must be eliminated. The Vienna Declaration stresses the importance of working towards the elimination of violence against women in both public and private life (paragraph 38). Paragraph 27 declares that every state should provide an effective framework of remedies to redress human rights grievances or

violations. Furthermore, the Vienna Declaration recognises that when the administration of justice, including law enforcement, prosecutorial agencies, and an independent judiciary and legal profession, is in line with international standards, full and equal human rights will be realised. This human rights perspective, according to Johnson et al. (2007), expands the understanding of violence against women from being a private matter between married couples or an attack by a stranger to a broader definition that includes rape in war, violence against women in refugee camps, rape by police and military and peace keeping personnel, trafficking of women for sexual exploitation, and harmful traditional practices such as forced marriages, genital cutting, honour crimes and bride burning.

To monitor human rights violations, the United Nations Commission appointed a Special Rapporteur on Violence against Women in 1994. The Special Rapporteur is mandated to collect and analyse data on violence against women from governments, treaty bodies, specialised agencies, and other rapporteurs in order to recommend measures to be taken at international, regional and national level to eliminate all forms of violence against women and their causes, and to remedy the consequences. They are mandated to work closely with all special procedures and other human rights mechanisms of the Human Rights Council and with treaty bodies in the discharge of its function, and to continue to adopt a compressive and universal approach to the elimination of violence against women, its causes and consequences, including the causes of violence against women relating to the civil, cultural, economic, political and social spheres (Office of the High Commission for Human Rights [OHCHR], 1996-2015a; Advocates of Human Rights, 2003; Pickup et al., 2001; Manby, 1995).

The Special Rapporteur reports dealt with issues of various forms of violence against women, including violence in the family (domestic violence, torture or cruelty, inhuman and degrading treatment or punishment, women battering, marital rape, incest and forced prostitution); violence in the community (rape and sexual violence including sexual harassment, trafficking in women, violence against women migrate workers, and reproductive health); violence perpetrated and/or condoned by the State (armed conflict, custodial violence against women, refugee and internally displaced women); cultural practices in the family that are violent towards women; and gender-related killings (OHCHR, 1996-2015b). Each report conceptualised types of violence against women and provided recommendations that mainly encouraged moves to create and implement new policy procedures and laws with respect to violence against women.

Ultimately, states are required to exercise due diligence to investigate, prevent and punish crimes of violence against women. In the 1999 report, the Special Rapporteur made reference to the 1988 case of Velasquez-Rodriquez in which judgement was passed by the Inter-American Court of Human Rights

to demonstrate when a state is responsible for the failure to exercise due diligence. In this case the court found the following: “An illegal act which violates human rights and which is initially not directly imputable to the state (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the state, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention.” States are therefore responsible for illegal acts that are committed by the state or its agents as well as by private actors where the state has failed to take sufficient steps to prevent the illegal acts from occurring. States are also responsible for the failure to investigate, prosecute or punish illegal acts that have been perpetrated by a private actor. If states fail to act with due diligence to investigate, prevent and punish crimes against women, they are just as guilty as the perpetrator of the crime. According to Pickup et al. (2001), exercising due diligence tends to concentrate on legislation reform which requires a host of initiatives by states, including the training of state personnel, education, and efforts to demystify violence against women.

In the same year as the appointment of the Special Rapporteur on Violence against Women, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará, 1994) (United Nations General Assembly, 1994), a regional document was adopted by the Organisation of American States (OAS) (Moeckli, Shah, Sivakumaran & Harris, 2010; Muntarbhorn, 2007). The significance of the Convention of Belém do Pará is that it is the first legally binding international treaty focusing specifically on the eradication of violence and discrimination against women (Department of Economics and Affairs/Division for the Advancement of Women (DESA/DAW), 2010; Pithey et al., 1999; Combrinck, 1998). The Convention of Belém do Pará places a positive duty on states to protect women from violence in both public and private spheres. In terms of article 2, violence against women may include rape, battery and sexual abuse which may occur in private (a family or domestic unit or within any other interpersonal relationship), in public (within the community and is perpetrated by any person), and violence that is perpetrated or condoned by the state or its agents, regardless of where it occurs. It is made clear that violence against women is infused in every level of society as it does not discriminate between races, culture or ethnicity (Smith, 2014).

The Convention of Belém do Pará expanded the definition of violence against women by identifying violence as one of the historic impediments to sex equality and women’s right to dignity (Meyersfeld, 2010). This is affirmed by article 6 which provides that the rights of women include being free from all forms of discrimination, including stereotyped patterns of behaviour and social practices based on

concepts of inferiority or subordination. The text reflects the frustration experienced by women's groups throughout the region in terms of sexual and domestic violence (Craske & Molyneux, 2002). In order to address violence against women, state parties are required to apply due diligence to prevent, investigate and prosecute perpetrators through establishing legal procedures, including protection orders, swift trials and effective access to justice (Craske & Molyneux, 2002). If governments do not meet their commitments to the Convention of Belém do Pará, any person or NGO may file a petition to the Inter-American Commission of Human Rights in terms of article 12. The Convention of Belém do Pará also acknowledges that the implementation of legislative bodies will be effective if police and other law enforcement officials are trained and educated in the prevention, punishment and eradication of violence against women (article 8).

The Fourth World Conference on Women held in China in 1995 ended with the adoption of the Beijing Declaration and the Platform for Action (Platform for Action) (United Nations General Assembly, 1995). The Platform for Action upholds the Women's Convention, and is regarded as one of the most comprehensive human rights documents that articulate the rights of women (Penn & Nardos, 2003). The Platform for Action highlights that violence against women is a violation of women's human rights and an obstruction to the full enjoyment of human rights of women. These rights include race, language, culture, religion, disability or socio-economic class, or being indigenous people, migrants, women migrant workers, displaced women, or refugees. With the adoption of the Platform for Action, the focus shifted from state accountability to prevention and elimination of violence against women (United Nations Division for the Advancement of Women, 2006), because the Platform for Action provides strategic objectives, proposed with concrete actions to be taken by various actors (paragraph 45). Although it is a non-binding document, the success of the Platform for Action requires the commitment of governments, international organisations and institutions at all levels, and also appoints responsibility to non-government organisations (Pithey et al., 1999).

The Beijing Platform for Action adopts and adds to the definition of violence against women found in the Violence Declaration. Violence against women includes the violation of human rights of women in situations of armed conflict, in particular in systematic rape, sexual slavery, murder, and forced pregnancy (paragraph 114). Acts of violence against women also consist of forced abortion, forced sterilisation, coercive/forced use of contraceptives, prenatal sex selection, and female infanticide (paragraph 115).

The Platform for Action identified twelve critical areas of concern relating to women's human rights violation, including violence against women. In terms of violence against women, which is identified as

the fourth area of critical concern, the Platform for Action proposes three strategic objectives. The first strategic objective is forming integrated measures to prevent and eliminate violence against women. The second is to study the causes and consequences of violence against women and the effectiveness of preventive measures, and the third is to eliminate trafficking of women and to assist victims of violence as a consequence of prostitution and trafficking. In order to meet the three objectives, the Platform for Action sets out a series of actions government, NGOs and others should take to confront and combat violence against women. The proposals include: the implementation of international human rights instruments; the adoption and periodic review of legislation on violence against women; access to justice and effective remedies; policies and programmes to protect and support female victims of violence; and raising awareness through education (United Nations Division for the Advancement of Women, 2006; Advocates for Human Rights, 2003).

The objectives of the Platform for Action are reviewed every five years. During the 2000 review, it was specified that violence against women is a human rights violation and that states are responsible for addressing such violence. Furthermore, governments were asked to take appropriate measures to eliminate violence against women by any person, organisation or enterprise and to treat all forms of violence against women as a criminal offence (United Nations Division for the Advancement of Women, 2006).

In 1999, the General Assembly adopted the Optional Protocol (United Nations General Assembly, 1999) as an addendum to the Committee of the Women's Convention. The Optional Protocol created an additional procedure that allows the Committee to receive and consider individual complaints or complaints by groups of individual women from states that have accepted the Protocol that fall within the scope of the Women's Convention (Freeman et al., 2012; Advocates for Human Rights, 2010). Secondly, it created an inquiry procedure that enables the Committee to initiate inquiries into situations of grave or systematic violations of women's rights (article 8). These procedures can only be used in cases where the state is a party to the Women's Convention and Optional Protocol. It is clear that acknowledging violence against women as a human rights violation was a long process which took years to accomplish. However, as women are still being subjected to violence and sexual assault, the suggestion exists that this process has not resulted in significant change. As such, the next section provides an illumination of some notable obstacles that prevent the effective implementation of international law.

2.5 Obstacles Preventing the Effective Implementation of International Law

There has been recognisable progress in terms of women's rights in many countries; however, there are major obstacles that hinder the full implementation of international law. Though each international instrument stems from another, it lacks a sense of social change, especially by government support systems. This could very well be attributed to the failure of the law to address the deeply entrenched problem of stereotypical notions about women that are embedded in all levels of society, including marriage and the family home, the community, and the state (Johnson et al., 2007). Stereotyped assumptions, as will be addressed in Chapter 3, include the use of one's own opinion based on social interaction and cultural beliefs.

The lack of a gender-sensitive legal system that perpetuates stereotyped notions could result in inadequate response from the police, criminal justice personnel, and judicial officers (United Nations Division for the Advancement of Women, 2006). In the first instance, the failure to address this aspect suggests that all victims are not treated equally and fairly, as one victim may be perceived as less believable compared to another. Second, insufficient resources undermine the implementation of international law as it may create longer and complex court procedures and insufficient trained personnel, which may result in the victim not reporting the incident to the police or, if she does report the incident, she may withdraw her complaint at a later stage. Third, legal systems that support women are worthless if women are not aware of the rights that will empower them (Cook, 1994). This lack of knowledge not only affects the reporting stage, but may also result in the withdrawal of cases. Aligned with these barriers, it can be said that women are still denied justice.

2.6 Defining Rape under International Law

The Women's Convention and conferences for women, including the conferences held in Vienna and Beijing that were referred to above, paved the way for recognising women's rights as human rights. It was further provided, specifically by the Vienna Declaration and the Beijing Platform for Action, that violation of women's rights requires effective response. However, rape and sexual violence were not discussed in the international arena, although the prohibition of rape dates back to the Lieber Code of 1863. The protection of women is contained in the 1907 Hague Convention IV and rape as a violation of custom and a war crime was considered under the War Crimes Commission of 1919. Although the Nuremberg Tribunal did not include rape or sexual violence in its list of crimes, it was nevertheless documented by the Tribunal's Judgements which lead rape to be regarded as a crime against humanity under the Control Council Law No.10 in 1945. The Tokyo International Military Tribunal in 1946 charged

rape as a war crime under inhumane treatment, ill-treatment and failure to respect family honour. The Geneva Convention (1949) and Additional Protocols (1977), which set out fundamental rules of international humanitarian law, did not expressly list rape and sexual assault as a serious violation of international law (de Brouwer, Ku, Romken & Van der Herik, 2013; Chappell & Hill, 2006). For example, the first Geneva Convention in 1949 regarded rape and sexual assault as a form of humiliating or degrading treatment or an offence against a woman's honour. However, it was only after the creation of the International Criminal Tribunal for the former Yugoslavia (ICTY) in 1993, the International Criminal Tribunal for Rwanda (ICTR) in 1994 and the International Criminal Court (ICC) in 2000, that the development of the definition of rape, as well as the criminalisation and punishment of rape and sexual violence, was introduced.

Moreover, it was only after the establishment of the ad hoc Tribunals that rape and sexual violence began to gain stature as a criminal violation under international law (Schomburg & Peterson, 2007; Nahapetian, 1999). Article 5 (g) of the ICTY and article 3 (g) of the ICTR statute clearly mention rape as a crime against humanity (article 5). The ICTY case law further reinforces the seriousness of rape and sexual violence by establishing rape as a crime against humanity (*Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic, 2001*), as a violation and a war crime (*Prosecutor v. Anto Furundzija, 1998*), and as torture (*Prosecutor v. Zdravko Mucic aka "Pavo", Hazim Delic, Esad Landzo aka "Zenga", Zejnil Delalic, 1998*). The ICTR, referring to the landmark judgement of *Prosecutor v Jean-Paul Akayesu (1998)* in many cases, classifies sexual violence as genocide. Genocide constitutes violent acts that are committed with the intention to destroy in whole or part of a particular group (de Brouwer et al., 2013; Forsythe, 2009). Thus, the crime of rape may constitute genocide when rape and other forms of sexual violence are used as a step of destruction. The ICTR grew out of the atrocities experienced by women and children in Rwanda during which systematic rape was used as a weapon of war (de Brouwer et al., 2013; Eriksson, 2011). Thus, the statutes of the ICTY and ICTR state that rape constitutes a crime against humanity, and that it is crime during war, torture and genocide.

The ICTY and the ICTR simultaneously developed the definition of rape that was absent from international treaties and conventions. However, the challenge was to develop a definition that would cover the specific conditions of the international criminal law that took into account the interest of the victims as well as the rights of the accused to a fair trial (Schomburg & Peterson, 2007). International criminal law establishes criminal responsibility of individuals for their violations of international law that constitute international crimes (Brown, 2011). In assessing the definition and elements of rape, *Akayesu (1998), Furundzija (1998)* and *Kunarac (2001)* are cases in point. The *Akayesu* case was a

landmark judgement that established the initial definition of rape. The Tribunal in the case of *Akayesu* redefined the crime of rape as a form of aggression, arguing that the central elements of rape cannot be captured in a mechanical description of objects and body parts. Accordingly, the Tribunal defined rape as "a physical invasion of a sexual nature, committed on a person under circumstances which are coercive." This act must be committed: (a) as part of a wide-spread or systematic attack; (b) on a member of a civilian population; and (c) on certain catalogued discriminatory grounds, namely national, ethnic, political, racial, or religious grounds. The Tribunal further acknowledged that rape, like torture, is a violation of personal dignity and that rape constitutes torture when inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity, and where rape, like torture, is used for purposes such as intimidation, degradation, humiliation, discrimination, punishment, control, or destruction of a person. Thus, according to the Tribunal, rape and sexual violence were conceptualised as an expression of aggression rather than limiting it to the physical invasion of body parts. The Trail Chamber in the *1998 Delalic* case agreed with the definition provided by the *Akayesu* judgement and considers rape to constitute a physical invasion of a sexual nature, committed on a person under circumstances that are coercive. Although the Trial Chamber's definition of rape is gender-neutral, it does not address the elements of lack of consent or *mens rea* that is the criminal intention of the perpetrator. Furthermore, the definition does not recognise the factors that contribute to coercion (Weiner, 2013).

The elements of rape were again the subject of consideration in the *Furundzija* case. The *Furundzija* judgement did not move away from the definition provided in the *Akayesu* case, but argued that it is necessary to look for principles of criminal law that are common to major legal systems of the world. As such, the Tribunal found that the *actus reus* of the crime of rape includes: "(i) sexual penetration, however slight: (a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or (b) of the mouth of the victim by the penis of the perpetrator; (ii) by coercion or force or threat of force against the victim or a third person." The elements of rape under this definition are penetration, non-consent, force and coercion. Schomburg and Peterson (2007) point out that the definition is a reformulation rather than a departure from the *Akayesu* judgment which was made clear by the Trial Chamber by stating that sexual violence includes "all serious abuses of a sexual nature inflicted upon the physical and moral integrity of a person by means of coercion, threat of force, or intimidation in a way that is degrading and humiliating for the victim's dignity." However, the Trial Chamber did not refer to other factors which would render an act of sexual penetration such as non-consent or non-voluntary involvement on the part of the victim. The Trial Chamber in the *Kunarac* case found that it was necessary to clarify the understanding of the elements in paragraph (ii) of the

Furundzija definition. Thus, the factors which will classify sexual acts as a crime of rape can be considered as falling within three broad categories: "(i) the sexual activity is accompanied by force or threat of force to the victim or a third party; (ii) the sexual activity is accompanied by force or a variety of other specified circumstances which made the victim particularly vulnerable or negated her ability to make an informed refusal; or (iii) the sexual activity occurs without the consent of the victim." This definition acknowledges the situation in which women may agree to sexual relations only in response to a threat made to, for example, her children or family members (Weiner, 2013).

The Trial Chamber in the *Kunarac* case elaborated on the second aspect of the definition of rape that was provided by the *Furundzija* judgement and accepted the first aspect. The Tribunal removed coercion or force or threat of force from the *Furundzjia* definition and outlined consent to be the basic underlying principle that constitutes rape. After considering various national law systems, the Tribunal identified the *actus reus* of the crime of rape in international law to be constituted by: "the sexual penetration, however slight: (a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or (b) of the mouth of the victim by the penis of the perpetrator; where such sexual penetration occurs without the consent of the victim." The Tribunal provided that consent is to be voluntarily as a result of the victim's free will, assessed in the context of the surrounding circumstances. These circumstances include that "the victim was put in a state of being unable to resist, was particularly vulnerable or incapable of resisting because of physical or mental incapacity, or was induced into the act by surprise or misrepresentation". On appeal, it was argued that the use of coercion or force as opposed to lack of consent was a basic element of rape. The appeal panel went on to explain the relationship between force and consent by stating that force or threat of force provide clear evidence of non-consent, but force is not an element of rape and factors other than force can entail an act of sexual penetration non-consensual or non-voluntary on the part of the victim. It is acknowledged that non-consent can be inferred from the particular circumstances of the victim, such as the use of rape as a method of war during the Yugoslavia war (de Brouwer et al., 2013). The *mens rea* includes the intention to effect this sexual penetration, and the knowledge that it occurs without the consent of the victim. The case law of the ad hoc Tribunals provided a definition of rape that is gender-neutral and that includes both women and men, recognising that men may also be victims of rape (Eriksson, 2014). The Tribunals have therefore contributed to the global entrenchment of rape and sexual violence as a crime (Bartrop, 2015).

In terms of the three landmark judgements, different approaches to defining rape have been considered and applied. It was only in the case of *Sylvestre Gacumbitsi v. The Prosecutor (Appeal Judgement)*

in 2004 that rape was classified as a crime against humanity and an act of genocide. Importantly, the question of whether non-consent is in fact an element of rape was raised and the means of proving non-consent were considered. In addressing the first question, the appeal panel adopted the definition of the *Kunarac* case which established non-consent and knowledge thereof as elements of rape and as a crime against humanity. The Prosecution therefore bears the burden of proving these elements beyond a reasonable doubt. In terms of the second question, the appeal panel held that the Prosecution could prove non-consent beyond reasonable doubt by proving the existence of coercive circumstances under which meaningful consent is not possible. As a consequence, the Trial Chamber will consider all the relevant and admissible evidence to determine whether, under the circumstances of the case, it is appropriate to conclude that non-consent is proven beyond reasonable doubt. The Trial Chamber is free to infer non-consent from the background circumstances, such as an ongoing genocide campaign or the detention of the victim. However, it is not necessary for the Prosecution to introduce evidence concerning the conduct or words of the victim or the victim's relationship to the perpetrator, and neither does the Prosecution need to introduce evidence of force. The appeal panel also held that in certain circumstances, the accused might raise reasonable doubt by introducing evidence that the victim consented. The panel upheld Rule 96 (ii) of the ad hoc tribunal's Rules of Procedure and Evidence that such evidence is inadmissible if "the victim (a) has been subjected to or threatened with or has had reason to fear violence, duress, detention or psychological oppression; or (b) reasonably believed that if the victim did not submit, another might be so subjected, threatened or put in fear." In addition, even if it admits such evidence, a Trial Chamber is free to disregard it if it concludes that, under the circumstances, the consent given was not genuinely voluntary. Knowledge of non-consent may be proven, for example, if the Prosecution establishes beyond reasonable doubt that the accused was aware, or had reason to be aware, of the coercive circumstances that undermined the possibility of genuine consent.

The tribunals have made a significant contribution to the development of international criminal law and practice and have given substance to the crime of rape (Eriksson, 2010; Forsythe, 2009). For example, in 2000 the Rome Statute of the International Criminal Court (ICC) codified the jurisprudence of the ICTY and ICTR. Under the ICC subsidiary documents (i.e., the Elements of Crimes [EOF] and the Rules of Procedures and Evidence [RPE]) the crimes governed by the ad hoc tribunals have been restated to give them greater currency and up-to-date expression (Chappell & Hill, 2006). The establishment of the ICC Statute has made a significant contribution to international law by defining the crime of rape in the international forefront as well as by advancing procedural and evidentiary matters of sexual offences.

Under the ICC Statute, rape occurs where (i) the perpetrator invades "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 the anal or genital opening of the victim with any object or any other part of the body" and (ii) where the invasion is "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 a 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". The ICC definition has several notable features. Firstly, the definition of rape is gender-neutral and secondly, the definition gives a wide discretion of the terms 'force' and 'coercion' (Weiner, 2013). The ICC definition also recognises that certain persons are incapable of giving consent to sexual activity due to, for example, age, mental or physical conditions, or infirmity (Weiner, 2013).

In terms of procedural and evidentiary chances, the ICC and the ad hoc Tribunal's RPE have abandoned the requirement of corroboration of the victim's testimony and do not permit the use of prior sexual conduct as evidence in sexual offence cases (Weiner, 2013; de Brouwer et al., 2005). Rule 96 of the ad hoc Tribunal's RPE provides that no corroboration of the victim's testimony shall be required. Rule 70 of the ICC RPE provides that consent cannot be inferred by reason of any words or conduct of the victim where force, threat of force or coercion undermines the victim's ability to give voluntary consent. Further, consent cannot be inferred by reason of silence of the victim or the lack of resistance by the victim. The credibility, character and prior sexual conduct of the victim may not be used as evidence in sexual offence cases (Rule 71). These rules imply that victims of rape are treated with utmost respect and that secondary victimisation is nowhere prevalent during the trial process. Furthermore, it seems that certain behaviour, or the lack of it, may not be used to determine consent. However, the conviction rates both nationally and internationally suggest that these rules are often flawed as the high withdrawal rate may mean that victims are not treated appropriately.

2.7 South Africa's Obligations under National Law

The first step towards achieving compliance with international law is to enact legislation as required by several international instruments, as discussed above. In South Africa, the Bill of Rights (BOR) that is entrenched in the Constitution of the Republic of South Africa (RSA, 1996) contains provisions that guarantee the rights of all individuals and includes the notion of equality between men and women (section 9) and the right to be free from all forms of violence (section 12 (c)). In order to enforce the provisions of the BOR, incorporation of national and provisional legislation is required. Instructions as to the implementation of such legislation are found in policy documents. This segment places emphasis

on legislation as well as policy that is in place in South Africa to combat violence against women, specifically rape and its effects on the conviction rate of rape within the Republic of South Africa.

2.7.1 The Constitution of the Republic of South Africa

The BOR in the Constitution of the Republic of South Africa (1996) (RSA, 1996) contains provisions which guarantee rights to all individuals. In terms of section 7 (2) of the Constitution, the state is required to "respect, protect, promote and fulfil the rights in the Bill of Rights." Although all rights in the BOR apply to women, some have greater value to women, especially when women are subjected to violence. Lotter (1996) explains that the right to be free from all forms of violence from both public and private sources can become an instrument against domestic violence. Pickup et al. (2001) point out that human rights help people identify abusive behaviour and demand change and, by identifying violence against women as a violation of human rights, activists can be provided with access to "armoury of international law." Thus, women can demand both the state's protection and recourse against violence perpetrated against them (Pickup et al., 2001). It was affirmed in the case of *Van Eeden v. the Minister of Safety and Security 2003 (1) SA 389 (SCA),* that the state has a constitutional duty to protect and fulfil all rights described in the BOR in the Constitution, which places a duty on the state to recognise its international law duty to protect women from violent crime as a form of gender-based violence.

Women's rights are further protected and promoted by the Commission for Gender Equality. Section 187 (2) of the Constitution provides that the Commission for Gender Equality has the power to "monitor, investigate, research, educate, lobby, advise and report issues concerning gender equality." According to section 187 (1), the functions of the Commission include promoting "respect for gender equality and the protection, development and attainment of gender equality." Lotter (1997) argues that, with the inception of this Commission, violence against women will be a permanent agenda of government at all levels.

The BOR reflects a major victory for women as it promotes gender equality; however, Andrews (1999) points out that referring to rights as mentioned in the BOR is only the first step towards gender equality. Sections 35 (1), (2) and (3) of the Constitution articulate the rights of arrested, detained and accused persons, but there is no similar provisions that clearly express the rights of victims. However, Pithey et al. (1999) argue that the right to equality, dignity and freedom from all forms of violence applies to victims of rape. Westmarland and Gangoli (2012) add that the right to privacy is also relevant to victims of rape.

The significance of the equality clause is that it affords women the same protection under the law as it does men. It provides that everyone is equal before the law regardless of gender, sex or religion. The SALC Report (2000) on a new sentencing framework describes the right to equality to reflect the rights of victims in criminal justice procedures. Furthermore, section 10 of the Constitution provides that every person has the right to dignity. This means that a person has a right to self-respect, modesty and mental tranquillity (Joubert, 2010). A person's dignity is violated if he/she feels humiliated as a result of another person's conduct. Examples of conduct that violates a person's dignity include indecently exposing one's body to another; inviting a woman to participate in a sexually improper act against her will; sending indecent photos to a woman; and addressing a person in a language that humiliates or disparages her (Snyman, 2008). The court explained in the case of *S v Makawanyane and Another 1995 (3) SA 391 (CC),* that the right to dignity entails the right to be treated as worthy of respect and concern.

In addition, every person has a right to privacy (section 14), and a person's right to privacy is violated if there is an unlawful intrusion into his/her private sphere (Joubert, 2010). Section 12 (1) (c) provides that "everyone has the right to freedom and security of the person, which includes the right to be free from all forms of violence from either public or private sources." According to Combrinck (2005), the right to be free from all forms of violence is particularly appropriate for victims. Although these rights may be of greater value to women, it applies to everyone and in terms of section 7 of the BOR the "state must respect, protect, promote and fulfil the rights" contained in the BOR. In addition to respecting the rights of women to be free from all forms of violence, the state should take active steps to protect their rights (Combrinck, 1998). The case of *Carmichele v The Minister of Safety and Security 2001 (4) SA 938 (CC)* affirmed that the guarantee of the right to life, dignity and freedom from all forms of violence involves a positive duty to provide appropriate protection to everyone through the laws and structures designed to afford such protection. The legislative framework that is in place in South Africa which is aimed at combating, preventing and eliminating all forms of violence against women, especially rape, will be discussed next.

2.8 South African Legislation and Policy

South Africa has extensive legislation dealing with violence against women. Legislation is useful in specifying the responsibilities of various state bodies. Violence against women is mainly addressed through three laws namely; the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (RSA, 2007), the Domestic Violence Act 116 of 1998 (RSA, 1998b), and the Criminal Procedure Act 51 of 1977 (RSA, 1977) (Combrinck & Meer, 2013). Legislation addressing the

responsibilities of criminal justice personnel relating to sexual offence and rape is reflected in the South African Police Service Act 68 of 1995 (RSA, 1995) and the National Prosecution Authority Act 32 of 1998 (RSA, 1998c). Legislation is further guided by a comprehensive policy framework with specialised units implementing those policies, such as the Family Violence, Child Protection and Sexual Offences Unit (FCS) and the Sexual Offences and Community Affairs Unit (SOCA).

2.8.1 Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (Sexual Offences Act)

The Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (Sexual Offence Act) (RSA, 2007) deals especially with all legal matters relating to sexual offences in South Africa. The Sexual Offence Act provides the SAPS with new investigative tools when investigating sexual offences; it provides courts with extra-territorial jurisdiction when hearing matters relating to sexual offences; and it provides certain services to certain victims of sexual offence so as to reduce, as far as possible, secondary victimisation. The Act regulates procedures, defences and other evidentiary matters in the prosecution and adjudication of sexual offences. Furthermore, the Act makes provisions for the adoption of national policy framework and national instructions and directive by all Government departments including, law enforcement agencies and the NPA.

The Act repealed the common law offence of rape and replaced it with a new expanded statutory offence of rape. Rape was previously narrowly defined as "unlawful, unintentional sexual intercourse with a woman without her consent." This definition excluded coerced oral sex or sodomy, penetration by objects other than a penis and the rape of men (Artz, 2011; Andrews, 1999). Section 3 of the Act amends the previous exclusions by stating that "any person ("A") who unlawfully commits an act of sexual penetration with a complainant ("B"), without the consent of B, is guilty of the offence of rape." The Act further defines penetration to include "any act which causes penetration to any extent whatsoever by – (a) the genital organs of one person into or beyond the genital organs, anus, or mouth of another person; (b) any other part of the body of one person or, any object, including any part of the body of an animal, into or beyond the genital organs or anus of another person; or (c) the genital organs of an animal, into or beyond the mouth of another person." Thus, the elements of rape are unlawful, sexual penetration without consent (Kemp, Walker, Palmer, Baqwa, Gevers, Leslie & Steynberg, 2012).

The Act stipulates that any person knowing of a sexual offence committed against a child must report the offence to the police. Their failure to do so constitutes an offence that can result in up to five years'

imprisonment. Furthermore, knowledge, or a reasonable belief, or suspicion, that a sexual offence has been committed against a person with a mental disability must also be reported to the police. However, the Act does not make provision for a person to report a sexual offence committed against a person other than a child or mentally disabled person. A separate Act (Older Persons Act 13 of 2006) (RSA, 2006) obligates persons knowing of a sexual abuse perpetrated against older persons to report such offence to the police.

Other positive developments include the amendment of certain evidentiary rules relating to evidence in sexual offence cases which is supported by the 1977 Criminal Procedure Act (RSA, 1977). For example, section 58 provides that evidence relating to previous consistent statements by a complainant shall be admissible in sexual offence proceedings, provided that the court may not draw any negative inference from the absence of such previous consistent statements. Artz (2011) points out that this significant change in the law is important as previously, the absence of such evidence, coupled with delays in reporting had a negative impact against the rape complainant during the trial. Section 59 also provides that the court may not draw any inference from the length of any delay in reporting the alleged crime. Section 60 further provides that the court may not treat evidence of a complainant in a sexual offence matter with caution. However, the court may still approach evidence with caution in cases where the complainant is a single witness (Bellengere, Palmer, Theophilopoulos, Witcher, Roberts, Melville, Picarra, Illsley, Nkutha, Naude, van der Merwe & Reddy, 2013). Ultimately, section 60 implies that the cautionary rule will not automatically apply in sexual offence cases (Bellengere et al., 2013).

The Act also makes provision for the establishment of a committee for the management of sexual offences, known as the Inter-sectoral Committee for the Management of Sexual Offence Matters. The committee consists of the Director-General of Justice and Constitutional Development (DJCD), the SAPS, the Department of Correctional Services (DCS), the Department of Social Development, the Department of Health (DH), and the National Director of Prosecutions. The committee is responsible for developing a National Policy Framework (NPF) that must include implementation of the priorities and strategies contained in the NPF. National instructions, directives and training courses dealing with sexual offences must be developed for police officials, prosecutors and medical practitioners, and must include guidelines on the investigation of sexual offences.

One of the objectives of the Act is to improve victims' experiences of the legal process; however, the Act does not address secondary victimisation of rape victims in their interaction with the criminal justice and health care process (Artz, 2011). Smythe (2002) argues that the adversarial nature of a trial process places a victim in a vulnerable position during cross-examination, which results in secondary

victimisation. The exposure to secondary victimisation within the CJS may be equally if not more traumatising than the assault itself which could lead to the failure of victims reporting the incident to the police or discontinuing with the reported case to the conclusion stage. Ultimately, a victim-centred approach is neglected especially when the Act does not make provisions for the treatment of victims.

Furthermore, sexual offence crimes are treated as crimes against the state; this means that rape victims do not have a right to a choice of legal representation and the prosecutor or the presiding officer does not have any obligation to protect the interest of the victim, which adds to secondary victimisation (Gender Health and Justice Research Unit [GHJRU], 2008). Unlike the accused who has a right to legal representation in terms of section 35 (3) (g) of the Constitution, a victim of a sexual offence does not enjoy such a right because he/she is represented by the public prosecutor. The Sexual Offences Act therefore does not make provision for rape victims to have their own legal representative. This suggests that the right to equality as entrenched under section 9 of the BOR is ignored. Artz (2011), the GHJRU (2008) and Smythe (2002) believe that the introduction of legal representation for rape victims will strengthen victims' rights and improve efficient and effective management of cases through the criminal justice process. In addition, having legal representation for rape victims can reduce secondary victimisation which may reduce the withdrawal of cases by victims. Moreover, the right to equality will be adhered to.

Artz (2011) further points out that the Act removed provisions protecting victims from confrontation with the accused and, unlike the Domestic Violence Act 116 of 1998 (RSA, 1998b), the Sexual Offence Act does not specify the legal duties of criminal justice personnel to perform specific functions in relation to rape cases. Although guidelines and functions of criminal justice personnel are set out in national directives such as the SAPS National Instruction document, such guidelines are not easily available to the public (Combrinck, 2003). With the lack of the inclusion of the duties of criminal justice personnel in the Act, victims are inadequately informed of what is expected from state officials. It seems that with the lack of adequate support systems for victims of rape, the lack of information about the criminal justice process, and the lack of representation of choice for victims, the conviction rate will continue to remain low. Artz (2011) confirms that "without legally prescribed support services and adequate information flow within the system," it is unlikely that the conviction rates will improve. However, the question is asked whether victims' experience of the system is that of support or something that added to their trauma (Artz, 2011).

2.8.2 Domestic Violence Act 116 of 1998

The Domestic Violence Act 116 of 1998 (RSA, 1998b) repealed many sections of the previous Prevention of Family Violence Act 133 of 1993 (RSA, 1993). Domestic violence is a serious problem in the South African society and its frequent occurrence is recognised in the Preamble to the Domestic Violence Act. The Preamble indicates the government's Constitutional obligations as well as international obligations under the CEDAW and the Convention on the Rights of the Child to ensure equality, freedom of security of the person, and ending violence against women. The Act provides a comprehensive definition of domestic violence which includes physical, sexual, emotional, verbal and psychological abuse, economic abuse, intimation, and harassment. Thus, the Act offers greater protection to women against violence or the threat of physical violence, or sexual, emotional, verbal, psychological or economic abuses. Sections 4 and 5 of the Act provide protection orders against perpetrators, which were not considered in the Prevention of Family Violence Act 133 of 1993 (RSA, 1993).

The Domestic Violence Act imposes a duty on the police to intervene in cases of domestic violence, and their failure to do so will constitute misconduct as stated in section 4 (a) of the Act. However, there is a perception that intervention by police in domestic violence does not comprise police work; as a result the police are seen as the weakest link in South Africa's CJS (Meyersfeld, 2010). The lack of acknowledging police responsibility with respect to domestic violence may perhaps be attributed to the lack of awareness raising and education within the police, which are not provided for in the Domestic Violence Act (Meyersfeld, 2010). The implementation of the act is also restricted by the lack of proper resource allocation, poor management of budgets, and the lack of accountability among officials. A lack of collaboration between departments, a lack of access to information for service uses, and a lack of services also contribute to this problem (Vetten, Le, Leisegang, Haken & Van der Westhuizen, 2010).

2.8.3 Criminal Procedure Act 51 of 1977

The Criminal Procedure Act (RSA, 1977) regulates matters relating to criminal proceedings in court. The Criminal Procedure Act is also complementary to the Sexual Offences Act as several provisions in it relate to the protection of witnesses and complainants. Importantly, the Act contains provisions that expressly prohibit the use of the previous sexual history of the complainant as proof of consent or to show that the complainant is less believable. Section 227 (1) explicitly prohibits the adducing of evidence relating to the character of the victim of sexual offence, and section 227 (2) prohibits adducing of any evidence as to the previous sexual experiences or conduct of the victim, unless such evidence is

granted by leave of the court or such evidence has been introduced by the prosecution. This means that the character of the victim will not be the subject of debate in court and that the victim's previous sexual history cannot be used to determine the victim's credibility.

However, the court must consider whether the evidence regarding the previous sexual experience of the victim is relevant. Section 227 (5) offers factors that must be taken into account when deciding the issue of relevance including if it is in the interest of society in encouraging the reporting of sexual offences. The court may not grant such evidence if the evidence in question is sought to support the inference that, by reason of the complainant's sexual experiences, the complainant is more likely to have consented to the offence being prosecuted, or is less worthy of belief (section 227 (6)). These reforms serve, to some extent, to accommodate some of the rights of victims. However, in line with the South African adversarial system, the rights that are displayed on paper may not be reflected in practice (Doak, 2008). This is clearly illustrated in the next chapter of this dissertation.

2.8.4 South African Police Service Act 64 of 1995 (SAPS Act)

In terms of section 205 (3) of the Constitution (RSA, 1996), the objectives of the police are to prevent, combat and investigate crime, maintain public order, protect and secure the people of the Republic and their property, and to uphold and enforce the law. The functions of the police are reinforced by section 13 (1) of the SAPS Act (RSA, 1995) which holds that, subject to the Constitution and with due regard to the fundamental rights of every person, a member "may exercise such powers and shall perform such duties and functions as are by law conferred on or assigned to a police official." Thus, once a rape complaint is reported to the police, the police are then tasked with the responsibility of investigating the case. The investigation includes evidence gathering, forensic medical examinations, and the arrest of the accused (Artz & Smythe, 2007; Kelly, 2001). The roles and responsibilities of investigating officers are dealt with by means of policy documents such as those contained in the National Instructions 3/2008 on Sexual Offences (RSA, 2008).

2.8.4.1 National Instructions 3/2008

The National Instructions 3/2008 on Sexual Offences document aims to ensure that members render a professional service to victims in respect of the investigation of sexual offences. The National Instructions document provides a step-by-step process on dealing with the victims of sexual offences. Instructions are given on how to assist victims, including informing victims of the services available to them. The National Instructions document further sets out the responsibilities of the first member on the crime scene as well as the steps to be taken to safeguard the scene. Importantly, guidelines are given

to the investigating officer on how to conduct a thorough and professional investigation in every case. It provides a 77-point checklist that details what needs to be included in the victim's statement that should be provided. The Instructions further note the purpose of the medical examination of the victim as well as the suspect. Additionally, investigators are required to prepare and assist victims for and during court proceedings. The National Instruction document is therefore detailed, providing steps on investigating procedures as well as victim assistance. However, various researchers (as will be discussed in the next chapter) have shown that the National Instructions guidelines are rarely followed (Vettern et al., 2008; Sigsworth et al., 2009).

The National Instructions document stipulates that every police station should have a copy of specified documents and that SAPS officials should familiarise themselves with the relevant legislation. However, findings from the Shikumisa Campaign conducted during the 16 days of activism (2009-2011) showed that only 17 percent of police stations had copies of all the relevant documents. Furthermore, a study by Bornman et al. (2013) showed that not all victims received all services required by law and policy. This suggests that officials lack information on how to handle victims of rape as well as on the prescribed methods of conducting investigations. The National Instructions document does not have the status of an Act of Parliament, yet officials are required to follow the guidelines set out in it (Bornman et al., 2013). This absence of the National Instructions at police stations and the fact that victims did not know what was expected from service providers support Artz's (2011) argument that the Sexual Offences Act should contain provisions indicating the function and duties of criminal justice personnel, rather than presenting these guidelines in policies that are not available or publicly accessible.

2.8.4.2 Family Violence, Child Protection and Sexual Offences (FCS) Unit

The SAPS established the Family Violence, Child Protection and Sexual Offences (FCS) unit in 1995. The FCS unit grew out of the Child Protection Unit of 1986. The unit is dedicated towards specialisation, devoted to human resources and infrastructure, and deals with the specialised management of sexual assault cases (Frank & Waterhouse, 2009). Prior to 2006, the FCS unit was placed at 'area' level, which meant that the unit was located at certain victim-friendly offices within a geographical area (Vetten, 2012). Victims did not necessarily report to the unit but reported to their local police station and a specialised detective from the unit would be called to assist the victim. The 'area' level management of the unit meant a greater distance between a police station and the unit and areas not having access to the unit resulting in general detectives investigating such cases. Thus, in 2006 the SAPS underwent major reconstruction which aimed at eliminating the 'area' level and placing

specially trained staff at provincial or station level (Westmarland & Gangoli, 2012; Frank & Waterhouse, 2009). Accordingly, police stations were clustered in groups of six stations with each cluster to be supervised by an 'accounting station' that is responsible for the administrative duties of the station cluster (Waterhouse, 2008).

The restructuring process led to confusion and various problems. For example, the restructuring process was interpreted differently by each province with some provinces maintaining the dedicated unit and locating the service at accounting stations with detectives providing a service at the police station that was located within the cluster, whereas some provinces relocated FCS detectives to station level (Waterhouse, 2008). Confusion also reigned in terms of the mandate of the FCS units. FCS detectives were mandated to investigate a variety of crimes such as attempted murder, indecent assault, and assault with intent to cause grievous bodily harm (GBH) (FCS investigating mandate, 2010). FSC detectives were therefore expected to investigate various matters while general detectives were allocated to investigate rape cases, among others (Vetten, Riba & Van Jaarsverld, 2009, cited in Vetten, 2012; Waterhouse, 2008). This led to over-worked FCS detectives and undertrained general police officers who were mandated to investigate FCS-related cases.

As of 2014, South Africa has 176 FCS units country-wide that staff 2 139 members (Wakefield, 2014). A further break-down shows that each unit consists of 12 members, or 12.1 percent. In 2013/2014, 62 649 cases of sexual offences were reported to the SAPS, which meant that each FCS detective had, on average, 29 cases to investigate, which is equivalent to two cases a month. However, the FCS mandate includes the investigations of other crimes such as indecent assault, attempted murder, and assault with intention to do grievous bodily harm. Consequently, sexual assault cases may not be given priority, or are investigated by general detectives. Unspecialised detectives investigating rape cases may negatively affect the conviction rate of rape (Vetten, 2012). FCS detective are found to be more effective when investigating cases with 36.6 percent resulting in guilty findings compared to 22.7 percent by general detectives, as demonstrated by Vetten et al. (2008). However, with a broad mandate, prioritising the crime of rape seems attainable.

In addition to the uncertainty, the problems facing the FCS units are related to service delivery and resource allocation, or lack thereof. The aim of the FCS units is to provide a sensitive, professional service endearing to victims of FCS-related crimes (FCS investigating mandate, 2010). However, the poor quality of services provided by the FCS units, coupled with a lack of resources, prevents the fulfilment of their mandated function. The restructuring process has impacted negatively on service delivery (Van Graan, 2008). The victim-friendly offices that were previously located in specific areas are

now spread out to police stations, which is not the most appreciated place for victims of sexual assault. Furthermore, although some of the victim-friendly offices are still in use and services have been extended to some new rural areas, the incorporation of additional areas causes previous areas to suffer. Moreover, this expansion of victim-friendly offices was not accompanied by specific training for detectives of sexual offences. When investigating the impact of restructuring on the FCS units, Van Graan (2008) found that members at police stations were not trained or equipped and not sensitised to render an efficient service to FCS-related offences, which increased the exposure of those who already suffered secondary victimisation. Moreover, the study found that some members who were in charge of the cluster or station unit did not fully understand the process of FCS-related investigations (Frank & Waterhouse, 2009).

The resources that were previously used by FCS detectives such as cell phones and cars are now allocated to general investigators (Waterhouse, 2008). The units do not have an identifiable budget and it is unclear on how investigations are to be funded at station level (Westmarland & Gangoli, 2012). Thus, with inadequate funding and limited resources, the quality of services provided to victims will be poorly implemented, which will affect case outcomes. With a unit that is not solely dedicated to sexual offences, the conviction rates of rape will not see positive results. Although these units are seen as a positive intervention on the part of government to address the problem of high recorded rapes and low conviction rates, they are still inefficient as they face various challenges.

2.8.5 National Prosecution Authority Act 32 of 1998 (NPA Act)

The National Prosecution Authority (NPA) Act (RSA, 1998c) provides for the powers, functions and duties of members of the prosecution authority. Section 20 (1) of the NPA Act provides that the power, as contemplated in section 179 (2) of the Constitution, includes instituting criminal proceedings on behalf of the state and carrying out any necessary functions incidental to instituting a criminal proceeding, including discontinuing criminal proceedings. Unlike the police who have to investigate every reported case, the prosecution authority has discretionary power to decide on pursuing a case or discontinuing a case (Matthews, 2009). The manner in which prosecutors should exercise their discretion is set out in the Prosecution Policy.

2.8.5.1 Prosecution Policy (2013)

The Prosecution Policy (revision date 2013) (NPA, 2013b) serves to guide prosecutors in the way they should exercise their discretionary powers, carry out their duties, and perform their functions. Accordingly, prosecutors' discretion can be exercised at specific stages of the criminal process,

including whether or not to pursue a case, whether or not to withdraw charges or stop prosecution, whether or not to enter into a plea or sentence agreement, which evidence to present during the trial, and the decision whether or not to appeal to a higher court. In deciding whether or not to institute criminal proceedings against an accused person, prosecutors must assess whether there is sufficient and admissible evidence to provide a reasonable prospect of a positive case outcome, and if there is no reasonable chance of a conviction, the prosecution should not commence with the case, or stop the proceedings.

The policy holds that prosecutors need to be objective in their assessments. Prosecutors must therefore consult with prospective witnesses in order to evaluate their reliability. The policy further provides for factors that need to be considered when evaluating evidence. These include assessing the strength of the case for the state, evidence that will be admissible, credibility of state witnesses, reliability of evidence, availability of evidence, and the strength of the defence case. Although the Prosecution Policy sets out the manner in which prosecutors should exercise their powers, barriers in the implementation of their function exist, and such barriers include limited prosecutor capacity, time constraints, and pressure to reduce the number of cases enrolled in court (Matthews, 2009). Further barriers are discussed in the subsequent chapter.

2.8.5.2 Sexual Offences and Community Affairs (SOCA) Unit

The NPA is primarily responsible for the actual prosecution of cases, whereas the Sexual Offences and Community Affairs Unit (SOCA) is concerned with determining and implementing policy through sensitisation and scientific functional training for the prosecution of sexual offences (Westmarland & Geetanjali, 2012; SOCA Unit Annual Report, 2008). The NPA established the SOCA unit in October 1999.

The unit consists of four sections, namely the Sexual Offence section; the Domestic Violence section; the Maintenance section; and the Child Justice section. The aim of the unit is to eradicate all forms of gender-based violence against women and children by enhancing the capacity to prosecute sexual offences and domestic violence (NPA, 2008a). The unit therefore focuses on facilitating and formulating research techniques, developing and implementing community awareness programmes and plans for the participation of non-government organisations (NGOs), and developing training programmes and mechanisms for the prosecution of sexual offences, domestic violence and maintenance cases, as well as for managing young offenders (NPA, 2008b).

The objective of the unit is to improve the conviction rates for sexual offences, to reduce secondary victimisation, and to reduce the cycle period for the finalisation of cases (NPA, 2008a) through initiatives, such as the Thuthuzela Care Centre (TCC), that operate in conjunction with the Special Sexual Offences Courts (SOCs) (Louw, 2013). Although the SOCA unit came into operation in 1999, the Crime and Criminal Justice survey of 2009 (CCJS, 2009) showed that only 18 percent (232 of their sample) knew about the SOCA unit. The results of the CCJS (2009) survey suggest that positive interventions are insignificant without acknowledging their existence. Moreover, this indicates that the NPA are inadequately equipped to educate the public of the tools available to them.

2.8.5.2.1 Thuthuzela Care Centres (TCCs)

Having recognised the difficulties victims of sexual violence experience in the criminal justice process and that this may discourage reporting or continuing with the case, the TCC initiative was launched. The NPA and the Bureau of Justice launched this initiative in Cape Town in 2000 (Combrinck & Skepu, 2003). Victims of sexual assault are more likely to seek medical care after an attack than to report the incident to the police. Therefore, by strengthening the links between the legal system and hospitals and clinics, victims seeking medical care are incorporated into the data base of sexual offence victims, which in turn will increase the number of sexual violence cases and ultimately the conviction rate (Seelinger & Mejia, 2011).

TCCs offer victims care, counselling, PEP, and legal assistance (Kapp, 2006). Two of the aims of the TCC initiative are to reduce the cycle time for finalising cases and to improve conviction rates. The centres run a multi-disciplinary project that involves the police, medical personnel, social workers, prosecutors, and volunteers (Artz, Smythe & Leggett, 2004). The Thuthuzela project is led by the NPA's SOCA unit in partnership with various departments and donors. This cooperative support structure recognises the urgent need for an integrated strategy for preventing sexual offences and for providing support to victims of sexual offences (Bornman et al., 2013). One of SOCA's main triumphs in ensuring government's obligation to fight against sexual offences and gender-based violence is the establishment of the TCCs (Burger, 2011).

TCCs are located in public hospitals and are operational 24 hours a day (Schenck-Gustafsson, DeCola, Pfaff & Pisetsky, 2012). The centres have a trained investigator on staff, and are directly linked to a specialised court that tries sexual violence cases. The link between specialised courts and the TCCs is to support speedier, more sensitive and effective prosecutions. The HEAL Africa hospital in the Democratic Republic of the Congo (DRC) offers similar services to victims of sexual violence; however,

the facility does not offer a direct link to specialised sexual offence courts. Nonetheless, Seelinger et al. (2011) recognise that HEAL Africa has increased prosecution more than tenfold from 2008 to 2009.

Seelinger et al. (2011) argue that the advantages of these integrated models include education about the legal system and emotional, psychological and practical assistance for the victims, resulting in their cases moving into the legal system. Moreover, the proper collection of evidence needed for any eventual prosecution is facilitated through this system. Bornman et al. (2013) acknowledge that the TCC initiative is not mentioned in any relevant laws and policies, which puts the sustainability of the centres in the current rapidly changing political and economic environment into question. However, the TCC concept is recognised by the UN General Assembly as a "world best-practice model" in the field of gender-violence management and response (Burger, 2011).

There are 52 TCC centres in South Africa, with seven of those still being established at the time of the study. In KZN there are seven centres, two of which were still being established by 2013 (Bornman et al., 2013). The establishment of these centres has seen some positive results; for example, the Nthabiseng centre in Soweto, Gauteng Province, has seen a reduction in trial completion time of 7.5 months compared to the national average of 2 years (Schenck-Gustafsson et al., 2012). The Nthabiseng centre has also seen an increase in conviction rates, which have reached 84-89 percent (Schenck-Gustafsson, et al. 2012). The Nthabiseng centre also saw an increase in conviction rates which reached 84-89 percent (Schenck-Gustafsson et al., 2012). The 2012/2013 annual statistics for cases reported at the TCCs showed an average of 61 percent increase of the conviction rate for the second quarter of 2013. However, if a report-based approach is used to determine the rate, the conviction rate will be only 6.97 percent (Mazars, Mofolo, Jewkes & Shamu, 2013), suggesting that there are other deficiencies in the CJS. Further, a report-based approach is absent, suggesting that a joint responsibility to combat this phenomenon is lacking.

2.8.5.2.2 Sexual Offence Courts (SOCs)

The first Sexual Offence Court (SOC) was established in the Wynberg Regional Court in Cape Town in 1993. This was an innovated measure to improve the adjudication of sexual offences (Walker, 2002). The objective of the court was to improve sensitive treatment of victims in the CJS through following a victim-centred approach. It also aimed to establish a coordinated and integrated approach among all role players who dealt with sexual offences. Further objectives were to improve the reporting, investigation and prosecution of sexual offences as well as the conviction rates for sexual offence cases (Stanton, Lochrenber & Mukasa, 1997). The establishment of the court showed a conviction rate

of up to 80 percent over a year (Ministerial Advisory Task Team on the Adjudication of Sexual Offence Matters (MATSSO), 2013). By 2005, 74 of these courts had already been established.

The 2005 Minister of Justice and Constitutional Development recognised the success of the SOCs; however, it was noted that several challenges were experienced by these courts. As a result, the SOC system was brought to a halt. The challenges included the fact that SOCs lacked a legal framework to establish and support the establishment of these courts; inadequate resources that led to many courts being blueprint non-compliant; a lack of donor funds; limited visibility of these courts in remote areas; shortage of prosecutors, intermediaries and court preparation officers; and inadequate and inconsistent provision of skills training and debriefing programmes for court personnel (MATSSO, 2013).

In 2012, the Minister of Justice and Constitutional Development mandated a Task Team (MATTSO) to investigate the viability of re-introducing the SOCs. MATSSO found that there was a dire need for the establishment of specialised courts in order to afford victims of sexual offences specialised infrastructure. Victims of sexual offences are seen as a particularly vulnerable group who have specific needs; hence the need for specialisation. MATSSO further found that the courts were in line with the objectives of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (RSA, 2007), which seeks to afford complainants of sexual offences the maximum and least traumatising protection. It was also recognised that SOCs had indeed been effective in dealing with sexual offences by reducing victim trauma and in improving reporting and conviction rates. MATSSO therefore recommended that the SOCs be re-established. It must be stated that, although the establishment of the SOCs boasts an approximate 80 percent conviction rate, such a rate is calculated based on cases that proceeded to court rather than on a report-based approach. It seems that each department operates in isolation rather than exercising a joint responsibility.

2.9 Justice-promoting Policy

The Service Charter for Victims of Crime (2004) (DOJ&CD, 2004b) and the Minimum Standards for Victims of Crime (2004) (DOJ&CD, 2004a) established the consolidation of the present legal framework for laws and policies relating to the rights of and services provided to victims of crime and violence. These are important documents that victims can use to claim their rights and to act with responsibility in ensuring the realisation of justice.

2.9.1 Service Charter for Victims of Crime (Victims Charter), 2004

The adoption of the Victims Charter is a result of international obligations and the need to realise constitutional guarantees (Rodgers, 2009). The Victims Charter was adopted in accordance with section 234 of the Constitution of the Republic of South Africa and aims to eliminate secondary victimisation in the criminal justice process; ensure that victims remain central to the criminal justice process; clarify the service standards that can be expected by and are to be accorded to victims whenever they come into contact with the CJS; and make provisions for victims' recourse when standards are not met.

The Victims Charter specifies services that must be provided to victims of crime across the CJS, including the support offered by the police and the courts. The rights of victims set out in the Victims Charter include the right to be attended to promptly and courteously, and the right to be treated with respect in terms of dignity and privacy by all members of any department, institution, agency or organisation dealing with the victim. State departments must provide victims with information on the criminal justice process. The Victims Charter also makes provisions for the right to assistance, protection, compensation and restitution. However, Artz and Smythe (2005) argue that the value and use of the Victims Charter is questionable. This is because the guidelines contained in the Charter are also found in sector-specific policies and regulations, including the National Instructions document. This suggests that the Victims Charter is not a unique document which specifically affords victims a right to recourse. Nevertheless, the Victims Charter has been described as South Africa's first attempt to empower victims through redesigning the CJS (Rodgers, 2009). Victims are able to enforce their rights found in the Victims Charter, combat secondary victimisation, be actively involved in the CJS, and be duly informed of the criminal justice process. The Minimum Standards for Victims of Crime (2004) was developed for implementing the Service Charter for Victims of Crime.

2.9.1.1 Minimum Standards for Victims of Crime (Minimum Standards), 2004

The Minimum Standards identifies those departments accountable to victims of crime in the CJS and the type of assistance each department should provide. The document is divided into four parts. Part I outlines the rights of victims of crime, part II explains the processes and responsibilities of the relevant departmental role-players in the CJS, including the trial process. Part III is regarded as the most important part of the Minimum Standards as it sets out the minimum standards of services for victims of crime, with reference to each right explained in the Victims Charter. Part IV contains various complaint mechanisms that can be used by victims of crime who are unhappy with the level of service they

receive from CJS role-players. In essence, the Minimum Standards explains the rights contained in the Victims Charter. Importantly, the Minimum Standards facilitates the implementation of the Victims Charter through detailing how the state must respond to victims of crime (Rodgers, 2009).

These justice-promoting policies serve to empower victims of sexual violence and rape. However, the low rates of rape convictions suggest that these policies are not adequately promoted and implemented. Although government recognises rape victims to be vulnerable in the justice system, the failure to adequately punish perpetrators of crime implies that the justice system is failing victims and society. Moreover, with the low rate of rape convictions it seems that the state is failing to comply with the constitutional duty to "respect, promote, and fulfil the rights" contained in the Constitution. Government is failing to take the necessary measures to protect women from violence and abuse. This is particularly so because perpetrators are free to repeat the offence, and thus the cycle of rape continues. The next part of this chapter will look at issues that are hindering the implementation of these positive interventions.

2.10 Obstacles Preventing the Effective Implementation of Legislation, Policy and Strategic Units

The presence of clear and detailed legislation in South Africa has not resulted in a significant change in the incidences of violence against women, or in sexual offences (Thorpe, 2013). This could be attributed to the lack of legislation addressing the functions and duties of criminal justice personnel. Although such duties are provided for in policy and are binding on criminal justice personnel, such policy is rarely made known to the public (Artz, 2011; Waterhouse, 2008; Combrinck, 2003). This deficiency in the law creates the impression that criminal justice personnel can impose their own methods and means of conducting their duty. One may argue that this interpretation is fuelled by socially constructed ideologies based on social learning. Moreover, and as seen in the next chapter, this construction may possibly be based on rape myths and stereotyped notions.

Policy documents can be accessed. However, it can only be accomplished by means of complicated procedures outlined in the Promotion of Access to Information Act 2 of 2000 (RSA, 2000). The use of law and legal apparatus is thus prevented when women are not aware of their rights or the remedies available to them (Meyersfked, 2010). For example, the Victims Charter is in place to help victims through the criminal justice process; however, the NPA's CCJS (2009) showed that only 17 percent of respondents in the study were aware of the Victims Charter. As such, the effectiveness and value of

justice promoting policies may be questionable where the victim and society lack knowledge of the existence of such policies (Rodgers, 2009).

According to Thorpe (2013), legislation and policy cannot address the root causes of violence against women, thus violence against women runs rampant. Just like international instruments addressing violence against women, South African legislation does not include gender-sensitive legal systems that address stereotypes of rape. Moreover, within South Africa, service delivery may be negatively affected by cultural and social norms that are imbedded in society. Thus, the perception among female victims of unsympathetic police officers, prosecutors and judges may influence their decision to find recourse in the legal system in the future (Meyersfled, 2010). Moreover, the impact of stereotyped behaviour in the justice system may also influence the decisions of police officers, prosecutors and judges when pursuing a reported rape case.

In addition, legislation and policy are poorly implemented, resulting in poor service delivery to victims of sexual offences (Thorpe, 2013). There is also no legislation regulating the provision of services that provide for the consequences for poor service delivery (Dey, Thorpe, Tilley & William, 2011). According to Meyersfled (2010), the lack of law enforcement is the "principal weakness" of the law. Although each department has comprehensive legislation and policy in place to assist victims, many victims of sexual offences experience a gap between law and implementation (Thorpe, 2013). This could be attributed to the lack of resources, limited budgets, lack of training, and a shortage of criminal justice personnel. Thus, the problem lies in execution rather than in legislation or the policy itself.

2.11 Conclusion

South African law has adopted various international standards in terms of sexual offences and rape. Both internationally and within the Republic South Africa, comprehensive legal frameworks are provided for the prevention, combating and punishment of sexual offences, including the crime of rape. Within the Republic of South Africa, attempts have been made to eliminate secondary victimisation of rape victims by introducing justice promoting policies such as the Victims Charter. To address the low rates of rape convictions, strategies such as the Thuthuzela Care Centre (TCC), Family Violence, Child Protection and Sexual Offence (FCS) Unit, and the Sexual Offences and Community Affairs (SOCA) Unit were introduced. Although these units are positive interventions, each has its own challenges and blemishes that seem to affect the rate of rape convictions. It is anticipated that, with the reintroduction of the specialised sexual offences court, the conviction rates of rape will increase. However, this optimistic view cannot be effectively achieved without the commitment of all levels of government. A

joint responsibility in ensuring that victims attain justice is a fundamental requirement. Moreover, when victims are not aware of legal remedies available to them, it impedes the effects of legal recourse. Thus, the effective implementation of law is dependent of the "human factor" rather than on how well the substantive and procedural laws of rape are written (Artz, 2011). The barriers include inadequate resources, budgets and trained personnel. Therefore, there needs to be an evaluation of implementation strategies, which can only be done once the areas of concern have been identified. In this context, the next chapter contains an illumination of literature that outlines further problem areas at a practical level.

Chapter 3

Literature Review: Rape and the Criminal Justice Process

"Rape is unlike any other sort of injury incurred by accident or neglect. Survivors of rape must bear social stigmatization which accident victims do not. Rape is not about sex; it is about anger, it is about power and it is about control. It is… 'an overwhelming life event'. It is a form of violence intended to create terror, to dominate, to control and to humiliate." Ontario Court (General Division), Canada in Klink v Regional Court Magistrate NO and Others 1996 3 BCLR 402 (E)

3.1 Introduction

As seen in the previous chapter, legislation not only criminalises rape, but also acts as a tool to eliminate such acts by providing methods of combating, eradicating and preventing the occurrence of the crime. Legislation also expounds the responsibilities of criminal justice personnel in responding to the crime of rape. Contrary to legislation and its impact on the conviction rates of rape, the literature on rape convictions also provides a substantial amount of recognition of the problem areas affecting a higher conviction rate. The present chapter therefore focuses on literature that addresses reasons for the low rates of rape convictions, specifically in terms of adult female rape. More precisely, this chapter outlines the complications of the CJS that exist both vertically and horizontally. In this chapter, I describe and explain the points of attrition and I illuminate the problem through a statistical lens. Further, this chapter will illustrate how medico-legal evidence is not as helpful as one might expect, and that the crime of rape is one that is difficult to prove. Consequently, the discussion elucidates the complexity of the crime of rape that is experienced throughout the criminal justice process. Importantly, this chapter describes the working framework of the South African adversarial legal system and I also present a discussion on the various issues that emanate from the system itself. Furthermore, social attitudes within the CJS regarding rape will be theorised to offer an understanding of the legal decision making process. In this context I will demonstrate that decisions in the legal system, with particular focus on rape cases, are influenced by cultural and social beliefs, practices and attitudes.

3.2 Key Points of Rape Attrition

In order to understand the low conviction rates of rape, it is important to distinguish where the attrition occurs and why it occurs (Vetten et al., 2008). In terms of rape conviction rates, national and international research suggests four key points of attrition with the majority of rape cases lost in the initial stages of the process (Daly & Bouhours, 2009; Vetten et al., 2008; Artz & Smythe, 2007; Kelly,

2001). The first stage in the criminal justice process is the actual report of the crime. However, according to the 2012 Victimisation survey in South Africa, 42.6 percent of sexual assault is not reported to the police. The second stage after a report is made involves the investigation of the alleged rape. At this stage of the process half of the reported rape cases are lost, with only 50 percent resulting in the arrest of the accused (Vetten et al., 2008). The next stage involves cases that are referred to the prosecution authority, followed by cases referred to court. The last stage of the process is the actual trial. Vetten, Van Jaarveld and Riba (2012) studied the attrition of rape cases in Lefaufaung in Mpumalanga, South Africa, and they illustrated that out of 120 opened adult rape cases, 59 (49.2 percent) resulted in the arrest of the accused or in the accused being asked to appear in court; 54 (45 percent) went to court where 6 cases (5 percent) commenced in a trial, of which 1 (.8 percent) ended in a conviction. It is clear that rape cases fall out at each stage of the criminal justice process, therefore the next section discusses each stage and its associated shortfalls.

3.2.1 Reporting the Crime

In terms of adult rape, victims may exercise their right to report the incident to the police or not. Victimisation surveys have indicated that less than half of sexual offence incidences are reported to the police, suggesting that barriers exist at the initial stage of the criminal justice process that prevent victims from seeking recourse in the system (Statistics South Africa, 2012). Although the accurate number of rape incidences is impossible to ascertain as victims may not always report the incident to the police or any other entity, the reasons for women not reporting rape to the police have been well documented (Du Plessis, Kagee & Maw, 2009; Artz & Smythe, 2007; Walklate, 1995).

One reason women do not report an incident of rape to the police is because of the lack of sympathy and interest shown towards rape victims (Artz & Symthe, 2007; Stanton et al., 1997). Women often feel blamed and exposed to the prejudicial attitudes of the police (Stanton et al., 1997). The skills and expertise demonstrated by police officers as investigators and evidence gatherers, as well as their treatment of complainants, are essential elements in encouraging or discouraging a victim from making a report or even continuing with a rape report to the prosecution phase (Kelly, 2001). Artz and Smythe (2007) argue that it is not only the poor treatment by the police that influences women's decision not to report a rape incident, but poor treatment by the courts and the prosecution authority also affect victims' decision to refrain from reporting a rape.

This poor treatment by officials of victims of rape can negatively impact society's judgement of the CJS, which in turn will dislodge further interaction between victims of crime and criminal justice personnel.

Other factors influencing the decision of victims not to report the incident include a lack of understanding of the sexual assault; fear of repercussion, particularly when the victim knows the offender; fear of reprisal or social isolation if family and friends support the offender; and the lack of confidence in the legal system (Vetten et al., 2008; Lievorce, 2005b; SALC, 2001; Schonteich, 1999; Frazier & Haney, 1996).

Although victims may be deterred from reporting the incident to the police, it appears that certain factors increase the likelihood of reporting the incidence to the police. These factors, according to Frazier and Haney (1996), include the severity of the assault; injuries sustained; the relationship between the victim and the offender; and their social support systems. The former factors are what scholars refer to as "rape myths" (Maier, 2014). Women who internalise rape myths were found to blame themselves for the rape, and thus they did not report the incident to the police (Koss & Harvey, 1991). Victims are also deterred from reporting the incident to the police because of emotional, psychological and social implications, which were beyond the scope of this study and will therefore not be discussed in-depth. Once a report has been made to the police, the next step involves the investigation of the alleged rape.

3.2.2 Police Stage

Once a rape incident has been reported to the police, they are liable to investigate the crime in terms of section 205 of the Constitution of the Republic of South Africa (RSA, 1996). The objective of conducting an investigation is to collect, confirm and analyse the facts of a case with the goal of producing compelling evidence for it to proceed to trial (Seelinger et al., 2011). This means that the conviction rate is largely dependent on the quality of police investigations. However, an evaluation of the SAPS 2012/2013 Annual Report revealed that only 38 percent of reported sexual assault cases had been marked as "court-ready", indicating that 62 percent of cases fell out at the investigation phase. A comparative study by Daly and Bouhours (2008) of five countries (United States, Canada, Australia, England and Wales, and Scotland) between 1970 and 2005 found that the greatest attrition occurred at the police stage, with 65 percent of rape cases reportedly dropping out at this stage.

Cases that drop out during the police stage fall into one of three categories: the case may be undetected, withdrawn, or it is categorised as "unfounded" (Schönteich, 1999). Cases are classified as undetected when a rape is believed to have occurred but the police have been unable to positively identify a suspect; the complainant is not traced after filing a complaint; or a warrant of arrest has been issued but the suspect whereabouts are not known (Sigworths et al., 2009; Waterhouse, 2008; Artz &

Smythe, 2007; SALC, 2001). Cases that go undetected are generally a result of incomplete or poor investigations by the police and a major factor in attrition of rape cases (Artz & Smythe, 2007; SALC, 2001). Research by Vetten et al. (2010, 2008) suggests that the most common reason for the failure to identify a suspect is attributed to the quality of police dockets. Fernandez (2000) argues that incomplete dockets cause delays, postponements, backlogs and withdrawals of cases that have a high probability of conviction. Artz and Smythe (2007) stress that poor quality of statement taking and investigations will affect cases being referred for prosecution. Vetten et al. (2010) found that description of the perpetrator was absent from more than 78 percent of victim statements, while Vetten et al. (2008) found that the description of the perpetrator was missing from police dockets in 74 percent of victim statements.

The research by Vetten et al. (2008) further revealed that most adult rape cases were closed by the police because the suspect could not be identified or located (i.e., 52 percent). This could arguably be related to the geographic isolation of rural areas and informal settlements due to the lack of adequate house and stress addresses. Dhlamini and Dissel (2005) explained that the lack of road names, street numbers and street lighting makes it difficult for the SAPS to trace suspects. Moreover, SAPS members complained that they are not equipped with vehicles that could easily drive into informal settlements (Dhlamini & Dissel, 2005). However, the lack of street names cannot account for more than 50 percent of unidentified suspects.

Although Annexure E of the SAPS National Instruction 3/2008 document on sexual offences provides a 77-point checklist (Annexure F) that details what needs to be included in the victim's statement, police are unaware of the procedures to follow when a rape is reported. The lack of important information contained in the police dockets not only results in the suspect not being traced, but many victims also become untraceable. Vetten et al. (2008) showed that 30 percent of victims became untraceable as a result of inadequate statements by the police. Information such as work address (75.2 percent) and contact person (85.3 percent) was omitted from the police docket. Another study by Vetten et al. (2012) found that in one in ten cases, the home address of the victim was not recorded in the police docket and in 52.8 percent of the cases the contact details of the victim had also not been recorded. Inadequate statement taking may also be a result of language barriers between the victim and the police (Artz et al., 2004).

The reference to insufficient police dockets suggests that police officials are inadequately trained to deal with rape complaints. A study conducted in 1995 by the Human Rights Watch of South Africa found that 90 percent of police officers did not know how to handle a complaint of rape. Research conducted by Barday and Combrinck (2002) found that very few investigating officers at 13 police

stations received specific training on dealing with sexual offences. Those who had received training did not undergo refresher courses, which would have been necessary to bring them up-to-date on medico-legal developments and the contents of national instructions and policy guidelines (Barday & Combrinck, 2002). Campbell, Patterson, Bybee and Dworkin (2009) also point out that police officers seldom receive counselling or have access to support systems in order to adequately deal with trauma-inducing jobs. This oversight has a negative impact on the services they provide for victims of rape. These studies suggest that police in South Africa are inadequately trained in terms of the hard skills (i.e., the technical skills) and soft skills (i.e., interpersonal skills) needed to effectively deal with the reporting, investigation and ultimate conviction for rape cases. Inexperienced and untrained police officers create a system that is tolerant to the injustices experienced by rape victims. This unfair system suggests that the state is failing to take active measures to protect and promote the rights of women.

Cases are also filtered out of the process when the case is withdrawn by the complainant or prosecution (Waterhouse, 2008; SALC, 2001). Kelly, Lovette and Regan (2005) indicated that 34 percent of victims withdrew their complaint at the early stages of the process. Vetten et al. (2008) found that 37 percent of victims withdrew their case with one in 20 victims withdrawing their complaint because they were reconciled with the accused or his family, and one in 20 victims withdrew their case because they found the proceedings too upsetting or disruptive to their lives. Other research indicated that complainants withdrew their cases because the victim was intimidated by the perpetrator; the victim was afraid of a possible negative reaction by unsupportive partners or parents; a false report had been made, victims feared the trial process; or the police persuaded the complainant to withdraw charges where the evidence was weak (SALC, 2001; Schönteich, 1999; Frazier & Haney, 1996). What is significant here is that research has shown the social and psychological impact rape has on victims and how that impacts on case outcome. Furthermore, it also confirms that the criminal justice process in itself is a daunting route to justice, and for this reason withdrawals are prevalent.

Surprisingly, studies have found that police tended to persuade victims to withdraw their complaint in line with their assessment of the 'convictability' of a case, which is based on the available evidence and if there is any hope of finding the suspect (SALC, 2001; Kerstetter, 1990). SALC (2001) notes that the fact that cases that are classified as 'undetected' reflects negatively on the police, thus they rather persuade victims to withdraw their complaint. Persuading victims to withdraw their case without an attempt to find the suspect or evidence constitutes a denial of justice for the victims and society. Moreover, one of the objectives of the police is to investigate crime as set out in section 205 of the Constitution of the Republic of South Africa (RSA, 1996). Therefore, persuading complainants to

withdraw their case is a breach of police duties and a breach of the Constitution. The court, in the landmark case of *Carmichele v Minister of Safety and Security and Another 2001 (4) SA 938 (CC),* clearly stated that the police is one of the primary agencies of the state and therefore responsible for the protection of the public in general and women and children in particular against the invasion of their fundamental rights by perpetrators of violent crime. Thus, when the police fail to honour their duties, damages may be claimed against the state. Moreover, this suggests that police are failing to protect women and children, which is not only a violation of the Constitution, but an international human rights violation as well.

'Unfounded' is the general term used for cases that are regarded as false allegations (Hazelwood & Burgess, 2009). A small percentage of cases fall in this category (SALC, 2001); for example, Vetten et al. (2010) found that 2.3 percent of cases in their study were regarded as false reports. Cases that are classified as 'unfounded' are those that, based on the victim's account of the incident and the evidence available, the police do not believe occurred. Such cases are when the police doubt that a sexual assault occurred or the evidence has revealed the complaint to be false; the victim drops the charges; the victim is unable to cooperate with the police; evidence is lacking; the victim makes inconsistent statements or was heavily intoxicated; the victim is apprehensive about the proceedings; and concerns about the outcome of the prosecution by the police (Sigsworth et al., 2009; Waterhouse, 2008; Kelly et al., 2005; Soulliere, 2005; SALC, 2001; Gregory & Lees, 1996).

Soulliere (2005) points out that the majority of the reasons for classifying a sexual assault complaint as 'unfounded' can be attributed to prosecution concerns by the police. Such concerns may comprise of insufficient evidence such as the lack of physical injury, a lack of corroborating medical evidence, the suspect not being identified, and the suspect not being apprehended. Secondly, the victim's credibility may be suspected, and this may include the inconsistency of the victim's account of the incident; delayed reporting to the police; possible ulterior motives by the victim; emotional state of the victim not being 'typical'; alcohol/drug use by the victim; the victim has a criminal record; and the victim has a history of mental illness. Third is the question of consent, which may include the lack of resistance by the victim; prior victim-offender relationship; degree of violence; victim-offender contact; risk-taking by the victim; and the victim reconsidered. Finally, additional factors may include occupational status of the victim; marital status of the victim; number of offenders; criminal record of the offender; multiple sexual acts; other criminal acts committed; and racial composition of victim-suspect dyad (Soulliere, 2005). Interestingly, some of these factors pointed out by Soulliere (2005) are based on rape myths that are

often stereotyped and become daily police practice. The following section considers some of the factors police use to exercise their discretion including typification and stereotyped assumptions.

3.2.2.1 Factors Affecting Police Investigations of Rape

The continuation of a rape report through the CJS depends on both extralegal and legal factors (Campbell, Patterson, Bybee & Dworkin, 2009; Soulliere, 2005). While some contend that extralegal factors such as victim characteristics influence police decision making (Artz, 2002; Chan, 1996), others stress that legal considerations are significant for cases to move in the CJS (LaFree, 1981; Kersetter, 1990). Kersetter (1990) argues that three primarily facts need to be established in the investigation of a rape report: first, the occurrence of sexual intercourse; second, the identity of the offender; and third, the issue of consent (Kersetter, 1990). However, Klockars and Mastrofski (1991) argue that police investigation occurs only when at least one of three elements is present. These elements are: (1) a witness - someone who can identify the offender; (2) physical evidence - trace evidence that can lead the offence to the offender; or (3) a confession - an admission by the offender. Several studies also indicate that minimum requirements for accepting a rape complaint also include the availability of evidence, a victim's creditability, and the severity of the offence (Frazier & Haney, 1996). Bhana (2009) disputes the definition of rape, claiming that it is more complicated than depending on penetration, non-consent, force and threats, and that people's views and experiences should also be considered in the definition. What can be deduced from these studies is that both legal and extralegal factors are interdependent. Extralegal factors such as trace evidence or the availability of evidence is used to determine legal factors such as the identity of the offender and sexual penetration.

Although this relationship may be compulsory, research has shown that extralegal factors go beyond trace evidence to include stereotyped notions and rape myths. These factors can be categorised into three groups: victim characteristics; eventual defence strategies; and police assessment of the situation (Artz, 2002; Chan, 1996). The first includes the use of alcohol and/or drugs by the victim, the second includes delayed reporting, previous consensual sex with the offender, previous false complaint, and concealment of important information. The third category includes physical harm to the victim, the lack of evidence and its impact on caseloads and the fear of disciplinary action for not investigating the case. Frazier and Haney (1996) also indicate factors that are associated with the decision to question a suspect, namely in cases where there was a witness when the assailant was a stranger; when penetration occurred; and when the victim was injured.

Extralegal factors on police decision are also attributed to experience and knowledge. In other words, police discretion is an aspect of everyday experiences as police officers learn a set of beliefs, values, attitudes, rules and occupational practices from one another (Schulenbery, 2006). As such, police develop theories about the people they police (Schulenbery, 2006). This contention is supported by Soulliere (2005) who suggests that police rely on typifications in making decisions. Soulliere (2005) uses Griffiths and Verdun-Jones (1994) definition of typifications that are constructs or formulations of events based on experience and involve what is 'typical' or common about routinely encountered events. Thus, police discretion is exercised by experience of events that are categorised as typical or common events. Police formulation of typical behaviour would include the victim not having contact with the suspect; the victim reporting the incident as soon as possible, as delays in reporting may lessen the victim's credibility or may lead officials to question the victim's motives; the victim will display emotion; and the victim is a stranger to the offender who used violent force and has a violent criminal history (Soulliere, 2005).

Typifications in police decision making may also extend to rape myths. Rape myths cover a range of stereotyped beliefs around rape, its victims and perpetrators (Adler & Gray, 2010). Rape myths create beliefs and attitudes about sexual assault that distort the definition of sexual assault and redirect the blame to the victim (Savino & Turvey, 2011). Several studies point out that rape myths and stereotyped assumptions influence the decision of pursuing a rape complaint (Larcombe, 2011; Daly & Bouhours, 2008; Artz & Symthe, 2007; Ullian, 2002; Frazier & Haney, 1996; Estrich, 1987). Daly and Bouhours (2008) identify factors that influence case progression through the CJS, including injuries sustained by the victim; victim resistance; use of force or a weapon; suspect's prior criminal record; and promptness in reporting the incident to the police. Similarly, Artz and Symthe (2007) found delay in reporting; characteristics of the victim such as the use of drugs and alcohol; the use of force by the perpetrator; the level of resistance by the victim; and injuries sustained by the victim to be factors influencing case advancement in the CJS. These factors not only reduce the likelihood of the case moving through the system, but are also used to 'prove' that a rape victim was in some way responsible for the rape (Campbell et al., 2009).

It is clear that both legal and extralegal factors influence police decision-making in whether to proceed with a case after a rape report or not. Similar findings to those of the studies discussed above were reflected in one of the earliest US studies by the National Institute of Law Enforcement and Criminal Justice (1976). This study found that, apart from the necessary elements of rape such as penetration and non-consent, accepting rape complaints also included the threat of force, physical proof of

penetration, the use of physical force, and evidence of resistance (Artz & Smythe, 2007). This suggests that rape myths and stereotypical notions have a long standing in the CJS both within the Republic and internationally, and in many ways influence case outcome.

Other factors limiting case progression include logistical issues such as inadequate resources, manpower, and infrastructure. The maximum number of cases a detective should investigate at a time is 20 (Stanton et al., 1997). However, Artz et al. (2004) found that in three police stations in Cape Town the detectives investigated between 27 and 300 dockets at a time, which included all types of crimes, with between 1 percent and 100 percent of cases being rape investigations. In terms of rape, the FCS units are mandated to investigate cases of rape; however their, mandate extends to the investigation of other crimes including indecent assault, attempted murder, and assault with intention to do grievous bodily harm. An extensive mandate can mean that investigating officers are not giving priority to rape cases and are heavily burdened by high caseloads. High caseloads can negatively affect a rape investigation, which negatively impacts the conviction rate. In addition to poor service delivery, understaffed and overworked police officers increase the likelihood of secondary victimisation (Campbell et al., 2009). Moreover, when investigating officers are not sensitised to rape cases, it could add to the trauma experienced by the victims. Moreover, high caseloads can have a negative impact, both physically and psychologically, on the investigating officers themselves, which in turn contaminates case investigations. This is especially prevalent as police officers seldom receive counselling or have access to support systems in order to adequately deal with their trauma-induced jobs. Again, this has a negative impact on the services provided for victims of rape (Campbell et al., 2009). This results in dissatisfied victims and the portrayal of a weak justice system that deter society from seeking justice through authorised channels.

Artz and Symthe (2008) rightfully argue that it is the system itself that contributes to high attrition at the police stage, as a lack of resources that are required by the police to thoroughly investigate a rape complaint provides an incentive to cut caseloads. It was also argued by Temkin as far back as 1999 (Temkin, 1999) that the problem is not the system or the lack of policy or guidelines, but the limited resources and experience of police officers. These limitations therefore create barriers in the continued involvement in the CJS. Thus, limited resources will continue to see police refuse cases, encourage victims to withdraw their complaints, and conduct investigations that will not lead to a positive outcome (Artz & Symthe, 2008). Moreover, undertrained and overburdened police officials are more likely to fall back on their personal opinion and stereotyped views to interpret a situation (Artz & Smythe, 2008).

Although it is evident that investigations are flawed for several reasons, including that of untrained and inexperienced police officials, this does not necessarily imply that all police officials reflect the same negative work ethics. However, a generalised opinion is formed. This generalised perception that all police officials are not conducting proper investigations contributes to the justice system being perceived as ineffective, which perpetuates the high "dark" figurers of rape. Thus conviction rates will continue to remain low and the system will continuously be seen as the last resort to justice.

3.2.3 Prosecution Stage

After the police have properly investigated a case, it is handed to the prosecution authority. The prosecution authority is then tasked with the responsibility of deciding whether the police have fully and adequately investigated the case with sufficient evident for the case to be heard in court (Matthews, 2009). At this point the prosecution authority has to exercise its discretionary power to decide whether or not to prosecute. In South Africa, prosecutorial discretion is guided by the National Prosecuting Authority policy manual (2013) (NPA, 2013b), as was discussed in the previous chapter. The policy manual advises prosecutors to consider whether there is sufficient admissible evidence to provide a reasonable prospect of a successful prosecution and, if there is no reasonable prospect of a conviction, a prosecution should not continue (Schönteich, 2001).

Consequently, prosecutors are seen to act as 'gatekeepers' (Frohmann, 1991) to the initiation of a criminal proceeding. At this stage the case may fall into one of four categories: (1) the case may be *nolle prosequi;* i.e., be withdrawn from court, struck off the court roll, or proceed to trial (Vetten et al., 2008; Artz & Symthe, 2007). A case is *nolle prosequi* when the prosecution believes that there is no reasonable prospect of instituting a successful prosecution or that there is no *prima facie* case (Artz & Symthe, 2007). According to findings by Vetten et al. (2008), the rape attrition rate of 16.1 percent of cases was *nolle prosequi,* with the greatest proportion of cases (20 percent) being withdrawn and 2.2 percent being struck of the court roll. The majority of cases was *nollied* on the basis that there was too little evidence to warrant a prosecution (25.7 percent) and 33.5 percent was withdrawn because the victim had become untraceable (Vetten et al., 2008).

According to Hazelwood and Burgess (2001), court proceedings may be mentally difficult for the victim as they have to relive the rape in a public setting. Although the court experience may be extremely traumatising for the victim, the court has to investigate every angle in order to make a sound ruling on the case. Recognising the intimidating process victims endure during the court proceedings, the reintroduction of the sexual offences court in South Africa (as discussed in Chapter 2) is an attempt to

reduce trauma or secondary victimisation of victims during the criminal justice process. The trauma experienced during court proceedings may be a contributing factor for victims to withdraw their case, or even act as a deterrent for victims to report the incident to the police.

In addition to the trauma victims face during the trial process, cases are also withdrawn due to a combination of factors such as the high number of postponements because the case may need further investigation, the docket has been lost or not brought to court, or the accused needs to obtain legal representation; witnesses fail to appear at court; the SAP 69 (which details previous convictions) is not available when needed; the victims could not be traced; the suspect's attorney fails to appear or request further time to prepare for trial; or because there is a need to obtain expert evidence (Vetten & Motelow, 2004; Van Vuuren & Van Rooyen, 1994). These studies indicate that there are a number of role players in the criminal justice process and each is dependent on the other for a successful trial. However, cases are also rejected based on procedural, circumstantial, personal obstacles and logistical issues (Artz & Symthe, 2007; Kelly, 2001). Thus, the subsequent segment will discuss the factors associated with prosecution classification of rape cases.

3.2.3.1 Factors Affecting Prosecutors' Decision to Pursue a Case of Rape

Prosecutors have two roles in the criminal justice process: one is to convince the court to convict the criminal, and the other is to decide which cases to prosecute (Ramseyer, Rasmusen & Raghav, 2008). In South Africa, the latter is governed by the 'principle of opportunity'; this means that the prosecution authority is not obligated to take on every case it becomes aware of, but rather to exercise a level of discretion on whether or not to take on a case (Schönteich, 2001). The discretionary power is rooted in section 179 (2) of the Constitution of the Republic of South Africa (RSA, 1996), which is reinforced under section 20 (1) of the NPA Act. This is in contrast to other countries, such as Italy and Sweden, where prosecutors comply with the 'principle of legality', which means that as a rule, prosecutors are obligated to prosecute all offences of which they become aware of (Schönteich, 2001; Hofer, 2000; Fernandez, 2000). In South Africa, there is no rule of law that requires prosecutors to take on every case that is brought to their attention. Such rule would impose an impossible burden on the prosecution authority and on a society interested in fair administration of justice (Schönteich, 2001). As such, a prosecutor has a duty to prosecute if there is a *prime facie* case. That is, the prosecution authority must be satisfied with the investigation of the case to such an extent that a conviction is likely. This is important because once a suspect is acquitted of a charge against him/her, the person cannot be prosecuted for the same offence, even if there is evidence indicating his/her guilt (Schönteich, 2001). Therefore, prosecutorial decision making relies on a policy of 'selective prosecutions' (Lievorce, 2004b).

Albonetti (1987) asserts that prosecutors base their decision to prosecute on rational choice models. A rational choice is made based on routine choices and predicated on the assumption that situations that worked out in the past will produce the same results in the future. A prosecutor's decision to prosecute is therefore made with a generalised preference for 'avoiding uncertainty' (Albonetti, 1987). In other words, if the foundation of the case is based on factors that are more likely to result in a conviction, prosecutors are more likely to take the case further. Thus, to avoid uncertainty, prosecutors take into account various factors before instituting a criminal proceeding, including if the case involves strangers, the use of a weapon, or if the offender had a prior conviction (Albonetti, 1987). Her study showed that having one witness or no witnesses produced a 64 percent decrease in the probability of a conviction and having corroborative evidence increased the probability of prosecution by 15 percent.

It can therefore be comprehended that the decision to prosecute is not only dependent on legal elements, but also on extralegal elements similar to the decision by the police to investigate a rape case. The Prosecution Policy Manual (2013) (NPA, 2013b) sets out factors that prosecutors should take into account when deciding whether or not to institute a prosecution. These factors include the strength of the state's case the admissibility of the state's evidence; the strength of the defence's cases; and the extent to which the prosecution will be in public interest. According to Kelly (2001), the decision to prosecute is evaluated with respect to an evidential and a public interest test. The evidential test is viewed as objective as it requires assessing what evidence is admissible, whether it is reliable, and whether the court will find the evidence and witness credible. Kelly (2001) argues that most cases are discontinued by prosecutors based on evidential grounds. Frazier and Haney's (1996) study found that the most common reason for declining cases was due to insufficient evidence. However, Kelly (2001) acknowledges that the difficulty in the process is the assessment of the complainant's credibility as a witness. This is prevalent in adult rape cases, especially when there is little or no corroborative evidence which then comes down to the victim's word against that of the defendant (Lievorce, 2004b). Spohn and Holleran (2004) further contemplate that when there is little physical evidence to link the suspect to the crime, and/or when there are no eye witnesses, the victim's character, behaviour, and credibility become an important factor in the prosecutor's decision. According to Vetten et al. (2008), assessing victim credibility is most vulnerable to misconceptions and stereotyped attitudes about rape.

Frohmann (1991) examined two techniques that prosecutors use to discredit victims' complaints: (1) discrepant accounts and (2) ulterior motives. The study argued that prosecutors develop a repertoire of knowledge about the feature of crime referred to as 'typification' as a resource to determine victim credibility. In other words, Frohmann (1991) argues that the views of how, why and where a rape

occurred are used to determine the credibility of a victim's complaint. Frohmann's (1991) research suggests that factors that undermine credibility include: personal characteristics relating to the character or reputation of the victim; risk-taking behaviour; inconsistency in the victim's account of the incident; and typifications about rape scenarios, rape reporting and post-assault behaviour. Frohmann's (1991) research further suggests that if the victim is blameless, there is a strong probability that the prosecutor will take on the case. Maschke (1997) contends that prosecutors develop the basis for ulterior motives from the knowledge they have of the victim's personal life and criminal connections. As such, prosecutors create two types of ulterior motives: those that suggest that the victim made a false rape complaint, and those that acknowledge the legitimacy of the complaint but discredit the account because of its potential for not leading to a conviction (Maschke, 1997). Spohn, Beicher and Davis-Frenzel's (2001) study findings support those of Frohmann (1991), but also suggest that factors other than typifications of rape influence prosecutors' decision. Such factors are the victim's failure to appear for a pre-file interview, his/her refusal to cooperate in the prosecution of the case, or his/her admission that the charges were fabricated. However, the study concluded that prosecutors' decision revolves around reducing uncertainty and securing convictions by incorporating beliefs about 'real' rapes and legitimate victims (Spohn et al., 2001).

Kelly (2001) argues that, in practice, prosecutors look for elements of 'discredibility' such as the personality and history of the victim that could be used to undermine her in court. As such, prosecutors tend to take on cases that fit the 'real rape' template (Kelly, 2001); i.e., where violence was used, where a stranger/s committed the act; where a weapon/s was used; or where the victim sustained injuries. These rape myths are confirmed by the findings of several studies. For example, the National Violence against Women survey in the US (2006) demonstrated that only 32 percent of reported rapes by intimate partners were prosecuted compared to 44 percent of reported rapes by non-intimates. Albonetti's 1987 study showed that cases involving strangers had an 18 percent probability of prosecution and an 84 percent probability of being prosecuted. Frazier and Haney (1996) also note that the decision to prosecute is mostly affected by the severity of the assault or threat. Albonetti (1987) found that the use of a weapon increased the probability of prosecution by 9 percent. The use of a weapon is viewed as dangerous; hence a higher probability of prosecution exists in such cases. However, contrary to popular belief, various studies have revealed that weapons are rarely used in sexual assaults, and that sexual assault results in moderate injuries (Larcombe, 2011). It appears that with such a low conviction rate currently in South Africa, weapons and physical injuries are absent and therefore few cases result in a conviction thus confirming Larcombe's (2011) argument.

Sphon and Holleran (2004) found that prosecutors are more likely to file charges where physical evidence can connect the suspect to the crime. Albonetti (1987) found that physical evidence of the rape increases the chance of prosecution by 4 percent. A more recent study by Daly and Bouhours (2009) found that the presence of injuries increases the chance of prosecution by 67 percent. Other studies have shown that prosecutors are more likely to file charges where the suspect has a prior criminal record (Spohn & Holleran, 2004). Albonetti (1987) also notes that a prior criminal record increases the likelihood of a prosecution compared to first offenders. Prosecutors also prefer cases in which the complainant was sober and unimpaired at the time of the assault and when forensic evidence is available (Lievorce, 2005a, Lievorce, 2004). An Australian study found that offenders who use drug and alcohol are more likely to be convicted (Lievore, 2005). These studies serve to confirm that extralegal factors are used to increase the probability of conviction and that, without these elements, the change in conviction rates is less likely.

Lievorce's (2004) study illustrated victim credibility to be influenced by the consistency of the victim's statements as well as the ability of the victim to recall the incident and communicate what happened. Artz and Sythme (2001) also found that consistency of victim statement to influence prosecutors' decision making. However, Pithey et al. (1999) stress that consistency in victims' statements is a serious problem. Some of the reasons given by Pithey and colleagues for the inconsistency in victims' statements include: the language barrier between the victim and the police; the quality of statement taking is extremely low and contamination of complainants' reports occur due to the stereotyped views of many police officers. These factors contribute to inconsistencies in the victims' statements because, at the time of the report, victims seldom pick up the incorrect statement written by the police officers. Contamination of victims' statements can also be attributed to the lack of trained police officers, especially in rape cases (Pithey et al., 1999). Halligan, Michael, Clark and Ehlers (2003) further note that traumatised victims are likely to recall events in a fragmented manner, which makes inconsistencies probable. Inconsistencies may also occur when victims try to hide certain facts; for example, a particularly degrading act suffered by a victim that may result in intense shame for the victim, or the use of an illegal drug that may result in the victim being treated with suspicion (Jordan, 2004). This is noteworthy as it suggests that victims themselves play an important role in achieving a conviction. However, the psychological impact rape has on the victim is neglected at the very outset of a rape report, especially when inconsistencies of victim statements become an issue at a later stage.

Other extralegal factors include logistical issues experienced by the prosecution authority. For example, high caseloads limit the amount of time available for prosecutors to consult with witnesses and prepare

them for trial (Vetten et al., 2008). The 2013/2014 NPA Annual report reported a 10.2 percent vacancy rate in South Africa, suggesting that there is a shortage of prosecutors to adequately deal with rape cases (NPA, 2014). Westmanland and Gangoli (2011) argue that a high caseload, combined with a court backlog and pressure to secure convictions, can negatively impact on cases, with only the strongest cases moving forward. The term 'strongest cases' refers to cases where evidence is readily available compared to cases where evidence needs to be found or extracted from the victims themselves, for example when the issue of consent is in dispute.

The Prosecution Policy (2013) (NPA, 2013b) advises prosecutors to probe deeper than merely relying on police dockets and to consult with prospective witnesses to evaluate their credibility. In reality, however, Matthews (2009) and Pithey et al. (1999) recognise that many prosecutors make decisions without or with minimal consultation with the victim because of limited capacity, time constraints and pressure to reduce the number of cases enrolled for trial. In many adult rape cases the probability of conviction is dependent on the ability of the victim to articulate the events and to convince the court beyond a reasonable doubt that a crime occurred (Lievore, 2004). However, with limited victim and prosecutor consultations, the complainant is under-educated in terms of what is expected of her; as a result, the complainant's testimony is often unclear, contradictory and incomplete (Pithey et al., 1999). Even if complainants do meet with the prosecutor, there is a slim chance that that prosecutor will be the legal expert to appear in court due to staff shortages (Pithey el al., 1999).

3.2.4 The Trial Stage

Cases that make in to court fall into one of four major categories: guilty, not guilty, and withdrawn in court or trial ongoing (Leggett, 2003; SALC, 2001). Hirschowits et al. (2000) found that 45.6 percent of cases were withdrawn during court proceedings. According to the SALC (2001) report, cases are frequently withdrawn in court due to insufficient evidence to warrant prosecution. A study by Vetten et al. (2008) showed that of 1 230 reported adult rape cases, only 181 (14.7 percent) commenced in trial, and that just over one in 20 cases resulted in a conviction. Vetten et al. (2008) also found that only 4.7 percent of reported adult female rape cases resulted in a guilty verdict.

Pithey et al. (1999) argue that one of the major difficulties in securing a conviction in a rape trial is that the state's evidence depends on the evidence of a single witness and, in most cases; the victim is the sole witness. Research has demonstrated that judgement of credibility is more likely to be based on extralegal factors such as personal biases and attitudes than what the witness says (Burrowes, 2013). Several studies illustrate that extralegal factors strongly influence the perceptions, values and attitudes

of presiding officers based on rape myths (Anderson, 2014; Maschkle, 1997). Taylor and Joudo (2005) studied 210 members of the public who participated in 18 mock trials. They were found to hold attitudes of how a 'real' rape victims would behave, which was strongly influenced by the demographics, beliefs, expectations and attitudes of rape victims.

It is clear that the 'real' rape template is carried through to the end of the process (Kelly, 2001). The Human Rights Watch (1995) notes that the ability of a raped woman to get justice in a South African court largely depends on whether the rape fits the court imagine of a raped woman. Judicial officers all bring their own stereotyped views to determine whether a woman fits the category of a rape victim or not (Human Rights Watch, 1995). The findings from the National Violence Women Survey in the US (2006) revealed that rapists who were intimates of the victim were 36.4 percent likely to be convicted compared to 61.9 percent of rapist who were non-intimates. This suggests that deeply rooted rape attitudes will negatively affect positive case outcomes. Moreover, with the lack of statutory reform to address the rape myths phenomenon, attitudes towards rape victims will remain the same and the conviction rates of rape will not see any improvement.

However, one cannot attribute blame solely on presiding officers attitudes towards rape victims as there are other factors that may be used to explain low conviction rates. For example, medico-legal evidence and the manner in which evidence is presented in court also affect the success rate of rape convictions. Thus, the next two sections are devoted to explain the association between medico-legal evidence and the progression of rape cases through the CJS.

3.3 Medico-legal Evidence

Medico-legal evidence forms part of evidence presented in court (Jewkes, Christofies, Vetten, Jina, Sigsworth & Loots, 2009; Feldberg, 1997) and provides corroboration of victims' allegations (Vetten et al., 2008). Medico-legal evidence is not strictly necessary to attain a conviction. However; many countries, including South Africa, rely heavily on medico-legal evidence in many cases in supporting victim's account of the incident including the assertion that coercion was used and helping to place the accused at the scene of the assault (RSA, 2005; Kim et al,. 2003). It is generally assumed that medico-legal evidence is a central feature for a conviction; however, Du Mont and White (2007:17) point out that there is "no systematic collation of scrutiny of globally available evidence" to support such an assumption. Research on the contribution of medico-legal evidence on convictions for rape cases has shown a mixed picture (Quadara, Fileborn & Parkinson, 2013; Jewkes et al., 2009).

Medico-legal evidence is collected from the victim's body to ascertain whether sexual assault occurred; to identify the perpetrator; and to establish the use of force or resistance. Such evidence can also indicate a victim's inability to consent due to the consumption of alcohol or the use of drugs, or mental incapacity (Du Mont & White, 2007). Medico-legal evidence comprises documented information about extra- and ano-genital injuries and the victim's emotional state, and also provides samples and specimens that are taken from the victim's body or clothing solely for legal purposes (Du Mont & White, 2007). This evidence usually includes body fluids (e.g., blood, urine, and semen), fibres and foreign debris (e.g., hair, fingernail scrapings, and soil); evidence of injury to the anus and/or genital organs (ano-genital injury) or to other parts of the body (extra-genital injury); clothing; and emotional presentation (Quadara et al., 2013).

In rape cases, medical evidence is often obtained from the use of a rape evidence 'kit', which consists of observations about the victim's physical and emotional state at the time of the medical examination and includes evidence of the victim's sobriety, bodily injuries that may have occurred generally in the ano-genital region, and results of analysis of specimens taken for Deoxyribonucleic Acid (DNA) (Jewkes et al., 2009; Feldberg, 1997). Information from the forensic examination, consisting of both a gynaecological and general examination, is recorded on the J88 form. Any physical evidence such as hair or semen samples is also collected and sealed in the Sexual Assault Evidence Kit (SAECK) and sent to the Forensic Science Laboratory (FSL) for analysis (Vetten et al., 2008). Vetten et al. (2008) found that in 77 percent of adult rape cases, a J88 had been completed for the victims; however, a forensic lab report after analysis had been received in only 1.6 percent of the cases. Moreover, in 16.1 percent of the cases the J88 did not have a conclusion; in other words, the J88 did not conclude whether a rape had occurred or not (Vetten et al., 2008). The objective of the FSL is to provide a service to the judicial system and to the public at large (Van der Walt, 2011). However, when this service is flawed owing to the quality and availability of results, it implies that victims are denied justice. The findings by Vetten et al. (2008) suggest two things: first, those who are responsible for collecting forensic evidence are not completing the required procedure for forensic analysis; and second, when the procedure is complied with, the laboratory is not completing the analysis.

It is important to remember that if the collection phase is flawed, the laboratories will demonstrate defective results (Omar, 2008). This suggests that in order to ensure sound results, the evidence collection phase needs to be faultless. However, Mabasa (2009) and Omar (2008) explain that various problems can be attributed to the collection phase, such as insufficiently trained forensic field workers; unavailability of doctors; poor quality samples due to environmental exposure; and an incomplete crime

kit or a delay in sending the crime kit to the laboratory. This problem is further compounded by the distance that the crime kits needs to travel to the FSL, which is based in Pretoria where all collected evidence is analysed and stored (Van der Walt & Luke, 2011). This complicates matters further as it means that all collected evidence is sent to Pretoria the Gauteng Province. Moreover, DNA cases are not immediately analysed as they are only analysed on the request of a state prosecutor (Van der Walt & Luke, 2011; Omar, 2008). Although this procedure may be substantiated by the laboratory not wasting resources on cases that are withdrawn (Omar, 2008), it does create delays in obtaining results, which contributes to the postponement of cases. In more specific time frame terms, it takes approximately 16 weeks or 120 days for a forensic analysis to be used in court (Omar, 2008). Thus, the time from which evidence is collected to it being transported and analysed creates a number of loopholes, including contamination or loss of case interest by the victim.

Prior to 1996, district surgeons were criticised for their disinterest, judgemental and insensitive approach when undertaking medical examinations. It is for this reason that the system was refurbished to allow all doctors in the public health sector to provide medical examinations on sexual assault victims. However, criticism still exists with the new system. For example, the doctors have no specific training in sexual assault care, documentation of evidence remains poor, lack of experience as doctors see very few cases each year, and the testimony and interpretation of their findings are very weak (RSA, 2005). Martin (1993), as cited in the Human Rights Watch (1995), argues that if victims are examined by trained doctors who have experience in the field and are aware of what the judiciary requires to reach a decision, the chances of conviction will substantially improve. However, steps taken to allow all doctors in the public health sector to be able to undertake medical examinations have apparently not resulted in any positive effect as South Africa's conviction rates remain low.

According to the SAPS National Instructions 3/2008 document, a health care professional will not conduct a medical examination before a report has been made and registered. This delay encourages opportunities for poor medical evidence as there will be delays in medical examinations. The Human Rights Watch (1995) describes the procedure of a rape report as cumbersome. This is because a rape victim must first travel a distance to get to the nearest police station, and must then travel again to the nearest surgeon. The distance increases when the victim is from a rural area.

Ideally, evidence should be collected within the first 72 hours after the assault; evidence can be lost if a victim bathes or even uses the bathroom before undergoing a medical examination (Seelinger et al., 2011). However, according to Campbell et al. (2008), cases exceeding 20 hours to examination were less than half as likely to progress. This suggests that the sooner a victim undergoes a medical

examination, the more likely the case will proceed. Surprisingly, Sigswoth, Jewkes and Christofides (2009) found that, after rape case had been reported to the SAPS, the police did not facilitate the victims' access to forensic examinations, which resulted in delayed or no examinations at all. This indicates that the police are not complying with their duties as imposed under the SAPS National Instructions document. Moreover, victims are deprived of the services that should be made available by government agencies and this restricts victims' right to justice.

In addition, the SAPS National Instructions document advocates that the police should visit the crime scene. The purpose of a crime scene investigation is to record the scene, to identify physical evidence, and to collect relevant biological and other potential evidence (De Wet, Oosthuizen & Visser, 2011). However, Sigsworth et al. (2009) found that police officers rarely visited the scene of a rape crime. This again suggests that police are failing to conduct their duties.

Apart from the logistical aspect of forensic evidence, other problems make the use of forensic evidence difficult. For example, DNA evidence can only be used if a DNA sample has been obtained from the victim or the crime scene, and from the suspect. Vetten et al. (2008) and Smith (2004) argue that collecting DNA evidence is meaningless without samples from both the victim and the suspect. For example, Vetten et al. (2008) found that suspects' blood had been taken in only 16.4 percent of the cases that the police examined. Without both the victim and the suspect's blood or DNA samples, the likelihood of elimination or confirmation of a suspect's involvement cannot be determined. This is problematic in cases where the suspect cannot be traced or when police officers do not visit the scene of the crime.

A second problem that relates strongly to establishing the *actus reus* of the crime is that DNA evidence can only assist in demonstrating that sexual assault occurred, but is unable to resolve the issue of consent (Quadara et al., 2013). Forensic evidence can therefore support or refute allegations of a sexual act but cannot determine the issue of consent. Additionally, medical evidence cannot prove whether intercourse actually occurred because many assaults are perpetrated by someone the victim knows intimately (Feldberg, 1997). Wilson (2013) further contends that DNA evidence is not helpful if the rape occurs on a date, between spouses or when alcohol had been consumed by the victim. Empirically, Du Mont and White's (2007) literature review of 13 studies show the effects different types of forensic evidence have on case outcome. They found that medico-legal evidence holds minimal importance to the courts and that medico-legal evidence is not always necessary to secure a conviction. This is indicative of the study's findings that indicated that only 7 to 32 percent of reported rape resulted in a conviction. Overall, DNA may very well be helpful in supporting the victim's

allegations, but it cannot prove the element of consent. However, it is important to note that forensic evidence is critical in stranger cases and where the assailant denies sexual contact (Kelly, 2001).

Although literature shows that general injuries have a strong association with case outcome, many studies have shown that women do not sustain physical injuries (Du Mont & White, 2007). This indicates that forensic evidence is not a prerequisite to acknowledge rape or obtain a conviction. However, Du Mont and White (2007) found that 44 percent of the studies that they reviewed showed a positive association between general physical injuries and case outcome, including the apprehension and interrogation of a suspect; the decision to forward a case for prosecution; and conviction and imprisonment. According to the National Sexual Assault Policy (2005) (RSA, 2005), many victims have no bodily injuries because victims are often threatened, particularly when weapons are used and the only strategy for self-protection is to offer no physical resistance. Jewkes, Vetten, Jina, Christofides, Sigsworth & Loots (2012) found that in more than half of the rape cases they reviewed, no injuries had resulted. The findings of their study showed that the majority of women do not fight against their attackers, with only 39.6 percent of victims resisting the attack. The study contradicts the common belief that women fight back against their attackers. However, when women do not strongly resist but submit in fear of severe retaliation by the rapist, the injuries sustained in the attack are very little or minor.

In the case of *S v Zuma 2006 (2) SACR 191 (W),* Dr Olivier conceded that 10 percent of women freeze during rape. In addition, Vetten et al. (2008) note that in cases where women are sexually active and have given birth, genital injuries are unlikely; consequently, injuries are less likely to be documented. According to Vetten (2000), during rape some men do not ejaculate hence do not leave their semen inside the woman's body. This is often caused by non-ejaculation which is the result of a man not having an erection, suggesting that whatever is driving him to rape it is not sexual arousal (Vetten, 2000). Others, if they ejaculate, deliberately do so outside the woman's body, ensuring that no trace of semen is left to connect them to the rape through DNA testing. There are also several other factors that influence case outcome. For example, Du Mont and White (2007) found that victim credibility or the characteristics of the assault also impact case outcome. The next part provides an insight into how forensic evidence plays a role in each stage of the criminal justice and decision-making processes.

3.3.1 Medico-legal Evidence and Police Investigation

The police stage includes forensic medical examinations (Artz & Smythe, 2007; Kelly, 2001) that are a key component of the police investigation. Forensic evidence assists the police in building their case,

and it influences investigators' perceptions of the complainant and suspect (Quadara et al. 2013). Interestingly, studies have found that a victim's agreement to submit to a medical examination influences the police to continue with the investigation and intensifies their efforts to find additional evidence (Campbell et al., 2008; Du Mont & White, 2007). According to Quadara et al. (2013), police officers are more likely to perceive a victim as credible if physical injuries are present and are then more likely to file charges. Spohn et al. (2001) found that the availability of physical evidence to collaborate the victim's account of the incident was associated with police filing charges. However, South African studies found that the presence of injuries, severe or otherwise, made no difference to the likelihood of a suspect being arrested (Jewkes et al., 2009; Vetten et al., 2008). This indicates that police in South Africa do not use the presence of physical injuries to determine whether a case should progress to the next stage. A Canadian study also found that the presence of forensic evidence was not significantly associated with laying charges (Du Mont & Mohr, 2000).

3.3.2 Medico-legal Evidence and Prosecutorial Decision Making

In order to avoid 'uncertainty', prosecutors rely on medical evidence for three purposes. The first is to provide corroboration of the victim's account of the incident, the second is to strengthen the case, and the third is when it goes to trial, it provides certainty about the victim's credibility (Quadara et al., 2013). Sphon et al. (2001) found that cases in which victims had sustained injuries were more likely to be prosecuted, but that there was no link between the presence of physical evidence and the decision to prosecute. However, Beicher and Sphon (2005) found that the presence of injury and physical evidence was related to the decision to fully prosecute. It seems that medical-legal evidence becomes more important as the case progresses.

3.3.3 Medico-legal Evidence and Victims' Decision to File a Rape Report

A medical examination can be a very difficult experience for victims of rape due to the invasive nature of the sexual assault and even the examination itself. The highly intimate nature of forensic examinations may result in secondary victimisation, which can leave victims feeling depressed, anxious, blamed and reluctant to seek further help (Campbell et al., 2008; Maier, 2008). In contrast, medical examinations can have a positive impact on victims and can leave victims feeling safe (Quadara et al., 2013). However, Quadara et al. (2013) also note that it is not clear whether forensic evidence that was collected and is available influences victims' decision to report the incident to the police.

Different types of sexual assault are associated with seeking medical examination. For example, victims of stranger sexual assault, victims who sustained injuries, verbal threats, coercion or confinement are more likely to seek forensic medical assistance after the assault (Quadara et al., 2013; Millar, Stermac & Addison, 2002). Du Mont, White and McGregor (2009) found that women seek medical examination to prove to family and friends that they had been sexually assaulted. Du Mont et al. (2009) further found that women generally seek medical examination in anticipation that justice will be served for their violation. However, research suggests that medico-legal evidence is often not associated with positive case outcome (Du Mont & White, 2007).

3.3.4 Use of Medico-legal Evidence during Trial Stage

Vetten et al. (2008) found that a conviction in adult sexual offence was three times more likely if there was a bodily injury and more than four times more likely if there was a genital injury. This suggests that bodily injury is used as collaboration of the victim's account of the incident. However, the availability of a report on DNA made no difference to the likelihood of conviction. Jewkes, et al. (2009) also found that non-genital or genital injuries and having both were strongly associated with a conviction and that DNA was not associated with conviction. This suggests that courts form their opinion based on rape myths, for example associating physical injuries to rape. In contrast, Kelly et al. (2005) found that injury had little impact on conviction. Quadara et al. (2013) note that the of use forensic medical examination in the criminal justice process is very limited and that the limited research that is available on this aspect has shown different results in terms of case progression.

In summary, Sommers and Baskin (2011:1) argue that "forensic evidence is auxiliary, occasional, and non-determinative for the majority of rape cases." This could very well be attributed to the adversarial system which South Africa is accustomed to. In an adversarial system our judges play a passive role and are expected to reach a decision based on material placed before them. They bear no responsibility for ensuring that the evidence is complete (Kelbrick, 2010). During the litigation process, DNA analysis is frequently challenged (De Wet et al., 2011). Moreover, given the associated problems with the use of forensic evidence, the defence largely rests on the issue of consent, and the most effective way to prove consent is to discredit the complainant (Larcombe, 2011). Discrediting the complainant can be achieved by means of a number of ways, for example by attacking the complainant's character, the accuracy of her memory to recall the incident, or her history of sexual abuse and violence (Larcombe, 2011). In order to understand the South African criminal process and the detrimental effects it has on conviction rates, the next segment places emphasis on the adversarial aspect of the criminal justice system.

3.4 Adversarial System of Criminal Justice

South African courts follow the Anglo-American system of adversarial litigation (Kelbrick, 2010; SALC, 2002). The objectives of the adversarial system are truth-finding, fair process and the expeditious completion of proceedings (SALC, 2002). The adversarial system is characterised by the following three features: the parties are responsible for the presentation of evidence in support of their submissions; the oral presentation of evidence where the cross-examination of parties and witnesses is emphasised; and the judicial officer is expected to play a passive role (Kelbrick, 2010). Primarily, in an adversarial system the judicial officer is a silent spectator who makes a decision based on the evidence presented by the two opposing parties: the defence and the state.

Sexual assault in South Africa is prosecuted as an offence against the state and not as a dispute between the victim and the accused (Combrinck & Skepu, 2003). Thus, victims have no conceptual role within the adversarial structure which is naturally conditioned to facilitate two parties (Doak, 2008). This means that the complainant in a sexual assault case is not directly involved in the case but acts as a state witness. The complainant therefore does not have a right to legal representation at any stage of the proceedings. Combrinck and Skepu (2003) argue that this limits the victim's right to challenge evidence presented by the prosecution, or of the defence to appeal against an acquittal or, in the event of the conviction of the accused, against the sentence imposed. Importantly, in an adversarial trial, victims are not afforded an opportunity to give their side of the story to the court in their own words, but are confined by the questions posed by the advocates (Doak, 2008). By neglecting to give victims the opportunity to present their version of the incident and the choice to legal representation is in itself an obstruction to the objective of a fair trial.

On the other hand, accused suspects have a right to legal representation which enables them to enforce their rights, although the right to legal representation may be undermined by the high cost. However, the fact that an accused may exercise certain rights, whereas the victim may not, is significant (SALC, 2002). Moreover, section 35 (3) (g) of the Constitution (RSA, 1996) entitles an accused to have a legal practitioner at the state's expense if substantial injustice would otherwise result, and to be promptly informed of this rights. This is further reflected in section 73 (2A) of the CPA. Given the low rates of rape convictions, it appears that defendants are well represented and prosecutors are inadequately prepared. It is believed that the introduction of legal representation for rape victims will strengthen victims' rights and improve efficient and effective management of cases through the criminal justice process (Artz, 2011; GHJRU, 2008; Smythe, 2002). This will further enhance the objective of a fair trial.

Theoretically, the adversarial process involves two parties that are equal; however, the objectives of truth-finding are defeated when the parties are not equally represented. This occurs when an accused cannot adequately engage in the process because he is inadequately represented or not represented at all, or when the prosecution is poorly prepared or inexperienced (SALC, 2002). This results in either a wrongful conviction or an acquittal. Two cases pointed out by the SALC (2002) illustrate this point. In the case of *S v. Siebert 1998 (1) SACR 554 (A)*, the defence counsel failed to fully inform the trial court of the circumstances of the accused for the purposes of sentencing, resulting in the sentence of imprisonment. In the case of *S v. Manicum 1998 (2) SACR 400*, the prosecutor showed a total lack of interest in the prosecution process. In the latter case the accused contradicted his plea explanation in his evidence-in-chief; however, the prosecution failed to contribute to the cross-examination to assist the magistrate to come to a verdict. These cases highlight two aspects: first, the representing parties may not be competent and may thus neglect their duties; and second, the adversarial system creates barriers preventing fair justice. The latter is true in the sense that judicial officers reach a decision based on the evidence presented by the two parties and they do not bear any responsibility to ensure the authenticity or completion of material placed before the court (Kelbrick, 2010).

A fundament feature of the adversarial system is cross-examination (Bowden, Henning & Plater, 2014). In a rape trial, the prosecution begins with the examination-in-chief which refers to the questioning of the witnesses and victim by the prosecutors. After the prosecutor has questioned the victim/witnesses, the victim/witnesses are then questioned by the defence. This process of questioning is known as cross-examination. One of the objectives of the adversarial system is truth finding and this cross-examination process is regarded as the best way to determine the truth (Doak, 2008). Adversarial theory argues that the demeanour and the ability of the victim to remain composed and relaxed during cross-examination are indicators of veracity (Doak, 2008). This perspective fails to take into consideration that the defence will seek to discredit the victim by placing the victim's character into question (Bowden et al., 2014). Moreover, this perspective neglects the psychological aspects of rape and the trial process have on victims that may undoubtedly impact victims' ability to recall past events accurately (Doak, 2008). It is evident that cross-examination is particularly harsh to vulnerable witnesses such as rape victims. Research has shown that rape victims find cross-examinations humiliating and stressful, which might lead them to change their minds about giving evidence in court (Westmarland, 2005). Thus, the objective of truth finding is distorted when victims are placed in a position in which their demeanour becomes a public display.

According to Choo (2012), the purpose of cross-examination is twofold. First, it should elicit evidence supporting the cross-examination party's version of the facts; and second, it is used to discredit the evidence of the witness. It appears that the adversarial system is unfair to the victim as it focuses on proving the innocence of the victim rather than the guilt of the accused. Although each party has the opportunity to undermine the opposing party (Doak & McGourlay, 2012), defence attorneys are skilled in the ability to confuse an honest witness and to distort the truth (SALC, 2002). This process defeats the objective of truth finding as the focus is on winning. In this context, the adversarial system weighs up the evidence produced by two parties (Doak, 2008) rather than seeking justice.

During this process of cross-examination any inconsistency made by the victim is brought to the court's attention. In an adversarial system the evidence presented in court has more value than that which has been presented earlier (Doak, McGourlay & Thomas, 2015). Therefore, if it can be shown that the victim is forgetful, uncertain or unobservant, or appears to present a different version of the incident even if it is minor details that differ from the initial statement, it is suggested that the complainant's testimony is unreliable (Bellengere et al., 2013; Temkin, 2000). Although rape memories are less clear and vivid, less detailed, less well-remembered and less recalled (Tromp, Koss, Figueredo & Tharan, 1995), the defence argues that these lapses indicate deception or inaccuracy (Ellison, 2005). This is referenced to as previous inconsistent statement. Regulated under section 190 of the CPA, previous inconsistent statements are permissible where the previous statement is relevant to the subject matter of the case (Morris, Mullier & Da Silva, 2010). The reference to previous inconsistent statements is to undermine the witness's credibility (Belllengere et al., 2013). In this manner the truth finding process is distorted when previous inconsistent statements are used to draw negative inferences. Moreover, this rule does not take into account the literature on the psychology of rape victims that indicates that giving evidence in an unfamiliar and stressful environment will surely cause an unpleasant effect on the witness's ability to recall past events accurately (Doak, 2008).

In keeping with the right of access to information (section 32 of the Constitution) and the right to be presumed innocent until proved guilty, the court in *Shabalala and Others v. Attorney-General, Transvaal 1995 (2) SACR 761 (CC)* granted access to police dockets that permitted the accused to have access to the contents of police dockets and state witnesses where the access was required for a fair trial. This meant that the defence had an advantage since police dockets were made available to them before the commencement of the trial, unless compelling reasons could be supplied not to disclose them (Bellengere et al., 2013). The defence was thus in possession of witness statements and when any deviation was shown during trial, the defence used it to attack the credibility of the witness.

Bellengere et al. (2013) acknowledge that bringing the statement and the discrepancies to the court's attention may have a profound effect on the way the court views the witness's evidence. This rule provides the defendant with an unfair advantage which compromises society's legitimate right to bring offenders to justice (Bowden et al., 2014). As such, the objective of a fair trial and truth finding in an adversarial system is again obstructed. For an equal trial, the SALC (2002) recommends that defence disclosure should be made available to the prosecution.

The defence usually draws a negative inference about the credibility of the complainant if a statement was not made to the police at the "first reasonable opportunity" (Pithey et al., 1999). It is argued that if a rape did occur, then a complaint would have been made as soon as possible (SALC, 2002; Pithey et al., 1999). Although late reporting may mean the loss of important forensic evidence which may explain the low conviction rate in itself, late reporting has a negative impact as it is a strategy used to discredit complainants (Ellison, 2005). Adler (1987) illustrated that from 81 rape cases only 38 percent of cases that had been reported late resulted in a conviction compared to 73 percent of immediate complaints that resulted in conviction.

It has been recognised that there are various psychological and social factors that may affect the immediate report of a rape (Pithey et al., 1999). However, defence attorneys still exploit the myth of delayed reporting by associating it to behaviour that is inconsistent with a 'genuine' victim, thereby succeeding in discrediting the complainant (Ellison, 2005). A genuine rape victim is a victim who fits the "real rape" template; for example, the victim does not know the offender, the victim was sober, the victim sustained injuries, the victim reported the crime soon after it occurred, and the victim fought back against the attacker or screamed for help (Burrowes, 2013; Ewing, 2009; Redondo, 1997). Although the judge in *Holtzhausen v Roodt 1997 (4) SA 766 (W)* confirmed that complainants may have valid reasons for not reporting a rape as soon as possible, whether courts conform to it is questionable (Bellengere et al., 2013; Pithey et al., 1999).

Although it appears that section 227 (2) of the CPA changed the general rule of questioning the prior sexual history of a complainant, Anderson (2000) argues that the statute does not define prior sexual history as irrelevant but rather leaves the question of relevance to the common law. Under common law, prior sexual history is relevant (Anderson, 2000). In practice, presiding officers always allow evidence of previous sexual history to determine victim credibility (SALC, 2002; Anderson, 2000). The statute is further undermined by the discretion conferred on presiding officers, since these officers who failed to exercise their discretion to exclude irrelevant previous sexual history in the past, are now required to make the decision regarding the relevance of such evidence (Pithey et al., 1999).

Introducing prior sexual history during a trial may divert the attention from the behaviour of the accused at the time of the offence to the behaviour of the complainant on earlier, unrelated occasions (SALC, 2002). Exposing the complainant's past sexual history contributes to secondary victimisation and humiliation of the complainant, which can lead to the victim withdrawing her case (Pithey et al., 1999). It is believed that the complainant, who has previously engaged in sexual activity, is more likely to consent to sexual activity on any other occasion (SALC, 2002). Furthermore, such complainants are generally regarded as untruthful and are therefore deemed unreliable witnesses (Pithey et al., 1999). This is not only unfair to the victim, but also distorts the truth finding process.

Victims who have previously reported sexual violence are less likely to see charges laid against their attacker as those earlier complaints can be recast as a history of making 'unfounded allegations' (Kelly et al., 2005). In the case of *S v Zuma 2006 (2) SACR 191 (W)*, the complainant's prior rape accusation was used to form the basis of the defence's case in court, implying that the complainant had a history of falsely accusing men of rape. A fair trial is therefore held back as the victim's innocence becomes the centre of attention rather than proving the guilt of the accused.

The objective of a fair trial is further diminished when the witness's evidence is treated with caution. Based on the assumption that the evidence of certain witnesses is unreliable, the cautionary rule requires that presiding officers to exercise caution before accepting evidence of such witnesses (Pithey et al., 1999). The rule implies that when courts are dealing with sexual offences, they are required to take cognisance of possible unreliability in a complainant's testimony because of the private nature of the crime and the various psychological and social factors that might make such evidence unreliable (Anderson, 2000).

The cautionary rule generally applies to complainants of sexual offence cases, single witnesses and children (SALC, 2002). The supreme court of appeal in *S v Jackson 1998 (1) SACR 470 (SCA),* declared the cautionary rule to be based on "irrational and outdated perceptions" and ruled that the cautionary rule should no longer be used automatically in all cases (Anderson, 2000). In *Abrahams v S 2011 ZAWCHC 77*, the court stated that the cautionary rule needs to be applied if it finds the complainant's evidence to be unreliable or contradictory. The rule is confusing and leads to uneven interpretation (SALC, 2002). While the rule arguably removes the obligation to treat complainants' evidence with caution, the discretion to do so remains (Pithey et al., 1999). The court held in *S v Jackson* that evidence in a particular case may call for a cautionary approach. Pithey et al. (1999) argue that this leaves magistrates with a broad discretion as to whether or not a particular case warrants this cautionary approach. Arguably, if the rule is applied it undermines a successful

prosecution. Combrinck (1998) further argues that this rule significantly undermines the right to be protected from sexual violence and the guarantee of equal protection of men and women under the law.

The application of the cautionary rule places the victim's evidence in an unequal position so that s/he is viewed as a suspect, while the offender's evidence is viewed with an open mind (SALC, 2002). The rule reinforces judicial stereotyped views about raped women (Human Rights Watch, 1995). The use of the cautionary rule may have a negative impact on the victim: not only does it contribute to secondary victimisation but also to the withdrawal of cases or not laying a report of rape with the police. The fact that the judicial system is made up of largely male judges further reduces the likelihood of conviction, especially when the cautionary rule is applied.

Another form of evidence that is brought to court is expert evidence. An expert witness or opinion evidence is a person who has special training, education, or experience of a particular subject (Bellengere et al., 2013; Gardner & Anderson, 2012). Expert evidence is only admissible if it can assist the court in determining the ultimate issue or if it is of material assistance to the court (Pithey et al., 1999). Types of expert evidence in rape cases include medical and psychological witnesses. Expert evidence by medical professionals is generally used to show that the medical examination was consistent with the victim's account of the incident (Kimberly, 2005). However, Kimberly (2005) stresses that medical professionals can only conclude whether there was sexual contact and/or recent trauma, but they cannot conclude whether the victim consented or give a conclusion on the degree of force.

Psychological expert evidence aids the judge in making a decision by addressing common misconceptions about rape, including rape myths (Barber, n.d). Expert evidence regarding physical health, mental health and other impacts of sexual violence can assist the adjudicator in understanding the victim's experience, demeanour, and behaviour, as well as the impact on and the complex reactions of rape victims (Seelinger et al., 2011; Ellison, 2005; Pithey et al., 1999; Barber, n.d). Although expert evidence can be used to enhance victim credibility by clearing rape myths and stereotyped assumptions about victims' behaviour before and after the incident (Pithey et al., 1999), the use of expert evidence is not always successful in diminishing rape myths and stereotyped notions that affect court judgements. For example, in the case of *S v Zuma,* expert evidence was used to explain the complainant's behaviour before, during and after the incident, but the defence was successful in using nine rape myths to discredit the victim (Barber, n.d). This suggests that defence attorneys are skilled to distort the truth by using undated beliefs and that presiding officers are more likely to hold such biased opinions and utilise those to form a decisions.

The problem with expert evidence is twofold: First, conflicting expert evidence by two or more experts occur; and second, inherent contradictions that are presented to the magistrate have to be assessed (SALC, 2002). The use of expert testimonies creates a problem since one expert methodology can be discredited by another when they question each other, in order to give the court an opportunity to validate such evidence (Van der Walt, 2001). The presiding judge can either make his own judgement of the evidence, thus discarding the testimony of one expert over the other, or simply use neither (Barber, n.d), as the presiding judge exercises broad discretionary power in determining the admissibility of expert evidence (Artz, 2002). For example, in the case of *S v Zuma*, Dr Oliver's testimony was able to discredit Dr Friedman on her choice of method by using a clinical interview as opposed to a forensic evaluation as well as by introducing the diagnosis of Post Traumatic Stress Disorder (PTSD). This confirms Doak's (2008) argument that truth finding is curtailed by the extent of party control evidence.

Within the South African adversarial system, the principle of fairness and truth finding continues to be neglected when one party receives preferential treatment (and thus benefits) while the other does not. Emphasis continues to be placed on the value of evidence presented in a public setting, such as using the demeanour of the victim and cross-examination as fact-finding tools (Doak, 2008). Thus, the defence has many opportunities to discredit the victim and to win the case. This system may very well contribute to the low rates of rape convictions as it appears to favour the accused rather than ensure a fair and equal trial. While the concept of a fair trial is fundamental, Bowden et al. (2014) argue that this extends beyond the interest of the defendant to those of witnesses and society. The concept of an adversarial system seems to be unfair to victims and society while affording defendants with an unfair advantage. This is mainly attributed to the fact that the accused has a right to legal representation, the police docket is available to the defence, and victims do not have the opportunity to present their side of the story. The adversarial structure compromises victims' and society's right to bring offenders to justice (Bowden et al., 2014). This does not mean that South Africa must become inquisitorial in nature as involving the court in the investigation phase will violate the principle of separation of powers. However, the adversarial system needs to be re-evaluated to ensure that the objectives of truth finding and fair process are met.

3.5 Theorising Rape and Social Attitudes within the Justice System

Although the public, legal officials, policy makers, and the media appear to be more sensitive to rape victims than they were in the past, attitudes that support rape and false perceptions about rape persist (Maier, 2014). This was apparent throughout my review of the literature, which suggests that historical

ideas of what constitutes be rape are still prevalent today (Geisinger, 2011). In this context, it is vital to offer a theoretical perspective in the discussion of rape and human rights. In terms of this study, a theoretical discussion will offer an understanding of whether and to what extent and how, the state holds men accountable for rape (Westmarland, 2005). According to Orenstein (2007), in rape cases conflict exists where evidence, law and ethics overlap. He further argues that this conflict can be attributed to cultural prejudice. Consequently, in order to understand the role of evidence in a rape trial, it is essential to understand "rape myths and the culture baggage" (Orenstein, 2007:1587) that exist parallel to the concept of rape. Collings (2006) acknowledges that there have been few systematic attempts to assist in explaining why rape myths and stereotyped notions about it are utilised in decision making. The notion of rape, as seen the throughout, literature is arguably culturally and socially inclined, which affects the progress of a case throughout the criminal justice process. The literature has revealed a high prevalence of the use of rape myths and stereotyped notions amongst the justice system community and society at large. As such notions affect the victims of rape, it is essential to engage a theoretical perspective that will help explain this phenomenon. Social learning theory has had a great impact on the development and testing of social learning models pertaining to delinquent and deviant behaviour, especially within the context of family interaction (Akers, 2010). In this context, social learning theory within this study will allow for the exploration of the rape myths phenomenon to determine how cultural beliefs can shed light on case outcome; more specifically, how cultural beliefs affect decision making. This section therefore focuses on how culture impedes legal response throughout a rape case. In pursuit of illuminating this phenomenon, both the feminist theory and the social learning theory are conceptualised. This theoretical perspective will also allow for an explanation as to why daily practices and traditional beliefs are used as decision-making tools within the CJS. Furthermore, this section places emphasises on different theories of rape and reflects on how these theories place responsibilities on the roles and functions of state bodies, society, perpetrators and victims.

Ancient law codes, including the Babylonian Code of Hammurabi which dates back to about 1780 BC (Smith, 2004), provide penalties for the rape of virgins, daughters, and wives as a violation of a man's property (Postmus, 2013; Rober, Peterson, Hilgenkam, Harper, Boskey, Kane & Kittleson, 2010; Bevacqua, 2000). The Code of Nesilim (1650-1500 BC) considered women who did not scream or offer resistance to have consented to the sexual intercourse (Smith, 2014). Rape victims were required by English law to raise a hue and cry to alert the community to the offence (Burger-Jackson, 1999). Interestingly, rape victim blaming tendencies date as far back as the Middle Ages (Bevacqua, 2000).

When women knew their offender before the sexual assault, she was blamed for precipitating the rape; consequently she was blamed for her actions or inactions (Barak, 2007).

Early theories of rape considered perpetrators of rape to be mentally ill and sexually perverted (Helgeson, 2012). Rape was regarded as a form of deviant behaviour which was strongly associated with sex rather than aggression (Helgeson, 2012). Psychodynamic theories of rape argued that rape was a result of fantasy, and they saw rape in adulthood as a cause of unsolved infantile sexual desire (Petrak & Hedge, 2002). Rape was later characterised as a result of external factors, such as victim blaming ideologies. For example, women who wore revealing clothing, or had a promiscuous background, were more likely to be blamed for the rape (Helgeson, 2010). It was interesting to note that the literature revealed that this perception is still held by various individuals, including those involved in rape investigations, prosecutions and adjudication.

Many of the above perceptions of and policies on rape existed up until the 1970s and 1980s, when feminist movements began to reconceptualise rape as an act of violence as opposed to an act of sex (Helgeson, 2012; Geisinger, 2011). According to feminist theory, traditional male domination in terms of political and economic gender discrimination promotes and facilitates sexual and other violence against women (Brown, Esbensen & Geis, 2012; Fisher & Lab, 2010). Feminist theory argues that the objective of the rapist is to dominate, intimidate and degrade women to ensure that women maintain a subservient role to men (Hall, 1993; Ellis, 1989). As such, rape in the form of political and economic control serves as a form of powerful social control (Westmarland, 2005). That is because rape is a form of dominance and control of women by men (Allison, 1993).

According to Jewkes (2002), sexual violence against women is rooted in power inequalities embedded in hierarchal gender relations. It can be argued that this form of dominance and control links physical aggression and sexuality in the minds of males (Ellis, 1989). Peterson, Bhana and Mckay (2005) found that traditional notions of masculinity not only affect boys, but also play on the minds of girls, and that patriarchal rape myths are used to rationalise and legitimise sexual violence. Women then do not hold men responsible for their behaviour and ultimately blame themselves. Ward (1995) argues that law enforcement agencies both influence and are influenced by the relationship between men and women in society. Criminal justice agents often have the perception that women are the property of men (Burgen, 1996). As a result, when rape occurs between known persons, victim blaming ideologies persist. This can undoubtedly affect women reporting a rape to the police or even carrying out the report to the conclusion stage.

Feminist theory puts forward that rape is an exercise of power that is reflective of the social control exercised in patriarchal societies (Kelly, 2001). Although South Africa has experienced a number of law reforms the difficulty lies in implementing structural and cultural change (Anderson, 2000). This is evident in the case of *S v Zuma 2006 (2) SACR 191 (W)*, where culture was invoked. Waetjen (2009) explained that Zuma used his culture to legitimate his action. The culturally established male domination and female subordination, learned from parents and accepted by society are duplicated symbolically and physically in the explosive act of rape (Vogelman, 1990). Zuma's sexual actions were thus interpreted as those prescribed by the wisdom of culture, familiar to him since his youth (Waetjen, 2009). This ideology reflects normatively of gender inequality and patriarchal morality within a court of law (Waetjen, 2009).

Feminists view the attitudes of society of both men and women within an economic, political and cultural totality (Vogelman, 1990). Jewkes and Abrahams (2002) acknowledge that rape in South Africa forms one part of a broader, gender-based violence that is influenced by a general culture of violence which pervades society. Violence in South Africa has been demonstrated as legitimate in public areas such as schools, politics, in correctional institutions and at home (McKendrick & Hoffman, 1990). These areas therefore reinforce violence towards women, resulting in socially approved behaviour which continues from one generation to the next. Jewkes and Abrahams (2002) argue that rape is influenced by factors operating at both individual level and at the level of society. The CJS is made up of members from society, which means that that culture of violence that has been replicated is now practised within the system. This leads to the recurring cycle of under-reporting, attrition and low conviction rates of rape.

A theory closely related to feminist thought is social learning theory. Social learning theory has been used to refer to nearly any social behaviouristic approach in the social sciences (Akers, 2010). Social learning theory as a general perspective emphasises "reciprocal interaction between cognitive, behavioural and environmental determinants" (Bandura, 1977:vii). Social learning theory is the only sociologically derived social learning theory of crime and delinquency. However, it draws upon and shares similar assumptions and basic compatibility with other psychologically based versions of social learning theory (Akers, 2010). Accordingly, the common feature of all such approaches is a focus on overt, observable behaviour incorporating cognitive variables as part of basic learning mechanisms (Akers, 2010). In essence, this theory argues that human actions are a result of learnt behaviour, and that this behaviour stems from observing others and from making sense of different behaviours followed by the cognitive process of developing one's own conduct.

This theory has constantly been used to explain what drives perpetrators to rape. Social learning theory of rape proposes that rape like, any other behaviour, is learned (Fisher & Lab, 2010). Social learning theorists claim rape to be a result of male aggression towards women that is learnt through various processes. Hall (1993) puts forward three processes in which male aggression is fostered: (a) becoming desensitised to the harm caused by sexual violence; (b) associating violence with sexual pleasure; and (c) [some] men are convinced that sexual gratification can be achieved through aggression towards women. Within this theory, rape is largely associated with male aggression and violence. The social learning theory of rape mainly focuses on the exposure to pornography and other aspects of culture that promote male aggression towards women, and that are fused with domination and sexuality (Hall, 1993).

The social learning theory was particularly useful for this study as it recognises behaviour to be a reinforcement of beliefs and attitudes that are socially and culturally inclined. In other words, within a male dominated CJS the perceptions of criminal justice personnel are moulded by reinforced beliefs and attitudes. Social learning theorists propose that behaviour is a manifestation of the socialisation process whereby rape and violence become linked through cultural and experiential factors mediated by attitudes, sex role scripts, and other thought processes (Ellis, 1989). Essentially, Albert Bandura's social learning theory proposes that behaviour is learned largely through imitation and sustained through various forms of reinforcement (Allison, 1993). This theory argues that reinforcement mainly comes from associations with family members and peers, one's culture, and the mass media (Ellis, 1989).

Both men and women and society at large cultivate these ideologies through socialisation compounded by cultural beliefs, social associations and the media, which in turn produce rape myths and stereotyped notions. Thus, individuals are taught through socialisation that certain actions are regarded as appropriate behaviour (Deming, 2009). Society adopts similar ideologies as it expects behaviour that is somewhat consistent with rape myths. Employing rape myths has a propensity to stem from accepting certain attitudes and beliefs that were learnt by the exposure to certain actions; for example, associating violence with rape. Both feminist theory and social learning theory of rape claim rape to be a form of violence and aggression. However, these theories only explain why rape takes a violent form rather than a sexual one. Prentky and Knight (1991) rightfully point out that rape is a multi-determined behaviour that incorporates several dimensions. However, attitudes adopted by criminal justice personnel regarding rape and their presumptions regarding consent and responsibilities impair the decision-making process of categorising incidences of rape (Deming, 2009). Not only does this affect decision-making processes within the justice system, but it also affects victim decision making.

Ewing (2009) argues that media representations frequently reinforce rape myths. This is because the media is distorting the public's perception of what rape is and how it is punished, which creates a negative impact on women who experience sexual violence outside these elements (Ewing, 2009). Moreover, notorious media frenzied cases of rape expose, and to some extent shape, cultural standards of "true" rape (Orenstein, 2007). The media, which is a powerful force in society, can therefore influence the legal response to rape throughout the process, including the victim's decision to report the crime, the decision of the police whether to pursue the claim, the prosecutor's decision whether to charge, the defence attorney's trial tactics, and judge's determination of guilty or not guilty verdicts (Orenstein, 2007). A well-known South African case involving the President of South Africa, Jacob Zuma, became a media buzz in 2006, which aligns with Orenstein's argument. In the case of *S v. Zuma 2006 (2) SACR 191 (W)* the defendant, Jacob Zuma, who was the Deputy President of the African National Congress (ANC) at the time of the alleged incident, was charged with rape. This case clearly demonstrated to the public, lawyers, government and non-government agencies how the criminal justice system works. More clearly, this case demonstrated the problems complainants go through during the trial. The court in this case granted permission for the defence to cross-examine the victim regarding her sexual history. Further, and most strikingly, the defence succeeded in using a number of rape myths to obtain an acquittal, including the lack of resistance by the victim or the fact that she did not cry rape. This case clearly enforced rape myths and, by the publicity bestowed on the case, created a learning platform for victims, offenders, investigators, prosecutors and defence attorneys. Thus, the results of this case imply that women who have not obtained injuries or did not cry rape are not true rape victims; thus they should not report the incident, investigators should not proceed with the investigation, or that defence attorneys should use these as defence strategies. This case clearly showed that modern society still follows ancient criminal codes.

Another notorious case in South Africa was *S v. Oscar Leonard Carl Pistorius 2014 (case number: CC113/13).* Oscar Pistorius, a South African paralympic athlete, was accused of murdering his girlfriend, Reeva Steenkamp. This case became a public display which showcased the functions and, arguably, the dysfunctional features of the South African CJS. In this case, the court had to determine whether the accused had intentionally murdered the victim, but at the same time it had to determine whether the police had conducted their investigation adequately. Thus, the court had to determine whether or not the police contaminated the scene of crime. Moreover, this case demonstrated to the public that any evidence given by a witness is treated with caution. Thus, throughout this case, witnesses were seen as suspects as their version of the story was argued. Even though this was not a rape case, it arguably created negative impressions of the CJS and the willingness of victims to report a

crime or give evidence in court. The example this trial set implies that the process of cross-examination may result in the failure of victims to report a crime to the police or engage in the criminal justice process. Moreover, the fear of cross-examination can result in increasing both the "dark" figures of rape and the withdrawal rate of rape cases.

Although highly publicised cases become a centre for criticism of the entire justice system, they serve as a means for educating society about the criminal justice process. Cross-examination is the most daunting aspect for victims and witnesses; this however indicates that the system is taking cognisance of the rights of both the accused and the complainant. Moreover, media coverage of criminal cases is able to show victims the process that is followed when a case has been lodged. Thus, through this socialisation process, individuals are able to conceptualise the actions and reactions of criminal justice personnel, which may create positive or negative expectations that will determine whether they will engage in the process or not.

The theories of rape elucidated above serve as a means to understand why men rape. Moreover, the use of rape theories assists in understanding the state's, offenders' and victims' response to rape. However, rape theories cannot explain every angle of state responses to the crime as there are external factors limiting the response rate by state officials. The literature has also demonstrated the issues of limited resources, inadequately trained personnel and insufficient legal discourse as factors that contribute to the low rape conviction rates.

3.6 Conclusion

Previous research studies on rape attrition in South Africa have demonstrated low rates of rape convictions (Vetten et al., 2008, Artz & Smythe, 2007). It appears that South Africa is performing within international norms but seems to be at the lower end with an estimated 7 percent conviction rate. As low conviction rates for rape are a worldwide phenomenon, it implies that introspection needs to be done at all levels. It has been shown that reported rape cases fall out the criminal justice process at various stages, with the highest attrition rate occurring at the police (i.e., investigation) stage (Vetten et al., 2008). This is mainly attributed to inadequate investigations by the police due to inexperienced and untrained personnel (Patterson et al., 2009; Bardey & Combrinck, 2002). Cases are further filtered out of the criminal justice process during the prosecution and trial stage. Various studies have shown that the continuation of a reported rape through the criminal justice process is influenced by both legal and extralegal factors. The latter occur predominantly because of inadequate resources and rape myths, and the former are attributed to the rules of law. Both national and international studies have illustrated that rape myths and stereotyped notions are still active in the system, yet legislation and policy

documents fail to address this issue (Johnson et al., 2007). Extralegal factors also incorporate logistical and technical aspects such as limited resources and lack of trained personnel. Echoing throughout this chapter was the fact that each limitation, at every step of the process, affects a positive case outcome. Scholars have argued that it is the rules of law that prevent a conviction because they specifically deny victims the right to a choice of legal representation and docket disclosure to the defence (Bellengere et al., 2013; Artz, 2011; GHJRU, 2008; Smythe, 2002). Moreover, it is the victim who is placed at the centre and asked to prove her innocence, rather than proving the accused guilty. Overall, these restrictions, whether they entail legal or extra legal-factors, prevent rape victims from attaining justice.

Chapter 4

Research Methodology

"*Research is to see what everyone else has seen and to think what nobody else has thought.*" Albert Szent-Gyorgyi

4.1 Introduction

The key aim of this study was to contribute towards an improved conviction rate of reported adult female rape in Verulam by means of providing an empirical understanding of the phenomenon, including the identification of challenges that hamper the achievement of a higher conviction rate. The objectives of the study were to explore and describe the conviction rate of reported adult female rape in Verulam. This will allow for the identification of possible obstacles and opportunities in addressing low conviction rates. Thus, this chapter will explain the methods employed in order to meet the aims and objectives of this study. In essence, this chapter explains how the research questions that were presented in Chapter 1 were addressed and answered. The research approach that was adopted for the study will be explained to demonstrate its relevance. This chapter also outlines the problems that I encountered as the researcher during the data collection phase.

4.2 Research Approach and Design

A research design is based on the purpose of the research, the paradigm chosen, the context in which the research is done, and the research techniques used to collect and analyse the data (Steyn, 2013). In this context, the research aims and objectives required a research approach that could describe the rate of rape convictions in Verulam, explore the problems associated with not achieving a higher conviction rate, and at the same time identify possible solutions to the phenomenon. The descriptive and explorative nature of the study required obtaining data that would be reflective of a descriptive-interpretive paradigm which is supported by a qualitative approach. This paradigm is associated with the subjective experiences of individuals and recognises that individuals, with their own diverse backgrounds, assumptions and experiences, donate to the on-going construction of reality active in their broader social context through social interaction (Wahyuni, 2012).

Qualitative research acknowledges that reality is not objective and that it is socially constructed by the participants' accounts of their experiences and/or their social interactions (Breakwell, Hammond & Fife-Schaw, 2000). Qualitative research allows the researcher to "'unpack' issues, to see what they are about or what lies inside, and to explore how they are understood by those connected with them"

(Ritchie & Lewis, 2003: 27). Importantly, a qualitative approach is particularly helpful in shedding light upon procedures and process (Patton, 1987). Consequently, by using a descriptive-interpretive qualitative research methodology, I was able to usher out practical knowledge of criminal justice agents who specialised in and had vast experience of rape cases in Verulam, which was the area of study. This enabled me to extract the perceptions held by criminal justice personnel of the conviction rate for adult female rape in Verulam in an attempt to meet the aims and objectives of the study.

4.3 Sampling

A qualitative study researches fewer people but acutely examines those individuals, settings and subcultures in anticipation of generating a subjective understanding of a particular phenomenon (Baker & Edward, 2012). Therefore, qualitative research is based on an in-depth understanding of social phenomena rather than on the statistical generalisability imposed by quantitative research. The research aims and objectives of this study required the involvement of a sample of participants who had first-hand experience and knowledge of rape cases within the CJS. As a consequence, the research sample included criminal justice personnel from Verulam. The sample size was determined by the aims and objectives of the study as well as by the time limitation to complete a master's degree. In addition, because the objectives of the study were to explore and describe the conviction rate of adult female rape in Verulam, a purposive sample design was employed. The idea behind purposive sampling is to select participants that are especially informative (Neuman, 2011). That is, the participants were chosen based on particular features that facilitated the descriptive and explorative nature of the research. Therefore, the participants were selected based on their direct link and experience within the CJS in Verulam. A snowball sampling technique was used within the purposive sampling process which allowed the identification other participants who were interrelated with the selected participants (Neuman, 2011). This allowed the further procurement of rich, in-depth data.

The purpose of the sample selected was not to generalise the findings, but to generate an in-depth understanding of the conviction rate for adult female rape in Verulam. Thus the sampling techniques were well suited for a study of this nature. The participants in the study consisted of SAPS personnel from the Verulam SAPS and the Family Violence, Child Protection and Sexual offence (FCS) unit in Phoenix, and prosecutors and magistrates from the Verulam Regional Magistrate's court. Snowball sampling was utilised to obtain details of defence attorneys from Verulam. The FCS unit cluster is based in Phoenix and is responsible for cases that are reported to police stations in Verulam, Tongaat, King Shaka Airport and Phoenix. Once a report of rape has been made to one of the above police stations, the report is investigated by the FCS unit based in Phoenix. FCS units, as discussed in

Chapter 2, are mandated to investigate rape and sexual offences. These individuals are directly involved in the reporting, investigation, and prosecuting procedures of a rape case. They have first-hand knowledge and experience about receiving reports of rape, investigating these claims, and understanding the systems in which they work in. All these features provided rich data on the positives and negatives of the systems in which they work.

This study did not interview rape victims about their perceptions of the conviction rate of rape because ethical issues had to be considered. Interviewing rape victims is an extremely sensitive exercise and could exacerbate the trauma already experienced by the victim. In such interviews, trained counsellors should be available to assist victims through the interview process as well as through a post-interview process, if needed. There had been an NGO operating in the area prior the study but this unit had closed down. Therefore, due to time and resource constraints, the decision was taken not to include rape victims in this study. By excluding such respondents from the sample it by no means implies that their perceptions and ideas were side-lined; however, their personal views fell outside the scope of this research. In essence, this study was conducted to contribute to an understanding of the low rape conviction rates in the Verulam area and, as a consequence, it is envisaged that it will provide a platform for further research.

A total of 15 criminal justice personnel participated in the study. The sample included magistrates and a prosecutor from the Verulam Regional Magistrate's Court, defence attorneys from Verulam, detectives from the FSC Unit in Phoenix, and SAPS officials from Verulam. Table 1 below indicates the sample of the study. All the participants had experience in dealing with rape cases and they thus constituted a comprehensive and valuable source from which recommendations for improvements could be made.

Table 1: Sample of Study

Sample Group	Population size	Number of Respondents
SAPS (Verulam)	47	7
SAPS (FCS Unit Phoenix)	12	3
Defence Attorneys	4	2 (Snowball sampling)
Verulam Magistrate's Court (Regional)	5	1
Prosecutors	3	2
Magistrates		
Total	71	15

In light of the highly complex nature of rape and the lack of case transparency, many individuals were reluctant to participate in this study. Such people were mainly found at the later stages of the justice

system (i.e., the prosecuting authority). Moreover, the busy schedules of criminal justice personnel, coupled with limited resources (funding and time constraints), restricted the size of the sample to a small group of participants. Nevertheless, it was not my purpose to have a quantitatively representative sample, but it was important to select an appropriate sample to reveal a number of crucial aspects relating to the criminal justice process. During the study period, Verulam did not have an operational NGO that could provide professional counselling services to rape victims within and the around Verulam. The Rape Crisis Centre, an NGO, had been operational prior to the research period. However, this centre had closed down and a new centre, Hilltop Prayer Centre, is in the pipeline. Furthermore, neither the SAPS nor the FCS unit staffed professional counsellors to assist rape victims. As a result, the study did not include counsellors. Moreover, the Verulam SAPS did not staff counsellors or social workers that dealt specially and entirely with rape victims at the time; and the FCS unit had one social worker who only dealt with child rape victims. I obtained this information verbally from criminal justice personnel.

4.4 Research Instrument

The research project required a measuring instrument that would capture the lived experiences of criminal justice persons that could be contextually analysed. The research tool adopted for the study was a self-administrative questionnaire. Due to the research participants' availability, convenience and preference, a self-administration questionnaire was well suited for the study. Usually, the use of questionnaires as a form of gathering primary data is fundamental to the success of quantitative research (Page & Connell, 2012); however questionnaires provide data that are a good enough quality to make real-world policy suggestions (Breakwell, Smith & Wright, 2012). The open-ended semi-structured questionnaire allowed respondents to voice their opinions which provided textual data and this according to Roberts and Priest (2010) lends itself to qualitative analysis. Thus, the use of questionnaires was deemed most appropriate for this particular research project.

The self-administered questionnaires allowed the respondents to complete the questionnaire at a time and place that suited them. This was particularly convenient for the respondents who had busy schedules (Gray, 2009). Self-administered questionnaires are known to have a low return rate (Koen, Khan, Khan & Ngwenys, 2003), thus to avoid a low return rate I provided the respondents with a time frame in which the questionnaires needed to be completed. In addition, the respondents were telephonically reminded of the due date for the completion of the questionnaire.

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The six-item, semi-structured, open-ended questionnaire (Annexure B) was designed by myself with reference to relevant literature and in consultation with experts in the field of sexual offences. The instrument consisted of six sections.

- Section A - Consisted of the purpose of the study
- Section B - Reflected on the ethical considerations impacting the respondents
- Section C - Provided the instructions and guidelines on how to complete the questionnaire
- Section D - Requested the biographical information of the respondents
- Section E - Consisted of the research questions
- Section F - Contained a declaration

Section A explained the purpose and aim of the study (Table 2) and Section B explained the ethical considerations and the respondents' right to confidentiality (Table 3).

Table 2: Section A of the self-administered questionnaire

Section A: Purpose of study
The purpose of the study is to identify the conviction rate of adult female rape cases in Verulam and examine the factors that contribute to the conviction rate. The aim of the study is to contribute towards an improved conviction rate for adult female rape in Verulam by providing an empirical understanding of the phenomenon, including the identification of challenges that hamper the achievement of a higher conviction rate. This questionnaire has therefore been designed to identify the conviction rate for adult female rape in Verulam and to examine the factors that influence the conviction rate. Conviction rate is operationalised and applied to the current study as the percentage of adult female rape cases reported to the SAPS in Verulam, divided by the percentage of cases finalised by the Verulam Regional Magistrate's Court with a guilty verdict.

Table 3: Section B of the self-administered questionnaire

Section B: Ethical Considerations
The identity of all participants will be strictly held confidential. No personal identification will be used in either the dissertation or in subsequent/parallel reports (published or unpublished). Participants are free to withdraw from the study at any time. All participants will also have the right to a copy of the study report on request. PLEASE NOTE All participants have a direct link to the Criminal Justice System thus COMPLETE ANONYMITY of professionals cannot be assured.

Section C provided the respondents with instructions and guidelines on how to complete the questionnaire (Table 4) and Section D requested the respondents to provide their biographical information (Table 5).

Table 4: Section C of the self-administrative questionnaire

Section C: Instructions and guidelines on how to complete the questionnaire
There are three (3) categories and under each category a list of questions. Please read each question and answer them according to the prescribed direction.
When answering the questions please remember the following:
1 Make sure you answer every question.
2 There is no RIGHT or WRONG answer! It is just a matter of how you personally react or respond to each question when expressing your opinion, perception or attitude that matters.
3 The information given in a question may not be as comprehensive as you would wish, but answer as best you can.
4 Try to avoid the option *"I do not have an opinion"* wherever possible.
5 Please apply your answers only to ADULT FEMALE RAPE AGE BETWEEN EIGHTEEN (18) AND THIRTY (30) YEARS.
6 Please apply your answers to the four-year time frame between 2009 and 2013.

Table 5: Section D of the self-administration questionnaire

Section D: Biographical information					
Please answer the following questions pertaining to yourself.					
Name					
Race	Black	White	Indian	Coloured	Other
Gender					
Specialisation field					
Position					
Qualification, and/or additional training or skills					
Years of experience in rape cases					

Section E consisted of three categories that were divided into six questions each (Table 6). Section F contained a declaration that respondents were asked to sign to indicate their individual and voluntary participation in the study (Table 7).

Table 6: Section E of the self-administered questionnaire

Section E: Questions
CONVICTION RATE
1. What is required for a conviction for rape, specifically adult female rape between the ages of 18-30 years?
2. What is the current conviction rate of rape in Verulam?
3. Is the current conviction rate acceptable?
Yes No
FACTORS
4. What is the reason for the current conviction rate?
IMPROVEMENTS
5. What obstacles are in the way of achieving a higher conviction rate?
6. How can the conviction rate of adult female rape be improved?

Table 7: Section F of the self-administered questionnaire

Section F: Declaration
Name.....
Signature.....
Date.....
Time of questionnaire.....

4.5 Research Procedure

Any research involving human subjects at the University of KwaZulu-Natal (UKZN) requires approval by the UKZN Research Ethics Committee. The committee in charge of the Discipline of Criminology and Forensic Studies is the Humanities and Social Sciences Research Ethics Committee (HSSREC). An application (ethical clearance application) was forwarded to this committee on 8 October 2013. The UKZN HSSREC granted provincial approval on 17 December 2013. In order for full approval, I needed the relevant gatekeepers' permission letters before commencing my fieldwork. Thus, the next step was to apply to the Verulam SAPS and the Verulam Regional Magistrate's court to conduct the research; that is, the collection of primary data process. The ethical clearance application form, together with the gatekeepers' permission letters and the questionnaire (Annexure B), was forwarded to the Acting Regional Court President and the SAPS National Head of Strategic Management. On 10 March 2013 the Acting Regional Court President granted permission to conduct the research (Annexure C) and the SAPS National Head of Strategic Management granted permission on 25 February 2014 (Annexure D). After gaining permission from the relevant gatekeepers, full approval was granted on 8 April 2014 (Annexure A) by the UKZN Ethics Committee.

Although full approval was granted to conduct this study, victims, who would have constituted an important participant group, were not included for ethical reasons. This meant that the perceptions of victims were left out which is a valuable source of data as victims are the ones who are denied justice when perpetrators are not punished. In addition, the recommendations that transpired in this study are limited to the perceptions of criminal justice personnel. However, this does not in any way suggest that this study is less significant, because several persons from the criminal justice system, who had been excluded from previous studies, were involved.

Once permission had been granted by the SAPS, the Magistrate's court and the Ethics Committee, I commenced with the collection of data. After several unsuccessful attempts had been made to contact the relevant participants and to arrange for interviews to discuss the project, I decided to enter the field by going to the Verulam and Phoenix SAPS and Verulam Magistrate's Regional Court. I then networked my way around and reached the relevant persons. Each respondent was therefore approached by means of face-to-face contact, briefed about the research rationale and its aims and objectives, and then asked to participate in the study. Participation was voluntarily with confidentiality guaranteed and, when anonymity was not certain, the participants were made aware of it. The participants were further asked to sign a confirmation of informed consent declaration which outlined the research by providing the project description, questions of the project, selection of research participants, procedure, possible benefits, ownership and documentation of the research data, research findings and confidentiality (Annexure E).

I also sought permission from the Station Commander of the Verulam SAPS to use statistics from the Case Administrative System (CAS). This permission was verbally granted by the Commander and I was given a printed copy of rape report statistics from 2009 until 2013. These statistics allowed me to identify the report rate, the 'conclusion' rate, detection rate, acquittal rate and the conviction rate. These statistics were all obtained from the Verulam SAPS CAS.

After much deliberation, I found that the SAPS and defence attorneys would be more comfortable to answer the questionnaire on their own and many respondents requested the questionnaire to be left with them. As a result, copies of the questionnaire were left with the respondents and collected at an allocated time on an agreed date. However, not all the persons who had promised to complete the questionnaire had done so, due to their busy schedules. This therefore reduced the sample size to that presented in Table 1. Interestingly, police personnel from the FCS unit in Phoenix were more likely to be available during the earlier hours of the morning (before 08:00). The Regional Magistrate's Court

closed between 13:00 and 14:00 every day for a lunch break and during this time the court doors were closed and any public persons who were inside the building were escorted off the premises.

The structure of the questionnaire and the questions listed were free of redundancy and were simple to understand. I provided my contact details (which also appeared on the questionnaire) to the respondents and this allowed the respondents to contact me if there were any misunderstandings or queries. The questionnaire allowed the respondents to answer the questions according to their interpretation and understanding and did not have any influence from an interviewer, which rendered the data that I collected authentic. Furthermore, the questionnaire format allocated enough space to answer each question and this allowed the respondents to voice their opinions in a comprehensive manner.

To ensure validity of the collected data, data triangulation was used. Triangulation in qualitative research refers to the use of multiple methods to collect and analyse data to reduce the chance of the researcher's bias or influence on the results (Markula & Silk, 2011; Given, 2008). Four basic types of triangulation have been identified, namely method triangulation, triangulation of data sources, analyst triangulation, and theory triangulation (Markula & Silk, 2011; Jonker & Pennink, 2010). To increase validity and to eliminate bias, triangulation of data sources was used in this study. This method of triangulation increases the credibility of the research findings by drawing from evidence taken from a variety of data sources (Given, 2008). In other words, the primary data that were collected by means of the questionnaire were reviewed simultaneously and in conjunction with the secondary data that were compiled and discussed in the previous chapters. Sapsford and Jupp (2006) assert that when a researcher's findings are supported (or refuted) by other forms of data, then the data can be regarded as valid.

4.6 Problems Encountered

A major problem was encountered during the data collection phase at the Verulam Regional Magistrate's Court where selected persons were not willing to participate in the study. Three reasons emerged for their refusal to participate: (1) those selected were afraid that I would misinterpret the data; (2) rape is a sensitive issue; and (3) the information regarding court statistics that I requested required further approval and such approval required time, which was not at my disposal. Thus, to counter the problem, I was persistent and continued to search for willing participants, and personnel at senior level (Durban Regional Magistrate's Court) were also approached. In this case, the participants were telephonically contacted, briefed about the research project and asked if they were willing to participate.

One additional person agreed to participate in the study that was not from the Verulam Regional Magistrate Court but was knowledgeable about the study area. Once participation had been granted, the questionnaire was emailed to the respondent in the Durban Regional Magistrate's Court and once completed it was emailed back to me.

Another problem that I encountered was that some respondents answered the questionnaire in haste, which resulted in incomplete questionnaires. However, these gaps pertained to their biographical information only. Given that it was difficult to get respondents to participate in the study, those questionnaires were not disregarded, but were still used for data pertaining to the research questions. Furthermore, the importance of administering the questionnaires was to gain insight into perceptions regarding the conviction rates for rape in Verulam. For this reason, the demographic information was not a primary objective, but it nevertheless provided useful information.

It was clear from the problems that I encountered during the data collection phase that sexual offences, particularly rape, are difficult to research because of the sensitive nature of the offence and the risk of secondary victimisation and trauma. The study did not focus on rape victims, but I found that the people who work closely with these victims are often reluctant to divulge any information, whether factual or opined.

4.7 Dissemination of the Research Findings

The core aim of this study was to contribute towards an improved rape conviction rate in Verulam. For this reason it is important that the findings be made available to the respondents. Sharing the findings of this study with the respondents will be the first step in informing the CJS in Verulam about the issues impacting the low overall rate for rape convictions and the obstacles preventing a higher rate. Moreover, the recommendations made in this study can further come to life in the actual improvement of the rape conviction rate. Having said that, it is not assumed that this study is guaranteed to generate positive results in improving the conviction rate for rape, but it is a means to convince interventionists to take note and to become active. Therefore, the findings of this study will be sent to each sample group by means of an email.

4.8 Conclusion

The aim of this study was to contribute towards an improved conviction rate in Verulam. This meant that obtaining the perceptions of persons involved in achieving a conviction would be vital. For this purpose a qualitative research approach and design were adopted to describe and explore the conviction rate of

reported adult female rape in Verulam. This research approach was best suited for this type of study as probing for responses pertaining to the subjective experiences of CJS personnel would present informative responses that could be used to address the research question. This was done in preference to obtaining information that was already known. This type of methodology therefore yielded rich data from which recommendations could be made. Although this study had several restrictions, this type of methodology supported its aims and objectives. The next chapter provides an analysis of the collected data that allowed me to interpret the data and formulate findings and recommendations with the purpose of attempting to contribute towards an improvement in the conviction rate for reported adult female rape in Verulam.

Chapter 5

Data Analysis

"In order to prosecute for rape, a woman must deal with the district surgeon (i.e., a government doctor), the prosecutor and the judge. With all three, there are potential problems." Riana Taylor, Criminologist, Advice Desk for Abused Women, Durban, January 31, 1995

5.1 Introduction

Provincial research on rape case outcome has illustrated a less than 6 percent conviction rate of rape (Vetten et al, 2008; SALC, 2001). The Verulam SAPS Case Administration System (CAS) also showed the low conviction rate of 5 percent between 2009 and 2013. Having taken cognisance of these low conviction rates, it was clear that there are issues in the CJS that require urgent attention. Moreover, the alarming low rates suggest that victims of rape continuously remain neglected in the system and are therefore prevented from receiving justice. In this context, the aim of this study was to contribute towards an improved conviction rate for the rape of adult females in Verulam. This would be accomplished by providing an empirical understanding of the phenomenon, including the identification of challenges that impede the achievement of a higher conviction rate. The objectives of this study, as was pointed out in Chapter 1, were to explore and describe the conviction rate for reported rape cases involving adult females in Verulam. This allowed for the identification of possible obstacles and opportunities in addressing low conviction rates. In order to meet the aims and objectives of this study, this chapter intends to unpack the issues surrounding low rates of rape convictions in Verulam with the intention of providing recommendations. This is accomplished through analysing the collected qualitative data that were obtained from criminal justice personnel. The data were evaluated by means of content analysis. The presentation of the study findings is of a descriptive nature. The study was not intended to be quantitative, but I do provide statistical information regarding the conviction rate for rape in Verulam. The latter information was obtained from the Verulam SAPS CAS and, in my view, contributed significantly to the value of this study. The subsequent chapter will present the findings and my recommendations.

5.2 Data Analysis Technique Selected for the Study

The data collected comprised written information pertaining to the subjective experiences and views of the respondents, which meant that the data analysis technique selected needed to be able to derive in-depth meaning from the collected data. The most appropriate technique for this study, which would be

consistent with a descriptive-interpretive paradigm, was qualitative content analysis with a deductive approach. The aim of content analysis in qualitative research is to examine the content in depth (Sappleton, 2013) by describing the meaning of data in a systematic way (Schreier, 2012).

Hsieh and Shannon (2005:1278) define qualitative content analysis as "a research method for the subjective interpretation of the content of text data through the systematic classification process of coding and identifying themes or patterns." Thus, qualitative content analysis involves identifying the emergent themes from the text, coding each theme, and drawing conclusions from the coded data (Roberts & Priest, 2010; Gorgens & Kusek, 2009). Qualitative content analysis not only allows the researcher to understand social reality in a subjective manner, but also in a scientific way (Zhang & Wildemuth, 2009). The steps of qualitative content analysis entail arranging the data for the analysis, deciding on the unit of analysis, reading through the data to identify patterns (similar responses, issues or situations) to develop categories, developing a coding scheme, testing the coding scheme on sample text, coding all tests, assessing coding consistency, drawing conclusion from the coded data, and reporting on the conclusions by taking into account the main categories and the main research question (Gorgens & Kusek, 2009; Zhang & Wildemuth, 2009). Qualitative content analysis was therefore used to reduce, organise and retrieve data to achieve the research aims and objectives as stated in Chapter 1 of this dissertation.

The process of qualitative content analysis began with a macro analysis which filtered down to a micro analysis. In other words, the data analysis started with a less detailed or general coding system that captured the broader essence of the research questions and then moved to a more detailed coding that provided in-depth meanings to the phenomenon (Corbin & Strauss, 2008). The participants were categorised into five groups: (i) the Verulam SAPS, (ii) FCS unit, (iii) defence attorneys, (iv) a prosecutor, and (v) magistrates. Each group's responses were individually analysed, after which the entire sample was analysed and then interpreted by comparing differences and similarities. This was sufficient to reveal a number of important issues pertaining to the criminal justice process. Content analysis identified the major themes that emerged in relation to the research questions as listed in the first chapter. A reminder of the questions:

- What is the current conviction rate of adult female rape in Verulam?
- What is required to convict adult female rape perpetrators in Verulam?
- What obstacles prevent a higher conviction rate of adult females in Verulam?
- How can the conviction rate for reported adult female rape conviction rate in Verulam be improved?

Recurring themes were identified under each question. After an analysis of the responses of each group representing the CJS, recurring themes were also identified across the entire sample. This allowed me to identify similar patterns within each participant group and similar patterns across the entire sample. All groups were asked the same questions, thus I expected to see some degree of uniformity across the sample. However, differences of opinion were also expected, especially because each group participant was interrelated and interdependent, and for this reason I envisaged that the 'blame game' might be prevalent. I therefore felt that illuminating the differences between the responses of the various participant groups would prove beneficial to the study's aims and objectives. The participants were divided into the following five groups:

- Group 1 - Verulam South African Police Service (SAPS)
- Group 2 - Family Violence, Child Protection and Sexual Offence Unit (FCS)
- Group 3 - Defence attorneys
- Group 4 – the Prosecutor
- Group 5 - Magistrates

In pursuit of maintaining the confidentiality of the respondents, names were omitted from the data analysis and replaced by a pseudonym. Table 8 below provides the name each participant was allocated in terms of his/her participant grouping. Since the study focused on five participant groups, identifying which group the response came from allowed me to identify any similarities and differences in responses.

Table 8: Allocation of pseudonym to respondents of each participant group

Group 1	Group 2	Group 3	Group 4	Group 5
Kevin	Khumbu	Raj	Trisha	Esther
Harry	Niven	Akash		Ayanda
Akani	Ravon			
Vijay				
Bongani				
Asmita				
Prem				

The next section provides a discussion on the analysed data.

5.3 Qualitative Content Analysis

5.3.1 Biographical Information of the Participants

Table 9 below provides a summary of the biographical data of the research participants.

Table 9: Biographical information of participants

	Group 1	Group 2	Group 3	Group 4	Group 5	Total
Gender						
Male	5	3	2			10
Female	2			1	2	5
Race						
Indian	5	2	2	1	1	11
Black	2	1			1	4
Experience						
Five years and below	1					1
Between six and ten years	4		1		1	6
Between 11 and 20 years	1	3		1		5
21 years and above			1		1	2
Position						
Warrant officer	2					2
Investigator	3	3				6
Sector commander	1					1
Attorney			2			2
Senior State advocate				1		1
Magistrate					2	2
Qualifications/addition training						
Basic Matric	7	3	2	1	2	15
Basic police training	7	3				2
B-Tech policing	4					4
Resolving of crime (ROC)		1				1
Detective course		3				1
Investigation of sexual offence course		3				3
BA Law					2	2
LLB			1		1	2
B.Proc			1	1		2
Post-grad qualification				1		1
Unrelated qualification		1				1

Table 9 provides a summary of the biographical data of respondents. However, as mentioned earlier one respondent did not fully complete their biographical details on the questionnaire. As such, 1 respondent's years of experience and position held is missing from the table. This did not mean that the questionnaire is null and void as this study was mainly concerned with exploring the conviction rates of rape.

Table 9 above indicates that 33 percent of the respondents were females. Of those, 13 percent represented the Verulam SAPS, with the remaining respondents making up the prosecutor and magistrates from the Verulam Regional Magistrate's Court. This percentage closely resembled the total percentage of females employed by the SAPS, which was 34 percent (Wakefield, 2014). Male participants made up 67 percent of the total sample. The FCS unit, all of whom were males, made up 20 percent of the sample. The unit based in Phoenix had a total of 16 detectives of whom two were female. This means that 12.5 percent of the personnel at the FCS unit were female detectives. The literature reveals that men are more likely to be perpetrators of rape than women (Rozee & Koss, 2001) and that men are more likely to hold negative stereotyped views of women and rape (Suarez & Gadalla, 2010; Anderson, 2004), which implies that this majority of male investigators could impact the first stage (i.e., the reporting stage) of the CJS. The commander of the FCS unit based in Mitchell's Plain, Cape Town, is cited in Wakefield's (2014) study to have commented that even though the number of women investigators is low, if a victim wishes to be interviewed by a female detective one will be made available to her. However, having few female investigators is a problem because the option of being interviewed by a female detective is not given to the victim upfront and victims may not be in the right frame of mind to make such a request (Wakefield, 2014).

Verulam was originally proclaimed to be an Indian residential, business and industrial area (Redman, 2011). The respondents in the sample were predominantly of the Indian race group (73 percent), whereas the remaining 27 percent were from Black ethnic groups. The respondents' experiences in rape cases ranged from 5 years to 23 years, with the majority (40 percent) having between 6 and 10 years' experience, 33 percent had between 11 and 20 years' experience, and 13 percent had more than 21 years' experience. Members of the SAPS made up 47 percent of the sample: 60 percent was investigators, 30 percent was warrant officers and the remaining respondent was a sector commander. Attorneys made up 13 percent of the sample, with the prosecutor and magistrates making up 20 percent.

The first point of contact for victims of rape in Verulam is the SAPS. This means that the person who takes down victims' statements should have appropriate knowledge and training on how to handle

victims and how to take down statements. One of the SAPS in-service training interventions on sexual offences is a 'first responder to sexual offences' learning programme (Wakefield, 2014). However, none of the respondents from the Verulam SAPS stipulated that they had undergone such training or any other training involving sexual assault. A total of 20 percent of the respondents indicated that they had completed a course on the investigation of sexual offences; however, this percentage included respondents from the FCS unit only. This finding is similar to a finding by Barday and Combrinck (2002) who conducted an investigated at 13 police stations. They found that very few of the investigating officers had received specific training on sexual offences and that those who had been trained had not received refresher courses to up-date their existing knowledge, especially in terms of medico-legal developments and the contents of the national instructions and policy guidelines.

The demographics of the respondents revealed that no common or general courses were in place for criminal justice agents that would give recognition to their joint responsibly and consolidate their efforts to investigate rape cases. Moreover, defence attorneys and personnel from the Magistrate's Court had not been exposed to any additional training on sexual offences and rape to supplement their qualifications and the Verulam SAPS officials had not received any training on handling or investigating cases of rape.

5.3.2 Themes that Emerged from the Responses to the Questions

This section presents a discussion on the recurring themes identified after an analysis of the participants' responses to the questionnaire items.

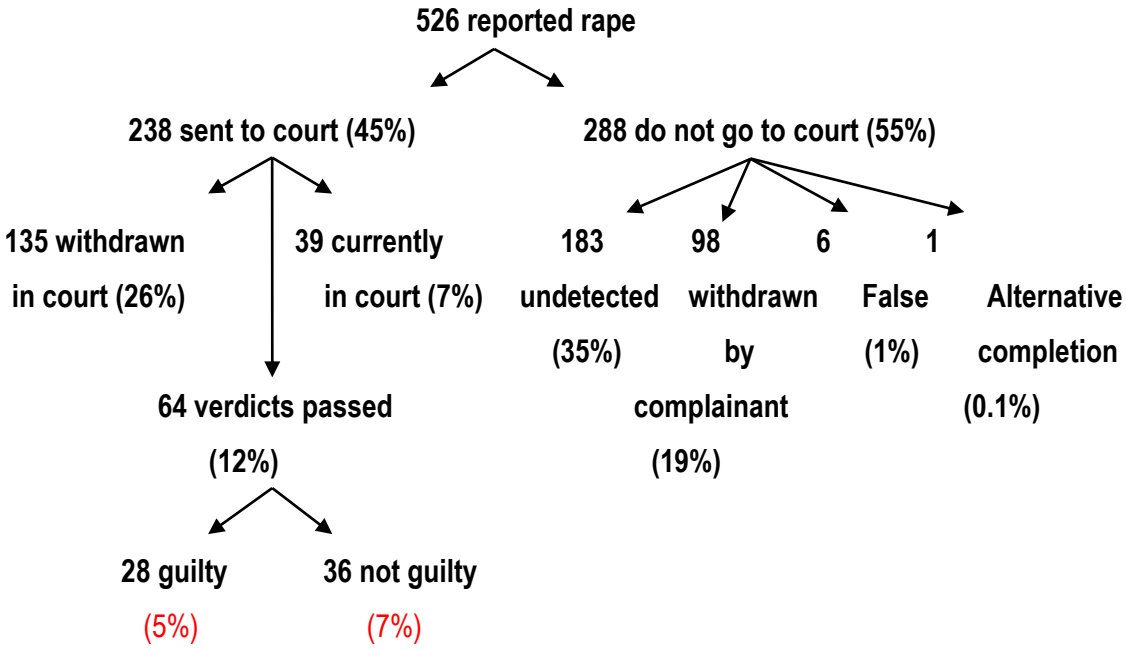
5.3.2.1 What is the current conviction rate of adult female rape in Verulam?

In light of the recognition of rape as an international crime and a human rights violation, one would expect this particular crime to be ranked in first position in terms of prosecution and conviction. However, in reality this is not the case, as was revealed by the available statistics on the conviction rate of rape both internationally and nationally. Daly and Bouhour (2009) found that the conviction rate of rape was 14 percent in Australia, whereas a report by the Office of National Statistics (2013) in England and Wales revealed a 6.8 percent conviction rate of rape for 2011/2012. In South Africa, rape is recorded under the category of sexual offences and after an analysis of the SAPS recorded sexual offences and the NPA 2012/2013 annual report, a 7 percent conviction rate for sexual offences was estimated. Provincially, research has shown a poorer conviction rate. Vetten et al. (2008) reported a 4.1 percent conviction rate for adult female rape in 2003 in Gauteng, and the SALC (2001) report indicated

a 5.45 percent conviction rate of adult rape for Durban in 2000. The current study found the conviction rate of sexual offences in Verulam to be 5 percent between 2009 and 2013 as shown in Figure 2 below.

Figure 2 depicts the attrition rates of rape cases from reporting through to conviction in Verulam, Durban, between 2009 and 2013. On the surface it would seem that Verulam and Durban in general performed within international norms of adult female rape convictions.

Figure 2: Attrition of sexual offences from report to conviction in Verulam (2009-2013)



Between 2009 and 2013, 526 sexual offence cases were reported to the Verulam SAPS. Figure 2 above shows a detection rate of only 45 percent. More than half (55 percent) of the reported cases did not go to court, 35 percent went undetected and 19 percent was withdrawn by the complainant. Of the cases that did go to court, 26 percent was withdrawn in court by either the prosecution or the victim and 7 percent is still in court. In the context of this study, an attempt was made to identify the reasons for such low detection rates and to provide an understanding of why cases do not go to court.

A total of 64 reported cases resulted in a conclusion, 7 percent resulted in a not guilty verdict, and 5 percent was concluded with a 'guilty' verdict. The 'conclusion' rate of sexual offences was calculated by means of a report-based approach; that is, the total number of verdicts (64) divided by the total number of reported sexual offence cases (526) in Verulam times 100/1. Thus, it was calculated that the 'conclusion' rate of rape in Verulam was 12 percent and the conviction rate of rape in Verulam was five

percent within a four year period. This rate covered all types of sexual offences as well as adult and child rape because the CAS does not differentiate between the two groups. Although there was no differentiation between adult and child rape, the statistical analysis of the CAS from the Verulam SAPS resembled the findings of research conducted by Vetten et al. (2008), Vetten et al. (2012), and the SALC (2001) report. Vetten et al. (2012; 2008) both showed a 50 percent and below detection rate. The SALC (2001) report found that 16.5 percent of cases had been withdrawn by the complainant. This figure is similar to the 19 percent of cases that were withdrawn by the complainants in Verulam during the four-year period under study.

When the conviction rate was calculated in terms of cases that went to court and resulted in a conviction, the rate was found to be still low at 12 percent, with not guilty verdicts dominating at 15 percent. From the 238 cases that went to court, 27 percent resulted in a conclusion. Thus, in terms of calculating the 'conclusion' rate by means of cases that progressed to court, the NPA had a 'conclusion' rate of 27 percent and a conviction rate of 12 percent.

Although the NPA sets a target of nine months for a case to be finalised in the regional court (Matthews, 2009), the statistics obtained from the Verulam SAPS CAS revealed that only 7.8 percent of cases resulted in a conclusion within the same year (2009), all of which ended with a not guilty verdict. Of the concluded cases, 39 percent resulted in a verdict within a year of the report, 40 percent was concluded in two years, 7.8 percent in three years, and 4.6 percent in four years. As the years progressed, the number of guilty verdicts or convictions decreased; for example, of the 39 percent that concluded within a year, only 56 percent resulted in a guilty verdict, 50 percent resulted in a conviction within two years of the report, and 10 percent within three years. However, no guilty verdict was passed after four years of the report. This suggests that the greater the number of years a case takes to conclude, the lower the chance of conviction. The probability of the 7 percent of cases that are still in court resulting in a conviction is therefore extremely low.

When questioned on their perceptions of the conviction rate for adult female rape in Verulam, the responses indicated that criminal justice personnel from the participant groups did not know the rate of conviction. Although the rates of conviction presented above include both adult and child rape cases, they do provide us with a means of evaluation. Respondents from group 1 indicated that the rate of adult rape conviction was average, with 1 respondent mentioning the rate to be satisfactory. In general terms, average is interpreted as 50 percent. Niven from group 2 indicated the conviction rate to be poor; Khumbu indicated a rate of 40 percent and Ravon mentioned a rate of 20 percent. Defence

attorneys also showed no signs of knowledge of the conviction rate, as Raj expressed a conviction rate based on cases he had dealt with at a rate of 40/45 percent and Akash mentioned a rate of 25 percent.

When personnel from the Verulam Regional Magistrate's Court were questioned on their perception of the conviction rate, they could not give an answer from a report-based approach and only included a rate based on cases heard in court. This suggests that a relationship between the police, prosecutors and magistrates is nonexistent. Trisha indicated a rate of 76 percent; Esther did not give a rate but said that as a magistrate she convicted more than she acquitted, with more than half the cases resulting in a conviction. Ayanda indicated a rate of 90 percent. When these responses are compared to actual rates between 2009 and 2013, it is clear that there is a lack of knowledge about the conviction rate of rapists. Furthermore, although the participants from the court had answered the question from an NPA perspective and not from a report-based approach, their perception did not come close to the 12 percent conviction rate of those cases that progressed to court.

Overall, the above responses suggest that criminal justice personnel lack knowledge in terms of the conviction rate of rape. What was most revealing was that even when the respondents could offer an informed guess, they did not get close to the real figures. As mentioned before, the conviction rate is a means of evaluating the performance of the CJS, and by acknowledging that criminal justice agents do not know the rate of conviction from a report-based approach suggests that there are major problems in the system. One glaring problem seemed to be the lack of coordination and consultation among the various sectors. The ignorance regarding the rate of conviction suggests that neither the nature nor the extent of the problem is known, or can even be guessed at. The severity of the problem therefore cannot possibility be understood, nor addressed.

5.3.2.2 What is required to convict adult female rape perpetrators in Verulam?

After interpreting the responses from each participant group, the following were identified as requirements for a conviction of adult female rape perpetrators in Verulam: corroborative evidence, qualified personnel, consistency, and court attendance.

Theme 1: Corroborative Evidence

Prior research has shown a mixed picture in terms of the use of forensic evidence such as DNA and positive case outcome. However, in this study the general consensus among the respondents was that forensic evidence is required for a conviction for adult female rape. Studies have found that sexual assault is one of the most difficult offences to prosecute because the offence usually occurs in private

and there are rarely any witnesses to the assault (Gender Equality Committee, 2011; Taylor, 2007). As a result, it involves one person's word against another (Taylor, 2007).Consequently the testimony of the complainant requires corroboration (Becker, 2009), and forensic evidence is used to provide such corroboration (Vetten et al., 2008). Apart from corroboration, DNA evidence is used to link the accused to the crime (Kim et al., 2003). In this study, the respondents confirmed that forensic evidence is necessary for a conviction of rape. Akash emphasised that medical evidence is needed for a conviction as it supports the victim's claim of the incident. Magistrates Esther and Ayanda also stressed that evidence which can confirm the victim's account of the incident is more likely to result in a conviction. Respondents from group 1 and 2 highlighted that evidence linking the suspect to the victim is essential for a conviction. This is important especially when the accused denies having sexual intercourse with the complainant as pointed out by Akash. These responses suggest that forensic evidence is required to verify the occurrence of sexual contact and that the suspect was the person to have had sexual contact with the victim. This finding is consistent with those of Jewkes et al. (2009), Vetten et al. (2008), Sphon et al. (2001) and Beichner and Sphon (2005). These researchers all found that cases that could present forensic evidence were more likely to progress and result in a conviction.

The lack of a quantitative approach means that the findings could not confirm that forensic evidence would result in a conviction, but the findings do suggest that forensic evidence is seen as an important factor in case progress and conviction. Some respondents also pointed out that expert medical evidence is a requirement for a conviction. Expert medical evidence is generally used to assist the court in providing confirmation that sexual contact took place (Kimbery, 2005). Mentioning that expert evidence is required for a conviction suggests that confirmation of the victim's account of the allegation is most important. This implies that the victim's account of the incident has to be supported by other evidence in order to clarify that the victim is not lying. Although expert evidence also includes educating the court on the psychological impact rape has on victims, which is a positive intervention to prevent the court from maintaining and exercising rape myths and stereotyped notions, it seems that expert evidence is used primarily to determine the physical aspect and ignores the mental implications of rape. This suggests that victims of rape are not viewed as part of society but as objects that stand trial.

The use of forensic evidence in terms of a conviction is also determined by the chain of evidence, which means that forensic evidence needs to be properly collected, handled and preserved for use as evidence in court. If the evidence appears to be contaminated, then the use of forensic evidence to support the victim's allegation will undermine the probative value and the chance of conviction will substantially decrease. In this context, Akash and Ayanda identified a proper chain of custody as a

requirement for conviction. In other words, the collected evidence must be presented in court uncontaminated. This also signifies the reliance on the police to adequately present the collected evidence in court.

Many criminal justice personnel believe that all women who are raped will sustain physical injuries. However, research has shown that very few women sustain physical injuries during this crime (Jewkes et al., 2012; Hazelwood & Burgess, 2001). The perception that all women fight back against their attackers and sustain injuries is still prevalent in the justice system. This was confirmed by Akash's response when he stated: "*If there are injuries, this would be consistent with a lack of consent....*" The response from the defence attorney suggests that rape myths are still active in the system. Esther also stated that if the medical report showed that the complainant had been bleeding or that the hymen was broken, it would support the complaint. In other words, if there are injuries, it will show that the victim did not consent. This was not a surprising finding as it supports both international and national literature where it is stated that injuries sustained by the victim are used to determine consent. Exercising rape myths and stereotyped notions to determine consent suggests that people's perception of rape is based on their own opinions and beliefs that are constructed from a lack of legal definitions. In other words, the lack of defining consent in legislative tools leaves an open interpretation of the term; it thus becomes a sociological construct which, according to Hurt (1981), produces a tendency that results in an unstable analysis. Theoretically, this social construct within a South African context can be said to be fuelled by socially learnt ideologies that declare, for instance, that rape results in physical injuries. Moreover, society itself is inclined to learn behaviours and attitudes and therefore physical injuries as a requirement for rape play on the minds of victims. Consequently, associating violence with rape may mean that the crime may not be reported, or it may be withdrawn at a later stage.

In this context, it is important to note that Esther perceived that when women are sexually active, injuries are less likely to occur, as opposed to the rape of children. Furthermore, women are also exposed to marital rape (Myhill & Allen, 2002) in which case injuries may be minimal. Therefore one of the difficulties in adult female rape cases is proving that a rape occurred without the consent of the complainant. It therefore seems that determining consent rests primarily on stereotyped perceptions. This notion is confirmed by Vetten et al. (2008), who found that women who are sexually active are unlikely to obtain injuries. Although this points to the fact that some adult women will not sustain injuries, injuries are still used to determine the issue of consent, suggesting that rape myths continue to exist in the CJS.

Akani identified the presence of an eye witness as an important requirement for a conviction. In terms of the rape of an adult female, this requirement seems unlikely as research points out that most rapes occur in private. For example, Myhill and Allen (2002) found that 32 percent of the women in their study had been raped by their former partners, 22 percent had been raped by an acquaintance, 45 percent had been raped by current partners and 55 percent had been raped in their own homes. These statistics suggest that eyewitnesses are seldom present in the case of rape. Moreover, the presence of an eye witness by no means guarantees a conviction (Homstrom & Burgess, 1992) as there are several problems associated with eye witness reports in the case of rape, such as the reliability of eye witness memory (Houck, 2015; Cohen & Conway, 2008). The latter issue was outside the scope of this study. However, this is a noteworthy finding as it suggests that an eye witness can provide corroborate evidence in the absence of DNA or any other evidence supporting the victim's account of the incident.

Overall, these responses indicated that corroborate evidence is a requirement for a conviction in adult female rape cases and that corroborative evidence may include DNA evidence, physical injuries, expert evidence or evidence that links the suspect and the victim. Importantly, the responses gathered under this theme suggest that criminal justice personnel are not kept up-to-date with current research and behaviour patterns of rape victims. This neglects not only the non-stagnant behaviour of individuals, but also all facets of rape, including the sociological and psychological features associated with rape.

Theme 2: Qualified Personnel

Although duties and functions of criminal justice personnel are neatly presented in legislations and policy documents that also include directives and guidelines on training courses, research has shown that inadequately trained criminal justice personnel jeopardise positive case outcome (Vetten et al., 2010; Vetten et al., 2008; Artz and Smythe, 2007). The lack of proper training may result in insufficient statement taking, deficiencies in evidence gathering and contamination of collected evidence. Studies have found that insufficient statement taking results in suspects not being apprehended, delays, postponements, backlogs and withdrawal of cases that have a high probability of conviction (Vetten et al., 2010, Vetten et al., 2008; Fernandez, 2000). In order to avoid risking a case that may have a high probability of conviction, it is essential to have qualified personnel to deal with rape case investigations and prosecutions. Respondents in this study stressed that qualified personnel play a crucial role in obtaining a conviction. Some respondents stated that a fully completed docket is essential for a conviction. This means that those who are responsible for completing a docket are able to fully compile a docket in the best way possible. Their comments included taking down the victim's statement properly, conducting a thorough investigation, and ensuring the collection of evidence.

A few respondents also mentioned that the collected evidence needs to be kept safely and presented in court uncontaminated. Contaminated evidence is inadmissible in court; this can severely damage the victim's case which may result in the acquittal of the suspect. Neglecting to safe guard collected evidence is a denial of a fair trial for both the complainant and accused. Contaminated evidence also implies that the victim's credibility will have to be proved on a greater level. This gives defence attorneys a loophole to attack the victim's credibility, which increases the trauma experienced by victims during the trial process. To avoid inadmissible evidence, personnel are required to be professional and handle their duties with utmost confidence and diligence.

Interestingly, Harry indicated that it is essential to prepare a victim for trial. This suggests that the police and prosecutors have to be fully aware of what is expected of a victim during the trial and what methods to use for preparing a victim to stand trial. It appears that preparing victims for trial rests with the police as the National Instructions document lists the preparation of victims and assisting them during court proceedings as one of the responsibilities of the police. Preparation for court proceedings could prevent a victim from appearing unreliable, and this will increase the chance of a conviction. Lievorce (2004b) found that preparing witnesses for trial had increased the probability of conviction in many adult rape cases as the cases largely depended on the ability of the victim to articulate the events and convince the court beyond a reasonable doubt that a crime had occurred. Moreover, if a victim is aware of the trial process it may reduce the chance of secondary victimisation and enhance the complainant's testimony. It goes without saying that victim preparation requires well trained, experienced and knowledgeable criminal justice personnel.

Khumbu stressed that a relationship between the police, victim and court is important for a conviction of the perpetrator. The lack of communication between the police and the complainant hampers the completion of an investigation. Studies have shown that the lack of communication between criminal justice personnel and the complainant may result in the disappearance of the complainant, which impacts a positive case outcome (Sigsworth et al., 2009). The relationship between the police and the victim is therefore important in obtaining a conviction. A relationship of trust, for example, will ensure that the victim is prepared and will attend the trial proceedings.

Moreover, a relationship between the police and the prosecution authority is equally important. This relationship allows for investigating officers to question prosecutors on what is necessary to bring a case to trial. Also, prosecutors rely on investigators to provide evidence that will ultimately lead to a conviction (Maier, 2014). It was mentioned by Trisha that a *prima facie* case is essential for a conviction. This means that all evidence provided by the investigating officer needs to be established to

such an extent that a conviction is guaranteed. This can only be achieved if the investigating officer is well aware of what evidence is required by the prosecutor to obtain a conviction. In this context the communication between the police and the prosecution authority is an essential requirement for a successful prosecution of rape. Studies have shown that when the prosecutor is involved in guiding the police investigation, the case easily proceeds in the CJS (Artz et al., 2004). Seelinger et al. (2011) also deem the coordination between investigators and prosecutors to be an essential requirement for a successful prosecution of sex crimes. The existence of this communication requires dedicated criminal justice personnel who are well informed of their duties and the methods for achieving justice for victims of rape.

Some respondents noted qualified prosecutors as a requirement. Asmita from group 2 mentioned that appropriately qualified prosecutors are required to ensure a conviction. This suggests that there is a slight blame on prosecutors for having a low rate of conviction. Esther mentioned that defence attorneys are generally strong, which means that the prosecution needs to be equally good, if not better trained, to prove the victim's case. Esther also stated the types of defence that are raised during a trial, including the issue of identity. In this instance the defence argues that the accused is not the person who raped the complainant because the rape may have occurred in the dark; or the defence of denial is offered, where the defence argues that the complainant is lying; or the defence of consent, where the defence argues that the complainant consented to the sexual encounter. If the former defence is raised, then it is essential for forensic evidence to be present. This responsibility rests partly on the police. However, adult rape victims exercise a choice in terms of undergoing a medical examination. Given the extensive and daunting medical examination that victims have to undergo, choosing not to have a medical examination is prevalent. This raises several questions that, however, were beyond the scope of this study. Proving and disputing the latter two are dependent on the prosecution and defence. However, Esther noted that acquittal rates are higher when the accused has a good defence attorney.

In an adversarial system, a case is determined based on evidence presented before a court. Moreover, in South Africa rape is a crime against the state (Combrinck & Skepu, 2003), thus prosecutors are the ones that present the case before court. Furthermore, the victim may not exercise a choice of legal representative as a prosecutor is appointed to a particular case. It is therefore all the more important to have well trained, qualified and experienced prosecutors. Additionally, prosecutors should exercise a degree of sensitivity, because in many cases the complainant is treated as a state witness rather than a victim (Reddi, 2007). Such insensitive treatment could arguably lead victims to withdrawn their

complaint or to not even report the incident to the police. Thus, prosecutors need to be well equipped to prove the credibility of the complainant.

Importantly, Akash stated: "*It is also important that the police official who takes down the complaint when the complainant lays the charge is competent and is able to extract all the relevant information from a traumatised complainant at this early important stage."* In recognition of the trauma that rape victims experience, it is essential that those who are responsible for taking down their statements are able to conduct themselves in a sensitive manner and that they provide the appropriate support that rape victims require. Therefore trained, competent and qualified persons are required to handle victims from the outset. The lack of displaying sensitivity and professionalism may result in significant information possibly being left out, which in turn will reduce the chance of conviction. Furthermore, qualified persons portray the image of a well organised CJS, and confidence in the justice system will be enhanced.

In general, the participants in this study pointed out that those who are responsible for achieving a conviction in rape cases are required to be qualified in exercising their duties. This requirement extends to conducting investigations, training in statement taking, evidence storage, and methods of handling victims. An efficient CJS for rape victims also requires coordination between all criminal justice stakeholders and qualified prosecutors.

Theme 3: Consistency

Research has noted that the use of forensic evidence is limited, primarily because DNA evidence can only prove that sexual intercourse occurred between the victim and the accused, but it cannot prove the issue of consent, especially when there are no signs of injuries. Thus other factors, such as victim credibility, influence the outcome of a rape case (Du Mont & White, 2007). Victim credibility is often determined by the consistency of the victim's testimony, which is when the victim's testimony is consistent with the first statement made by the victim (Bellengere et al., 2013). Bellengere et al. (2013) acknowledge that bringing the statement and the differences to the court's attention may have profound effect on the way the court views the witness's evidence. For example, if it is shown that the victim is forgetful, uncertain or unobservant, or appears to present a different version of the incident even if it is minor details that differ from the initial statement, the defence disputes the complainant's testimony and claims that she is unreliable (Bellengere et al., 2013; Temkin, 2000). Although rape memories are less clear and vivid, less detailed, less well-remembered and less recalled (Tromp, Koss, Figueredo & Tharan, 1995), the defence argues that these signs indicate deception or inaccuracy (Ellison, 2005).

Some respondents in this study accentuated that there needs to be consistency in victims' statements. In other words, the first statement made by the victim must correspondent to the complainant's evidence given in court. In this instance, the victim appears as reliable which increases the likelihood of a conviction. This requirement neglects the psychological impact rape has on a victim and that reporting the violation may be as traumatising as the incident itself. However, Ayanda highlighted that the first report statement is especially important when the defence raises the issue of consent. Harry also pointed out that the first report statement is important particularly when there are no witnesses to the crime.

Research also suggests that prosecutors and judges are influenced by the behaviour of the victims, for example anger and sadness are associated with the emotional state of a victim (Ewing, 2009; National Violence Women Survey, 2006; Kelly 2001). Spohn and Holleran (2004) further contemplate that when there is little physical evidence to link the suspect to the crime, and/or there is no eye witness, the victim's character, behaviour, and credibility become an important factor in prosecutors' verdict. According to Vetten et al., (2008) assessing victim credibility is most vulnerable to misconceptions and stereotyped notions about rape. Thus, if the victim's behaviour is probable to that of a genuine rape victim, the chances of conviction are higher. A 'genuine rape victim' is a victim who fits the 'real rape' template; for example, the victim does not know the offender, the victim was sober, the victim sustained injuries and reported the crime soon after it occurred, and the victim fought back against the attacker or screamed for help (Burrowes, 2013, Ewing, 2009; Redondo, 1997). Delayed reporting by the victim may be used as a defence strategy to discredit the complainant (Ellision, 2005). A 1987 study by Adler showed that delayed reporting significantly impacts on the result of a case, with only 38 percent of late reports in his sample resulting in a conviction compared to 73 percent of immediate reports. In the current study Esther mentioned that when a report is made at the first possible opportunity, a conviction is more likely. This suggests that a negative inference is drawn when the complainant does not report the incident soon after the violation. This misconception fails to recognise the psychological or social impact the sexual violation has on the victim. Bongani in this study even suggested that a report should be made within three days of the incident. Thus, perceptions about delayed reports show that the victim's behaviour is not deemed consistent with that of a 'genuine' rape victim. On the other hand, a delayed report may also contribute to the loss of vital evidence such as DNA; however, the presence of DNA evidence cannot prove consent. The consequence of delayed reporting seems to be directed towards the issue of consent as opposed to the loss of DNA evidence.

Ayanda stated: *"First report evidence … gives an idea of the condition of the complainant after the rape, particularly if reported early, and in cases where consent is the defence."* This suggests that if complainants display certain behaviours or show signs of injuries, a conviction is more likely. Esther stated: "*The complaint must be clear and satisfactory. That is, there must be no inherent improbability (common sense must tell you that it is believable and anyone in that position will have done the same)."* This indicates that rape victims are stereotyped in that the perception exists that all victims display the same or similar behaviour. In keeping with these responses, it is evident that rape myths and stereotyped notions are very active in the justice system. This finding is supported by various research studies that found that decision making is influenced by extralegal factors, including what criminal justice personnel believe and expect and what their attitudes towards victims are (Anderson, 2014; Taylor & Joudo, 2005; Maschkle, 1997).

Theme 4: Court Attendance

Studies have shown that one of the reasons cases are withdrawn in court is because of the failure of the victim and witness/es to appear in court (Vetten et al., 2008; Vetten & Motelow, 2004; Van Vuuren & Van Rooyen, 1994). Vetten et al. (2008) found that 33.5 percent of cases were withdrawn in court because the victim had been untraceable. Case progression and conviction are also affected when the victim fails to appear for a pre-file interview (Frohmann, 1991). Studies have shown that victim characteristics have an impact on case outcome, and that non-attendance by the complainant suggests a disinterest in the case (Ward & Inserto, 1990).

In this study it was also noted by a few respondents that court attendance by victims and witnesses is a requirement for a conviction. This requirement is important, especially in South Africa where a criminal case requires the attendance of the witness, unless the court excuses such a person. This requirement is found under section 187 of the Criminal Procedure Act 51 of 1977 (RSA, 1977), which states that "a witness is to attend court proceedings and remain in attendance unless such witness is excused by the court." If the witness fails to attend or remain in attendance during the court proceedings, the proceedings may be adjourned and the witness may be held guilty of a criminal offence (section 188). Court attendance is therefore one of the requirements for a conviction.

5.3.2.3 What obstacles prevent a higher conviction rate for the rape of adult females in Verulam?

The themes identified as obstacles preventing a higher conviction rate for adult female rape are the lack of expertise, process delays, and uncooperative victims, withdrawal of cases, unprepared victims,

the issue of false cases, and the accused person absconding from trial. Each theme will be discussed below.

Theme 1: Lack of Expertise

A major theme identified as an obstacle preventing a higher adult female rape conviction rate is the lack of expertise. Respondents indicated that there is a lack of qualified and experienced police officers and prosecutors who are responsible for dealing with rape cases. The lack of expertise among police officers, court officials and doctors carrying out medical examinations for legal purposes are detrimental to a woman's case (Human Rights Watch; 1997). The lack of expertise at each stage of the process has an effect on the next level in the process, which ultimately leads to a failed prosecution.

The police are often the first point of contact in the CJS, thus their level of expertise holds great value, especially to victims of rape. However, Naidoo (2013) argues that they are uninformed about procedures to follow and unsympathetic towards victims. Those police officers taking down statements are often untrained and unskilled in handling rape victims (Ebbe & Das, 2010; Vetten, et al., 2008; Human Rights Watch, 1995), and this jeopardises a positive case outcome. Artz and Symthe (2007) contend that the quality of investigations by the police is a major factor in the attrition rate of rape cases. The effects of poor statement taking were documented by Vetten et al. (2008), who found this factor to result in the victim becoming untraceable and suspects not being identified. In their study, 74.7 percent of police statements failed to provide descriptions of the perpetrators and 30 percent of the victims became untraceable because police statements neglected to include information regarding the contact details of victims. Such cases are eliminated from the justice process, which harms the rate of conviction.

In this study the respondents noted insufficient statement taking as an obstacle in achieving a higher conviction rate. Some respondents contended that police officers are inadequately trained in noting down victim statements, stating that this negatively impacts on case outcome. This is so as in many rape cases the victims are attacked on the first report statement and if there are any diversions to the evidence presented in court, it could undermine the chance of conviction. The defence attorneys who participated in this study both stressed that first report statements are an essential barrier. This verifies the fact that when victim statements are insufficient, it leaves the victim's testimony open to attack by defence attorneys, and they use this to the utmost advantage of the defence. Coupled with poor docket disclosure and the adversarial system, poor statement taking assists the defence as it provides an advantage when statements are not complete or consistent.

In addition, Esther contemplated that if the statements are properly noted and taken down as early as possible, it will give the accused fewer avenues of escape. Importantly, respondents indicated that those who are responsible for dealing with rape cases are not trained to deal with the psychological aspects experienced by rape victims. At present, there seems to be insufficient training courses for police that address statement taking and methods of handling victims, including the psychological impact that rape has on victims. The dearth of sensitive training and handling rape victims may contribute to secondary victimisation.

Artz and Smythe (2007) further point out that the accessibility of investigating officers, high caseloads, and the extent to which investigating officers are qualified to investigate rape cases are contributing factors to the quality of rape investigations. In South Africa rape is investigated by the Family Violence, Child Protection and Sexual Offences (FCS) Unit. Personnel employed in these units are not only mandated to investigate crimes of a sexual nature, but they also investigate indecent assault, attempted murder, and assault with intention to do grievous bodily harm. This means that investigating officers are burdened with high caseloads and specialisation in rape case investigation is absent. Harry noted that there is rarely any contact between the investigating officer and the victim. The lack of contact and constant feedback of case progression between investigators and victims may leave the victim feeling helpless. The lack of contact may be the result of high caseloads and understaffed personnel. Investigating officers can therefore become desensitised to rape victims due to the high number of cases they have to deal with. Moreover, female officers make up less than 30 percent of the policing community; therefore female officials cannot attend to all female rape cases. Consequently, rape victims may have to report their violation to a male officer and their statements are often noted by males. At this point essential information may be left out by the victim. This barrier of limited manpower can therefore detriment case outcome. However, if other problems in the system persist, increasing the amount of manpower may not have any positive effect on the rate of rape convictions.

During the investigation phase the collection and safekeeping of forensic evidence is another crucial factor, especially in rape cases, as it provides corroboration of a victim's allegations. However, the responses of the respondents in this study imply that this central part of the investigation is flawed. Harry noted that there is a lack of trained and qualified investigators to collect, safeguard and present evidence during court proceedings. Ayanda pointed out that forensic evidence is handled badly by the police. Akash stated that forensic evidence that is presented in court is contaminated. These responses strongly imply that investigating officers are not trained in evidence gathering and safekeeping of evidence. This is a surprising finding as the National Instructions document (which was discussed in

Chapter 2) expounds the responsibilities of police officers and provides detailed steps of police investigations, including statement taking and gathering and safekeeping of evidence. The comments suggest that national instructions and guidelines are rarely followed and further imply that investigating officers are not taking their duties seriously, thus obstructing a conviction and denying justice for victims. Furthermore, the presentation of uncontaminated evidence in court is the responsibility of the police and the failure to do so is one of the major factors that concern magistrates, as they are compelled to restrict the poorly presented use of such evidence which, in turn, hampers a conviction.

Some respondents highlighted that the lack of human resources creates an unfavourable environment that is conducive to loopholes. Trisha stated: "*Operational and logistical issues play a vital role. These include human resources. The issue relating to human resources has a ripple effect on creating a backlog of cases; these backlogged cases are cases that are on the court roll for longer than the stipulated time frames."* Logistical issues such as limited resources create an unbreakable chain where the issue of limited resources contributes to insufficiently trained personnel. This in turn produces an environment that is conducive to secondary victimisation. Furthermore, the reality of untrained and limited personnel creates a heavy burden on court rolls which leads to frustrated victims and eventual withdrawals. Overall, one issue leads to another.

Lack of human resources extends to health care facilities. Naidoo (2013) acknowledges that problems exist within facilities dedicated to rape victims. These problems include the lack of human and financial resources; a lack of appropriate training and clinical competence; the prevalence of staff apathy; and resistance and non-adherence to procedures. Ayanda indicated that the evidence that should be provided by medical doctors is often not present during court proceedings. This significant evidence that is omitted affects the case in more ways than one. The lack of presenting medical evidence during court proceedings may result in the case being postponed and, if case postponement is persistent, it could lead to the eventual withdrawal of the case or the loss of vital evidence.

A limited number of prosecutors not only affects the perusal of rape cases, but may affect the testimony of victims in court as limited prosecutors mean that victim and prosecutor consultations are restricted. Pithey et al. (1999) argue that because of limited victim and prosecutor consultations, the complainant is under-educated in terms of what is expected of her; as a result, the complainant's testimony is often unclear, contradictory and incomplete. This is an essential element as rape cases generally rely on complainants' testimonies. Prosecutors are required to probe deeper than merely rely on police investigations. However, with the lack of prosecutors this requirement seems more far-fetched than

anticipated. In addition to the existing problem of limited personnel, those that are recruited as prosecutors in South Africa are young and inexperienced lawyers (Strydom, 2009).

The general consensus of the respondents in this study was that there is a lack of experienced prosecutors. In South Africa the crime of rape is prosecuted as an offence against the state and not as a dispute between the victim and the accused (Combrinck & Skepu, 2003). This means that the complainant in a sexual assault case is not directly involved in the case but acts as a state witness. The complainant therefore does not have a right to legal representation at any stage of the proceedings. This makes it all the more important for prosecutors to be well trained and experienced to handle rape cases, especially in an adversarial system such as in South Africa.

Furthermore, in South Africa the burden of proof rests on the state rather than on the defence and if the version offered by the accused is shown to be reasonably possibly true, then the accused will be acquitted (Joubert, 2010). Esther highlighted this and further stated that even if the court may believe the complainant, if the evidence of the accused is seen to be reasonably possibly true, he is entitled to an acquittal. This seems to suggest that the South African court system tends to favour the accused rather than the victim. Interestingly, Esther further stated: "*The court rather acquits 10 than convicts one innocent person."* Although protecting those who are wrongfully accused, this system denies justice not only for the victim, but for society as a whole, as it leads to more perpetrators out there in society. The chance of reducing the high number of rapes in South Africa seems impossible with a system that operates in the interest of offenders rather than in that of the victims. This is not to say that all complainants are honest in their reports, as Niven, Bongani and Esther explained that women do lie about being raped for financial imbursement, and for this reason there are strict rules in law. Thus, unless experienced prosecutors eliminate those cases that are false at the onset and prove legitimate cases by removing the possibility of the version of the accused appearing true, higher crime convictions rates will not be achieved.

Although some participants from group 1 and 2 mentioned inexperienced investigators as an obstacle preventing a higher conviction rate, it seems that the police tend to blame low conviction rates on prosecutors as the majority of the responses from group 1 and 2 listed 'inexperienced prosecutors' and 'lack of specialised prosecutors' as factors impacting rape conviction rates. Groups 3 and 5 pointed out that it is the police who are not conducting proper investigations. While Raj identified the lack of adequately trained police and prosecutors in terms of the psychological trauma, no participant acknowledged the joint responsibility of the CJS in achieving a high conviction rate. This suggests that each department is operating separately and that investigators are thus not aware of what evidence

prosecutors require to obtain a conviction. The responses also imply that prosecutors do not guide the investigations because cases endure various delays in the system.

Moreover, the lack of expertise was a recurring theme in this study. This suggests the perception that the presence of experienced personnel will improve the conviction rate for rape. However, although the respondents in this study had a number of years of experience in rape cases, there appeared to be an absence of ongoing training, refresher courses and courses on sexual assault as well as courses on handling rape victims and first responder training. This suggests that personnel are not up-to-date with the latest research on rape and methods of handling rape victims.

Theme 2: Process Delays

The next theme identified as an obstacle was delays. It appeared form the responses that delays in terms of DNA results and the continuous remand of cases prevent a conviction. Ravon explained that when cases are continuously remanded, victims lose interest in the matter. This loss of interest results in the victims not attending court or withdrawing their case, and thus the accused are acquitted. Ravon also noted that cases take up to four years to finalise, which is consistent with the statistics obtained from the Verulam SAPS CAS that showed that 7 percent of cases are yet to be finalised. An important point to note is that unnecessary delays in criminal proceedings are a source of failed prosecutions and collapsed trials. These phenomena often lead to frustrated victims who may then not want to proceed with the case (Larcombe, 2011; Dandurand, 2009; Iruoma, 2005). Victim's nonattendance at trial can also be attributed to travelling costs, especially when the trial is remanded several times. Loss of wages is also an issue because of the time a victim has to spend going to court (Neubauer & Fradella, 2014). Apart from economic factors discouraging women from attending court proceedings, delays of the court process may cause emotional strain on victims as they may have to dwell on the incident during the period of delay; wait in an uncomfortable court environment; or face the defendant and his associates (Neubauer & Fradella, 2014; Iruoma, 2005). Moreover, delays can leave victims feeling that the CJS is ineffective and that personnel are unconcerned about their plight (Neubauer & Fradella, 2014).

Delays are often caused by factors such as incomplete and outstanding investigations; dockets being unavailable; unavailability of forensic laboratory and pathology reports; interpreters not being available; unavailability of legal aid for the accused; and witnesses, complainants and even the accused not being present (Matthews, 2009). Hickman and Strom (2014) argue that the delays in processing and receiving analysed evidence impact negatively on victims' rights, which may result in the guilty being acquitted. In this study respondents pointed out that the delays in obtaining DNA results are an obstacle preventing

convictions. All collected evidence is analysed and stored at the Forensic Science Laboratory (FSL) in Pretoria (Van der Walt & Luke, 2011) and, with South Africa experiencing a high burden of rape, delays in analysing evidence are probable. Kevin acknowledged that delays in DNA results are due to backlogs experienced at laboratories. Interestingly, Esther mentioned that DNA results are only processed when the prosecutor asks for it to be done. It appeared then that processing DNA is costly and therefore it is not done in each reported case. Ravon highlighted that DNA results can take between 6 to 12 months before they are available. This wait thus hinders the advancement of a case, causing frustrated victims as well as high court rolls.

The delay in obtaining DNA results may also cause cases to be postponed many times, leading to victims' unwillingness to attend court and the eventual acquittal of the accused. Delays are also caused by the lack of resources (National Institute of Justice, 2003). Trisha indicated that the lack of human resources has a ripple effect in the system by creating backlogs that ultimately affect the rate of rape convictions. Some respondents also noted a high court roll to be an obstacle, suggesting that there are insufficient personnel at the prosecution level and that this leads to the continuous remand of cases. It is therefore clear that, with a high occurrence of rape in South Africa, the shortage of criminal justice personnel is a serious problem.

Delays between the report and the medical forensic examination also reduce the likelihood of case progression through the CJS (Campbell, 2012). Ayanda stated that delayed reporting results in delayed medical examination, which means that physical evidence such as DNA can be lost. Medical examinations should in theory be conducted no later than 72 hours after the incident. However, vital evidence can be lost if the victim washes herself or even uses the toilet before undergoing a medical examination (Seelinger et al., 2011). Campbell et al. (2008) demonstrated that cases exceeding 20 hours to examination were less than half as likely to progress as cases where the examination occurred earlier. Delays in medical examination therefore reduce the chance of a conviction.

The participating respondents suggested that delays in the system, such as forensic analysis and delayed reporting, have an undulating effect as they give rise to other issues such as the withdrawal of cases. Furthermore, these delays suggest that there is a shortage of personnel at every level of the justice system, including forensic experts and prosecutors.

Theme 3: Uncooperative Victims

The third theme that was identified centred on the issue of uncooperative victims. In a rape case where forensic evidence is not available, courts rely on the evidence presented before it. In this context the

cooperation of victims becomes vital. Seetahal (2001) stresses that if the complainant does not appear in court, the magistrate may adjourn or dismiss the case. Furthermore, when victims are not cooperative in the process, prosecutors may refuse to file charges or the case is dismissed, which affects the conviction rate (Maire, 2014; Neubauer & Fradella, 2014). The fact that the respondents pointed out that court attendance is one of the crucial requirements for a conviction, nonattendance was revealed as an important obstacle preventing a higher conviction rate. Studies have shown that the odds of prosecution increase when victims cooperate with the prosecution. Some respondents in this study even highlighted that any lack of interest shown by victims has a detrimental effect on the conviction rate. Victim credibility is often determined by the reaction of the victim and if the victim is not interested in the case, credibility becomes a question. Moreover, in South Africa, if the victim does not attend court proceedings, the court may adjourn the matter.

A few respondents mentioned that victims become less interested in the case and do not show up during court proceedings. This is a surprising finding as one may argue that a rape victim will want to see the perpetrator punished for his actions. However, the fact that a complainant may show diminished interest in the case may be attributed to various reasons. Taking into consideration the many postponement and delays in the investigations, victims may naturally become disinterested in the matter. Moreover, going to court several times can add to the financial and economic burden on victims. Other factors listed by Maire (2014) and Leivorce (2005b) that deter victims from continuing with the criminal justice system include the lack of understanding of the process; the anticipation of secondary victimisation; stereotyped attitudes of the police; and unskilled and untrained staff. It is clear that each fault in the system has an impact on case outcome, which ultimately affects the victims.

Some respondents indicated that victims are unwilling to give evidence in court. Bongani supported this statement by indicating that victims are often fearful of being exposed in public, or they fear the suspect. Not surprisingly, this response is shared by Leivorce (2005b) who lists the fear of reprisal and social isolation as factors influencing victims from discontinuing with the criminal justice process. Although there are various reasons for complainants not to cooperate during the criminal justice process, this factor was beyond the scope of this study. Yet, it was revealed as a factor preventing a higher conviction rate of rape.

Theme 4: Withdrawal of Cases

Cases may be withdrawn by victims, the police, prosecutors, or while in court. Naidoo (2013) and Schonteich (1999) contend that victims may withdraw their case because they lack understanding and

faith in the CJS; because of the delays in the system; or because the experience of the trial may be upsetting. Other reasons victims may withdraw cases include the fact that the victim may feel intimidated by the perpetrator; the victim is afraid of the possible reaction of unsupportive partners or family; a false report was made; or the police persuade complainants to withdraw charges (SALC, 2001; Frazier & Haney, 1996). Although this study did not focus on the reasons for victims withdrawing charges, Prem stated that complainants withdraw charges because they are afraid to face the offenders. Ravon stated that victims withdraw cases because complainants lie about being raped; for monetary reasons; or to patch up their relationship. From the responses it appeared that cases are mainly withdrawn by complainants.

Kevin mentioned that complainants withdraw cases in court. Studies have shown that withdrawal of cases in court may sometimes be related to the credibility of the complainant (i.e., if it is shown that she is lying), which may be linked to the complainant withdrawing the matter (Artz & Smythe, 2008). Cases may also be withdrawn in court by the prosecution when investigations are incomplete or inadequate (Artz & Smythe, 2008). Prosecutors may also withdraw a case when there is a lack of sufficient evidence to warrant a prosecution (Schönteich, 1999). Withdrawal of cases either by the complainant or the prosecution ultimately affects the conviction rate. Additionally, when cases are withdrawn by the complainant, several other questions pop up. One such question is: *What is the system doing to prevent withdrawal of cases?* Furthermore, when cases are withdrawn due to insufficient investigations, it demonstrates poor investigation strategies on the part of the police as well as a lack of coordination between police and prosecutors.

Theme 5: Unprepared Victims

The next theme that emerged from the responses was that victims are often not prepared for the trial, which leads to inconsistent and contradictory evidence presented in court by the victim. Snow (2006) argues that prosecution becomes difficult when the victim is viewed with suspicion. This generally occurs when the victim is not prepared for the trial. Rape victims undergo extreme emotional experience in court (Snow, 2006), which results in bad victim testimonies and victims appearing as poor witnesses. In this study the respondents indicated that the fact that victims are unprepared for trial has a negative impact on case outcome. The responses highlighted that victims are not prepared psychologically and that they thus appear to be poor witnesses. This is an essential element as in rape cases victims are criticised on their behaviour in pursuit of discrediting their truthfulness. Moreover, if a victim's testimony deviates from the first report statement, her credibility becomes subject to much debate. This occurs when victims are not prepared and well informed about court procedures.

Importantly, if victims are not prepared to be crossed-examined by the defence, it results in contradictory evidence. Harry pointed out that victims are interviewed whilst in shock from their ordeal and that this results in important information being left out. This suggests that vital information is left out at the outset by the victim and, when presented in court, her evidence is questioned. This is a major factor as rape cases generally involve one person's word against that of another, thus the phenomenon of unprepared victims places the possibility of a conviction in a disadvantaged position.

A means of assessing victim credibility is consistency. If it is shown that there is inconsistency in the victim's statements or testimony, it may negatively impact on the victim's credibility (Hazelwood & Burgess, 2001). Thus, it is likely that if the victims' statement contains gaps, it will lead to questioning her credibility, which may result in the acquittal of the accused (Patterson, 2008). The respondents indicated that victim inconsistency and the inability to present evidence lead the court to believe her to be an unreliable witness. Akash stressed that a problem occurs when the evidence presented by the victim in court is contradictory and inconsistent with the first report statement. This indicates that the testimony given by the complainant in court needs to match every other statement in order for the complainant to be regarded as a reliable witness. When victims are not prepared psychologically and emotionally for court proceedings, the possibility of a conviction decreases.

Theme 6: False Cases

The perception that women lie about rape has not been adequately documented in South Africa. However, the studies that have looked at false rape cases have found that the public's belief that false allegations occur is higher than it actually is (Kelly et al., 2005; Temkin, 1997; Gregory & Lees, 1996). This erroneous, stereotyped belief results in the generalised opinion that women should not be believed. A few respondents in this study pointed out that an important obstacle in achieving a higher conviction rate is false accusations of rape. This findings raises concern, as the statistics presented earlier show that out of 526 reported cases, only 1 percent (i.e., 6 cases) was classified as false. Vetten et al. (2010) found in an investigation in Gauteng that only 2.3 percent of cases in their sample were classified as false. This finding suggests that even though laying a false complaint is prevalent (even to the smallest degree) it may result in the generalised opinion that a woman cannot be trusted. Besides, victims of adult rape cases are more likely to be blamed for their victimisation. Moreover, when criminal justice personnel hold biased opinions about women, it could undermine the investigation and possible prosecution.

Theme 7: The Accused Absconds

Another recurring response was that suspects abscond or evade court. Both international and national law regard the presence of the accused as a fundamental component of a fair trial (Fawzia, 2009). The presence of the accused at a trial is compulsory as contemplated under section 158 of the Criminal Procedure Act 51 of 1977 (RSA, 1977). According to section 14 (3) (d) of the International Criminal Court Rules of Procedure and Evidence 2002 (International Criminal Court, 2002) an accused has a right to be tried in his presence. As such, in South Africa a judicial officer cannot communicate with any witness in the absence of either party and if a judicial officer fails to comply with the principles of law, it will lead to the conviction and sentencing being set aside (Fawzia, 2009). Iruoma (2005) notes that the nonappearance of the accused in court causes delays in the CJS that eventually lead to the adjournment of the case. A significant finding in this study was that the accused person absconds whilst on bail. The system of granting bail to suspects of rape is therefore an issue as respondents indicated that accused who are released on bail cannot be traced after their release. This suggests that granting bail to accused persons affords them a significant opportunity to escape conviction.

5.3.2.4 How can the conviction rate for reported adult female rape in Verulam be improved?

The participants' responses for the improvement of the conviction rate were themed into five themes, namely training, specialisation, prompt process, victim preparation, and improved competency.

Theme 1: Training

An improvement of the conviction rate in terms of training is consistent with the 1993 United Nations Declaration of Elimination of Violence against Women (article 4 (i)) (United Nations General Assembly, 1993) which makes provision for states to "take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitise them to the needs of women". The Preamble and objectives of the Criminal Law (Sexual Offences and Related Matters) Amendment Act (RSA, 2007) recognise that the effective implementation of the Act requires all role players to undergo training for the efficient investigation and prosecution of sexual offences. Accordingly, training should be provided to all persons who deal with victims of sexual violence in the CJS, and these include frontline staff, police, medical officers, social workers, interpreters, victim support officers, intermediaries, prosecutors, presiding officers, and correctional supervision personnel (DOJ&CD, 2014). However, in reality and as was shown in the demographical information of the respondents, criminal justice personnel, apart from personnel from the FCS unit, do not receive specialised training on sexual offences. Thus it is expected

that, with ongoing training, the conviction rate will improve. In this study the respondents indicated that if those personnel responsible for handling rape cases are properly trained in investigating and prosecuting rape cases, the chances of conviction will be improved.

Vetten et al. (2008) also propose the need to strengthen training of police statement taking and investigation of cases to increase the rate of conviction and to reduce the attrition rate. The skills required also include the evidence collected from the victim and the crime scene and the handling of evidence (Smith, 2004; Rauch, 1994). The respondents in this study stressed that training is needed at all levels, including for the police in investigating, statement taking and evidence gathering and safekeeping as well as prosecutors in handling victims. The MATTSO Report (2013) also recommends that specialised courts should include ongoing training of all court personnel; at minimum, training must include topics such as trauma experienced by victims of sexual violence and the effects of testifying. Respondents further indicated that refresher courses and continuous training are required. This will keep criminal justice personnel up-to-date on various technological advancements and techniques when handling cases of rape.

Strydom and King (2009) also indicated that investigating officials not only require specialist scientific and technical expertise, but that they also need to be aware of the rules of evidence and criminal procedure. Esther pointed out that if police officials can anticipate what evidence will be used in court, there will be a better chance of conviction. Akash also stressed that those dealing with rape victims are required to show empathy and professionalism. The responses of the participants supported the legislative framework surrounding rape, but they added that ongoing training, workshops and refresher courses are also necessary to improve the conviction rate of rape.

Theme 2: Specialisation

The Preamble and objectives of the Criminal Law (Sexual Offences and Related Matters) Amendment Act (RSA, 2007) entrench the concept of specialisation of services for victims of sexual violence (DOJ&CD, 2014). In order to implement the rights listed in the South African Victims Charter, specialisation of services for victims of sexual violence is required and will include specialisation in terms of investigations, prosecution and courts that deal with victims of sexual violence in its entirety. The Ministerial Advisory Task Team on the Adjudication of Sexual Offence Matters (MATTSO) (2013) recognises that the complexities of working with victims of sexual violence require specialised intervention on the part of all stakeholders.

Specialisation can be defined as those areas of work that are limited to a pre-determined range of issues in order to achieve expertise in the field of sexual offences (DOJ&CD, 2014; MATTSO, 2013). Police officers that specialise in cases of a sexual nature should be allowed more responsive and effective means of dealing with such cases, especially in terms of gathering evidence which, according to the DOJ&CJ (2014), is a central feature for a conviction. In addition, the police are able to develop an ongoing relationship with other agencies such as rape crisis centres, medical facilities and the prosecution authority (Battelle Law and Justice Study Centre, 1977). Research has also shown that specialised detectives are more effective when investigating cases. For example, Vetten et al. (2008) found that specialised detectives were more effective when investigating cases, with 36.6 percent resulting in guilty findings compared to 22.7 percent by general detectives.

The DOJ&CD (2014) also stipulates that specialisation of prosecutors allows for the establishment of appropriate rapport with witnesses who are vulnerable and that it builds up an environment of expertise. It has been proposed that there are several benefits of specialist sexual offence prosecutors, including the ability to take on more difficult cases due to the level of expertise and skills developed through continuously dealing with such cases, as well as the reduction of secondary victimisation because prosecutors will have sufficient skills to conduct consultations with the rape victim in a meaningful manner (McDonald & Tinsley, 2011).

Aligned with the MATTSO Report (2013), the responses indicated the need for specialised courts dedicated to sexual offences. The MATTSO Report (2013) suggests that the re-establishment of the Sexual Offences Court will reinforce the establishment of a victim-centred court system that is prompt, responsive and effective. Prior to the demise of the SOCs in 2005, the court was found to be successful in the establishment of a victim-centred CJS, the reduction of secondary victimisation, improved skills of court personnel, quick finalisation of sexual offence cases, and the contribution to the overall prosecution and adjudication of sexual offence cases. McDonald and Tinsley (2011) argue that without specialised training, it is unlikely that the way rape victims are treated by the criminal justice process will improve in the long term. Specialisation may assist in generating an overall attitudinal change within the criminal justice process (McDonald & Tinsley, 2011; DOJ&CD, 2014).

Majority of respondents support the need for specialisation among investigators and prosecutors as well as specialised courts that exclusively deals with rape as a sexual offence. Prem indicated that having specialised investigators will enhance the conviction rate of rape. Vijay stated that specialised prosecutors will speed the finalisation process of rape cases. Interestingly, Raj pointed out that specialisation should also incorporate a psychological aspect to address the trauma experienced by

victims. Trisha was in agreement with the MATTSO report and concluded that dedicated sexual offence courts will contribute positively to an increase in the conviction rate of sexual offences nationally. These responses were found to be similar to those in Temkin's (1999) study in which police officer respondents suggested that dedicated units dealing exclusively with adult rape would benefit the conviction rate. Furthermore, specialisation can link various units to help victims of rape holistically and create a joint responsibility in fighting the phenomenon of low rate of convictions; but ultimately assurance is required that victims will be given priority in the justice system.

Theme 3: Prompt Process

The effects of delays in the criminal justice process are multifaceted and impact victims who may suffer from ongoing trauma. In most cases, witnesses may forget details of the incident, resulting in them emerging as unreliable victims (Brassil & Brassil, 2001). The continuous delays in the CJS cause unnecessary adjournments (Dandurand, 2009). It has been recognised that the speed at which a case progresses through the CJS is an important indicator of the effectiveness and efficiency of case outcome (Dandurand, 2009).

Evidently, as was pointed out in section 5.3.2.1 in this report, the longer a case takes to finalise the lower the chance of conviction becomes. This suggests that in order to improve the rate of conviction, the process of the case should be fast-tracked. This will not only contribute to an increased rate of conviction but also decrease the trauma victims experience and the reduction of secondary victimisation. Many respondents indicated that DNA results and the trial process need to be conducted promptly. If these processes are fast-tracked, it may reduce the chance of evidence contamination or the loss of evidence. It can also reduce nonattendance at court as victims will not be turned away and asked to continuously reappear due to delays in DNA results. Speeding up the trial process can also contribute to raising the hopes of victims that their cases are taken seriously. Importantly, Prem stated that rape cases should be given priority. This suggests that if rape cases are given precedence, it will aid in the case moving through the system smoothly and being finalised promptly.

Furthermore, Khumbu acknowledged that an improved working relationship between all stake-holders is important to improve the conviction rate of rape. The improved communication between the police and the prosecution authority can ensure proper evidence collection. Moreover, missing evidence can be identified and witnesses can be identified and protected. Improved communication can also contribute to a speedier process because police are available when required (Dandurand, 2009). Thus, with a cohesive and coordinated response from all state actors, any delays in the process can be

eliminated and the overall conviction rate can improve (Matthews, 2009). Most importantly, victims will receive the desired attention and they will feel confident that their victimisation is taken seriously. Overall, an immediate process that is free from delays and barriers will positively impact the conviction rate for rape and increase victims' confidence in the CJS.

Theme 4: Victim Preparation

Testifying in court can be an intimidating and traumatic experience for victims as they often have to testify in front of the defendant and a court room full of strangers (Hazelwood & Burgess, 2001). In most cases victims are unfamiliar with court proceedings, which results in victims appearing as poor witnesses. Hazelwood and Burgess (2001) argue that if victims are prepared in advance about the court's expectations, especially about being crossed examined, they will appear to be better witnesses. The goal of victim preparation is twofold: first, it allows victims to be aware of court proceedings which help witnesses feel more comfortable with the process and help them testify in a more confident manner; and second, it assists in the process of human collection (Seelinger et al., 2011).

Rape cases generally occur over a long period of time, which means that victims are asked to testify about the event after months or even years which may affect the consistency of their statements (Seelinger et al., 2011). As a result, it is important for prosecutors to carefully prepare victims for trial and ensure that they are confident and compelling witnesses. In rape cases there are typically no eyewitnesses and rarely is there physical evidence to support the victim's claim of the assault; hence the victim's testimony may be a most important variable in securing a conviction (Smith, 2004; Hazelwood & Burgess, 2001), and guarding against any inconsistency will have a positive impact on case outcome. The respondents in this study stressed that victims need to be prepared not only for the trial process, but also for the psychological trauma that they are likely to experience in court. Harry highlighted that per-trial interviews with the prosecutor are important. This engagement can have a meaningful impact on victims as they will be briefed about the court process. Furthermore, any information that was left out during the investigation phase can be uncovered.

Theme 5: Improved Competency

It has being recognised that the quality of police and prosecutor work is vital in determining whether a case will proceed to court or whether an accused is convicted (United Nations, 2010). The quality of police and prosecutor work is dependent on how they utilise their skills and knowledge. Moreover, rape cases require more attention than what is prescribed by law and investigating officers and prosecutors should take further steps to ensure that victims are afforded justice. Thus, to make any improvement to

the conviction rate, all criminal justice agents need to be competent to fulfil their duties. Competency may be defined as "the skills, knowledge and qualifications of a person in order to meet the desired purpose of a specific job" (Brush, De Bruin, Gatewood & Henry, 2010:45). In rape cases, the competency of criminal justice personnel is very important as these victims are the most vulnerable victims in society and any unpleasant behaviour on the part of the police or prosecutor can contribute to additional trauma. Importantly, achieving a conviction depends largely on the investigation conducted and the prosecution. Respondents in this study stressed that statement taking by the police and handling of forensic evidence are to be dealt with appropriately. Khumbu noted that police are required to ensure that the complainant and state witnesses are in court at all times. This suggests that the police are to keep constant contact with the complainant and ensure that she is present during trial proceedings.

5.4 Supplementary Findings

After identifying similar responses and categorising them into themes by means of content analysis, other responses that did not fall under these themes are discussed in this section. These findings are worth noting as they may also be important in contributing to the improvement of the conviction rate for the rape of adult females.

With eleven official languages in South Africa, challenges evolve at each stage of the criminal justice process. At first, language barriers between the complainant and the police can affect the quality of statements (Artz et al., 2004) which can be harmful to the outcome of the case. Any errors made during the initial stages of the process can undermine the victim's credibility in court. It is therefore all the more important that the police official taking down the statement is able to understand the victim and correctly note down the victim's statement. In this study Akash highlighted that the complainant must understand the language in which the statement is being recorded. This is important as court proceedings in South Africa are conducted in either English or Afrikaans (Lubbe, 2006; Moekets, 1999). Although witnesses and the accused may testify in any of the eleven official languages or rely on the services of a translator, magistrates, lawyers and judges are only required to speak English or Afrikaans (Lubbe, 2006). Despite this rule being viewed as unconstitutional by many, it is nevertheless followed in South Africa. This makes it even more important for language interpreters to be present during the initial statement taking procedure so that any errors can be picked up as soon as possible. Thus, if language interpreters are available from the very beginning, it could affect the case outcome in a positive manner. However, whether language interpreters are competent or effective was beyond the scope of this study.

It has been recognised that the lack of adequate resources acts as a barrier to effective investigations (Artz & Smyth, 2008; SALC, 2001). Studies have found that the lack of resources, such as vehicles and access to modern policing technology, proves to be a disadvantage not only for case outcome but also for the victims themselves (Fattah & Parmentier, 2001). For example, in rape cases the police must assist the victim to get to a hospital, to obtain counselling and to find alternative accommodation if necessary (Fattah & Parmentier, 2001). However, these services are either limited or absent when police are working with limited resources. Furthermore, Artz and Smythe (2008) contend that a shortage of resources required by the police to conduct a full investigation of a rape complaint provides an incentive to cut caseloads. The lack of resources creates unfavourable working conditions that are likely to impact negatively even on police officers who are well trained and skilled (Artz & Smythe, 2008). The studies referred to in this section seem to point out that with an increase in resources, the conviction rate of rape will improve. In the current study Khumbu highlighted that if SAPS officials were equipped with resources, an improvement in the conviction rate would be possible.

5.5 Acknowledgement of Additional Limitations

Each step towards completing this study meant learning something new. As such, other approaches that could have been used transpired during the completion of this study. This by no means implies that this study was incomplete; rather, it is noted that illuminating some shortfalls may benefit those who wish to conduct future research this field.

Although this study focused on perceptions of the conviction rate for the rape of adult females in Verulam, I did calculate a rate of conviction by means of statistical data obtained from the Verulam SAPS CAS. This figure could not reflect an accurate rate as it included cases reported prior to the research period and that were finalised during the study period. Moreover, the data that I used made no differentiation between adult, child or elderly rape, or the rape of males. The CAS record included sexual offences and did not have a specific category for rape. This meant that the rate that was calculated entailed a conviction rate for sexual offences and not specifically the rape of women between the ages of 18 and 30. Thus, for a more accurate rate of adult rape conviction rate between the ages of 18 and 30, each individual case should be followed to the conclusion stage. This method was adopted by Vetten et al. (2008) and the SALC (2000), and these studies reflected more precise conviction rates rather than an estimated figure, as was the case in the current study.

The sample group of the study included criminal justice personnel that were involved in rape case investigation, prosecution and conviction at the time of the study. However, medical practitioners that

conduct examinations on rape victims were not included in the sample of this study. As a result, rich data that could have transpired by including medical practitioners were omitted. Social workers were also omitted from this study. It is acknowledged that social workers are an important feature of the CJS; therefore, their omission was not an oversight but occurred as result of a lack of social workers in the study area. In retrospect, I feel that social workers could have been deployed from areas outside the study area and that this may have resulted in the procurement of additional, rich data.

Another limitation that is acknowledged in retrospect is that the questions posed to the participants were presented in the form of a structured questionnaire. Copies of the questionnaire were left with the selected respondents who then answered the questionnaire when they had free time. Although this had been the determined means of collecting data (refer to the reasons for this in Chapter 4), a semi-structured interview with the participants would have increased the value of the data collected. This would have been particularly valuable as questions posed in this study, and the responses to them, required additional clarification as follow-up questions emerged.

Nevertheless, this study provided useful data. The collected data pertained to the practical, first-hand experience of persons directly involved in rape cases, which I noted had not been the case in many studies that had been done on rape attrition. Studies in this field that were conducted within the South Africa context mainly focused on a quantitative analysis of rape attrition and failed to address issues from a more practical standpoint. The information that I could access included details of the requirements of a conviction as well as obstacles preventing a higher conviction rate. The data spoke close to adult female rape as it is a neglected aspect of research. Most importantly, the data assisted me in offering recommendations in an attempt to provide information that could improve the rate of conviction and in general ensure justice for rape victims. Overall, the findings of this study will not only contribute to the existing knowledge of rape attrition, but they will also form the basis for additional research as important questions that need to be addressed in future studies have been illuminated.

5.6 Conclusion

In this chapter the collected data from the five participant groups were interpreted, themed and discussed. More specifically, questions posed in chapter 1 were addressed. The analysed data of the participants' responses to each question were themed by means of identifying recurring responses. To further validate the findings, triangulation of data sources was utilised which allowed the collected data to be compared to secondary data. Although providing a statistical analysis of the conviction rate of rape was not the intention of this study, providing such information proved to be beneficial. The rate

identified within the four-year study period demonstrated that Verulam is performing within national and international norms in terms of the conviction rates for sexual offences. Despite the low rates, it seems that the conviction rate is the least important aspect of our CJS as many government officials fail to recognise conviction rates from a report-based approach as a means of measuring their performance as a whole and ensuring victims of rape are given priority. The most notable finding is that the conviction or release of a rape perpetrator includes the use of stereotyped notions about rape and rape myths, as criminal justice personnel seem to determine the issue of rape victim consent based on whether or not the complainant obtained physical injuries. Moreover, with the lack of sufficient legislation addressing rape myths and stereotypes, interpretations of rules and regulations become subjective, which is a phenomenon that is arguably based on social construction. Obstacles preventing a higher conviction rate also pertain to extralegal factors such as the lack of qualified personnel. This was a surprising finding as one would expect our justice system to employ competent persons to positively interact with rape victims and provide appropriate support systems. Another astonishing finding is that accused persons abscond from trial proceedings while they are on bail. This enhances the perception that our justice system is failing on several levels - from the legislative point down to the judicial interpretation of the law. The findings that were presented in this chapter provided useful yet worrying information from which I could formulate appropriate recommendations. Consequently, the next chapter presents a discussion of the findings and provides my recommendations.

Chapter 6

Findings and Recommendations: Conviction Rate, Problems and Solutions

"The objective of academic research, whether by sociologists, political scientists, or anthropologists, is to try to find answers to theoretical questions within their respective fields. In contrast, the objective of applied social research is to use data so that decisions can be made." Herbert J. Rubin. (1983). *Applied Social Research*, pp. 6-7

6.1 Introduction

The overall aim of this study was to contribute towards an improved conviction rate of reported adult female rape in Verulam by providing an empirical understanding of the phenomenon of low rape conviction rates. The objective of this study was therefore to describe and explore the conviction rate of adult female rape in Verulam. This involved identifying challenges that hamper the achievement of a higher conviction rate. In order to meet the aims and objectives put forward, the study solicited criminal justice personnel from Verulam, including SAPS members, defence attorneys, a prosecutor, and magistrates, all of whom formed the sample of this study. Each participant completed a qualitative questionnaire in which questions pertaining to their perceptions regarding rape conviction rates were posed. The questions related to the current rate of rape convictions in Verulam, the requirements for a conviction of adult female rape, the obstacles preventing a higher adult rape conviction rate, and suggested means of improving the conviction rate for the rape of adult females in Verulam. The first chapter presented an outline of this dissertation. Chapter 2 presented a discussion on the legislative framework and elucidated South Africa's obligations towards violence against women, and the rape of women specifically. The next chapter presented a literature review followed by a discussion of the research methodology adopted in this study. The penultimate chapter provided a discussion on the data analysis. This concluding chapter provides a summary of the research findings and makes notable recommendations based on the results obtained. Importantly, this chapter presents additional questions that emanated from the findings of this research project.

6.2 Findings

I was extremely surprised to find that there were no social workers or counsellors at the Verulam SAPS who were specifically tasked to assist victims of rape. The single social worker who was available at the Verulam SAPS had to provide support for various crimes, of which rape was only one. This neglected aspect is a violation of our commitment to international treaties and reveals that there is a failure on the

part of government to provide protective measures to ensure that victims of sexual offences, particularly rape, are provided counselling and appropriate support services. It was also most surprising to note that the town of Verulam does not have an operational NGO outside the court premises to assist rape victims. It was discovered that the previous NGO that ran under the name Light House Crises Centre had closed down and that a new centre (Hilltop Prayer Centre) was to be opened in the near future. At the time of completing this study in 2015, this centre had not yet opened its doors to the public. The Advice Desk for the abused is an NGO that is located within the Magistrate's Court. However, this type of support is not available at the initial stages of the criminal justice process, and whether this organisation is efficient is a question that requires research. Another astonishing finding was that the FCS unit based in Phoenix had one social worker; however, this person only assists child rape victims. This single social worker is responsible for providing support to child victims within a cluster that consists of four areas. Support for women of rape is therefore minimal, or nonexistent. Although the latter findings were not part of the scope of the study, they contributed to the argument that rape victims are not given priority in the justice system and that they are constantly denied justice.

6.2.1 Findings relating to the Conviction Rate of Reported Rape

The data obtained from the Verulam SAPS Case Administration System (CAS) provided useful yet disturbing information. It was revealed that only an estimated 5 percent of reported sexual offence cases resulted in a conviction of the perpetrator within four years. The conclusion rate was found to be 12 percent with the majority of cases ending in not guilty verdicts. Although this rate included all types of sexual offences, it does provide us with a means of evaluating our justice system. A 5 percent conviction rate suggests that our system is failing to grant justice to victims of rape and sexual offences. This rate seems to be a trend as other provincial studies show a less than 5 percent conviction rate (Vetten et al., 2012; Vetten et al., 2008; SALC, 2001). Previous studies determined a conviction rate within one- or two-year time frames; however, the current study expanded the time period to reflect a four-year period. Despite an extended period, however, it was revealed that the rate of conviction remains alarming low. The data obtained from the Verulam SAPS CAS also revealed that less than 8 percent of cases resulted in a conclusion within a year, none of which resulted in a 'guilty' verdict. It appears that the chance of a conviction further drops as the year's progress. In other words, the longer a case takes to finalise, the less likely it becomes that a conviction will occur.

When I focused on the perceptions of the criminal justice personnel from Verulam, I found that those involved in the process of rape cases did not have an idea of the conviction rate of rape or sexual offences in Verulam. With the majority stating that the rate of rape conviction was average, it is

suggested that acknowledging the problem is nonexistent and that, without acknowledging a crisis in the system, there will not be any solutions to improve the system and, ultimately, justice for the victims of rape will continue to be denied. Sweeping the problem under the carpet will only lead to a continued lack of faith in the justice system, and increased "dark" figures of rape and the cycle of low rates of rape convictions will spiral ever upwards.

6.2.1 Findings relating to the Requirements for a Conviction of Adult Female Rape in Verulam

One of the major themes identified as a requirement for a conviction was corroborative evidence. Essentially, this involves evidence that can support the victim's claim of the incident. Corroborative evidence was found to include DNA evidence, evidence that can link the suspect to the crime, expert evidence, and physical evidence. Not surprisingly, rape myths and stereotyped notions were found to be still active in the system, as a few respondents referred to the lack of physical evidence as a probable indicator of consent. This perception seems to be chiefly held by personnel at the latter end of the criminal justice process, i.e. the prosecutor and magistrates. Despite the large body of legislation available for the protection of women, there seems to be a failure on the part of the legislature to adequately address rape myths and stereotyped notions; nor are there policies or directives that address diverting the use of stereotyped notions to more authentic measures to determine consent. With studies echoing the use of stereotypes and rape myths to determine consent, it is with great concern that I suggest that attention be placed on eliminating such perceptions. The first step to eradicate rape myths and stereotypes is to introduce guidelines in national directives and policies on measures to be taken to discard the use of rape myths and stereotypes.

Other themes that emerged in terms of the requirements for a conviction revolved around extralegal factors, including qualified personnel, consistency in statements, and court attendance. It seems that having qualified personnel at each level of the criminal justice process is an essential requirement. This includes having qualified personnel to adequately take down victim statements, conduct investigations, gathering evidence and keeping it safe, and qualified prosecutors. Interestingly, the participants in this study had many years of experience in rape cases; however, there seemed to be no improvement in the rate of rape convictions, which suggests that the system is failing victims in many respects. However, this is not a solid conclusion as this sample size was too small to make concrete and definitive deductions related to the findings. In this context, the important point of departure is that the findings generated questions concerning factors that correspond to experience. It is acknowledged that limited resources, insufficient staff and lack of consistent training could very well limit personnel from exercising their knowledge.

A subsidiary theme that was linked closely to qualified personnel was coordination and communication among all state actors. This is an important requirement as it entails the active involvement of prosecutors during the investigation phase, thus reducing the chance of errors during investigations and increasing the possibility of conviction. Moreover, the communication between the victim and the investigating and prosecuting teams allows the victim to be actively involved in the case and to keep her informed of the case progress. The broader question emanating from this finding is, however, whether there is any form of communication among all three role players. However, there seems to be a lack of communication between the police and the prosecution authority in terms of reported sexual offences and case outcome.

Another important theme that surfaced as a requirement for a higher conviction rate of adult female rapists was consistency. The literature on rape constantly depicts victim credibility as an important factor in rape case outcome, which is often determined by how well the victim can articulate the incident. In terms of adult female rape, this is determined by consistent statements. This means that the first report statement made by the victim must correspond with the evidence presented in court. This requirement, however, neglects the psychological impact rape has on victims. Further, and most alarming, is that consistency also lends itself to consistent behaviour. Rape victims are often stereotyped, thus if they do not display behaviours that fall under the category of probable behaviour, their credibility is questioned. If consistency in terms of first report statement is a requirement, than those who are responsible for taking down victim statements need to be efficient. This further entails the presence of language interpreters and social workers during the initial report. Thus, to enhance victim credibility, especially in terms of the first report statement, qualified persons are required to guide and support victims.

Another important requirement is the attendance of the complainant during court proceedings. In terms of the Criminal Procedure Act (RSA, 1977), court proceedings may be adjourned if the witness fails to attend court. Studies show that more than 30 percent of cases are withdrawn because victims fail to attend court proceedings (Vetten et al., 2008). As this is viewed as an essential requirement, the question is: *Why are victims not attending court?* Could this be related to the lack of expertise and insufficient communication, or is it the victim who is not willing to cooperate? If the latter is true, the issue is deeper than what is seen on the surface and a fishbone diagram is required to root out the problem.

6.2.2 Findings relating to the Obstacles Preventing a Higher Adult Rape Conviction Rate

The key theme affecting the conviction rate is the issue of the lack of expertise. The descriptive results presented in Chapter 3 on factors affecting case outcome support this finding. It appears that expertise in rape investigations and prosecution in Verulam, and perhaps South Africa, is lacking. Most importantly, police are unable to take down statements, conduct proper investigations, collect and safeguard evidence, and present uncontaminated evidence in court. Furthermore, it was noted that prosecutors are inadequately trained and experienced to handle rape cases, and that there is a limited number of prosecutors and high caseloads. Interestingly, the respondents in this study collectively had many years of experience in rape cases, yet the conviction rate for rape was at a deplorably low level. Although the respondents had many years of experience, their responses revealed a disconcerting lack of exposure to ongoing training. Refresher courses, first responder training, and the investigation of sexual offence courses are absent. Moreover, there are no courses that recognise the joint responsibility of criminal justice personnel in achieving a conviction. With the highly complex nature of the CJS and the number of stakeholders responsible for obtaining a conviction, gaping holes were found to exist in the area of study. It is therefore recommended that further work be done in this area, especially in the context of governance and interlinking systems to ensure that these holes are filled, even if the process is gradual, in order to ensure that victims of rape in our society are given the justice and dignity they need and deserve.

The issue of inadequately trained prosecutors is a major one, especially in context of the current legal system in South Africa that does not permit victims of rape a choice to legal representation. This lack of choice may therefore affect case outcome, especially when prosecutors are insufficiently trained. Aligned with the respondents' comments about the lack of experienced prosecutors as an obstacle that prevents a higher conviction rate, it seems that introducing a choice of legal representation will benefit the victim and increase confidence in the CJS. This will, however, require further research on case outcome and victim legal representative rights.

A theme that was found to have a boomerang affect is the issue of delays within the system. The most prominent delay occurs in terms of receiving DNA analyses. This delay can be attributed to the DNA sample having to be sent to the Forensic Science Laboratory (FSL) in Pretoria, which is the only laboratory that analyses DNA specimens collected by the SAPS in South Africa. During the time specimens are collected and transported, and given the lack of experts handling rape investigations, the possibility of contamination is high. Moreover, with the soaring number of rape cases in South Africa, the possibility of backlogs is high, which further adds to the delays in receiving DNA results.

Furthermore, this delay in receiving the DNA results leads to postponements of court proceedings. Such delays have a direct impact on victims. If the delays in the system are attributed to delays in receiving forensic analysis the question is: *Why does South Africa still have only one laboratory that analyses such vital evidence?* In fact, the issue is deeper than what meets the eye, as it may entail technical issues such as untrained forensic staff or under-resourced and over-worked staff, given the high rate of rape in South Africa.

Given the lack of communication between the victim, police and prosecution, victims' continued attendance of court proceedings when proceedings have been postponed leads to feelings of frustration and anger for the victim. This is an important reason why victims withdraw their case and why some victims refuse to attend court at all. As a consequence, the accused is released back into society where the crime continues to be perpetrated. This finding suggests that the withdrawal of cases by adult female victims affects the overall conviction rate. Moreover, the justice system is seen to be neglecting victims of rape and this perception of a weak system is perpetuated by factors such as the above. The broader question relates to methods of preventing withdrawal of cases and, most importantly, how delays in the system can be overcome. Further research is thus required to shed light on these significant questions.

A surprising finding in terms of the obstacles preventing a higher conviction rate was the issue of unprepared victims during court proceedings, despite stipulations in the National Instructions document on how members of the police should prepare victims for trial. Importantly, victims are not prepared for the psychological trauma that may be experienced during cross-examination. This leads to contradictory evidence that discredits the victim, and thus victim credibility is questioned. It is therefore extremely important for victims to be prepared for court proceedings. Not only will this improve victim credibility, but it will also aid in reducing additional trauma experienced during trial. It is therefore recommended that victims should undergo compulsory counselling which will provide the psychological support victims require and, at the same time, provide recovery support. Counselling should be made available to victims at the very beginning of the criminal justice process as well as during the process. Furthermore, prosecutors should prepare and support victims prior to the trial as this will ensure victims that their cases are given priority and they will thus feel more confident in the justice system. This will perhaps prevent withdrawal of cases by victims and enhance the conviction rate.

Additionally, the media (print media and digital media) is a strong force to educate the public. A recommendation is therefore to inform society through all channels of media to especially educate women about their rights and procedures involved in reporting and continuing with a rape case. Thus,

publishing simple articles weekly in daily newspapers that address different aspects of rape and the CJS will act as an educational mechanism. In this way both society and victims will be aware of their rights. Importantly, billboards should be erected in rural and informal settlements where pictures can be used to educate those that are illiterate about rape and the consequence of the crime.

Research has illustrated that false rape reports are prevalent, but occur at the smallest amount. Moreover, despite the fact that false reports seem to occur very rarely, a generalised opinion exists that women cry rape for ulterior motives. This ultimately affects investigations and case outcome, but most importantly, women are viewed with suspicion. All rape reports deserve to be treated with utmost dedication rather than with suspicion. It is therefore essential that introspection be done at all levels to eliminate biased opinions. Holding these opinions creates a barrier in the implementation of positive interventions introduced by government, such as the FCS units.

The extensive rights of the accused are entrenched in the Constitution of the Republic of South Africa (RSA, 1996), and for this reason their presence during court proceedings is one of their fundamental rights to a fair trial. Without the presence of the accused, the case may not proceed. An astonishing finding that questions the South African legal system is the issue of suspects absconding trial whilst on bail. This suggests that our legal system is inefficient and that various gaps, which deny a fair trial to the victim, exist in the system. This also suggests that we have a system that fails to provide security to the citizens of South Africa as many perpetrators of rape are freed into society. This clearly implies that the number of rapes in South Africa will continue to increase. An assessment of the system regarding bail is necessary and methods to ensure that accused persons attend court are required.

6.2.3 Findings relating to the Improvements of Adult Rape Conviction Rate

Improving the conviction rate for rape is possible; however, it will require extensive dedication by all members of the CJS. The respondents suggested several means for improvement that speak directly to the obstacles presented. The most important improvement that was suggested is to enhance the skills and expertise of criminal justice personnel involved in rape investigations and prosecutions. This entails training of all key role players, which is a recommendation that echoes throughout other studies as well. Thus police training in statement taking, investigations, evidence gathering, and safekeeping, as well as training of prosecutors, is vital to contribute towards an improved conviction rate. This will require refresher courses and routine workshops so that all personnel will be kept up-to-date with recent developments. It is recommended that these courses be made compulsory to all members that should address difference aspects of rape, including the stereotyped notions about rape. Importantly, joint

training courses should be developed which will recognise the joint responsibility of all role players in obtaining a conviction. This should include familiarising police members with court sessions, which will improve evidence gathering and victim preparation. Prosecutors should be aware of case investigation methods and procedures, as this knowledge will enhance case progress. Magistrates should attend detective and prosecutors' courses which will improve the existing relationship between criminal justice personnel as well as allow magistrates to understand the procedures for sound investigation and prosecution.

It is envisaged that specialisation in terms of investigations, prosecutions and setting up specialised courts will increase the conviction rates. Studies have demonstrated the positive effects of having specialised detectives (Vetten et al., 2008). Specialisation increases the level of expertise and skills, not only in investigations and prosecutions but in the overall handling of rape victims as well. Specialisation creates opportunities to enhance case outcome. Having a direct line of specialisation in terms of investigating officers, prosecutors and courts, a victim-centred approach is established. Rape victims are thus given priority as the focus primarily rests on ensuring that victims attain justice. Moreover, specialisation will enhance the relationship between all state role players which will, in turn, improve co-ordination and cooperation in ensuring rape victims are given a voice. Structures dedicated solely to rape victims will be able to provide victims with the desired support and readiness for the trial process thus reducing withdrawal of cases.

However, an important reservation to this suggested improvement is that a rape case involves a multidisciplinary approach. In other words, it does not only involve the police and prosecution, but also social workers, counsellors and interpreters, medical practitioners, and forensic experts. Delays in obtaining DNA results are partly attributed to delays at the forensic laboratory. Consequently, specialisation in investigation, prosecutions and adjudication is just one end of the spectrum, which is incomplete without the manifestation of other elements that impact case outcome. It is therefore recommended that further work be done in the area of specialisation, especially in the region of interlinking systems to ensure that each structure is operational, with the aim of ensuring that victims are given the rightful attention they deserve.

Even though specialisation will increase the expertise level of personnel responsible to investigate, prosecute and adjudicate rape cases, no form of expertise can benefit a victim without having passionate personnel who are eager to see the perpetrator behind bars and who are ready to go the extra mile to ensure that victims are provided the desired support system. It is therefore recommended that personnel, in addition to the necessary educational qualifications, should be recruited based on

their dedication and overall passion rather than just filling vacancy gaps. In this way, victims become priority and society's confidence in the justice system will improve.

6.3 Concluding Thoughts

In the case of *S v. Makwanyane and Another 1995 (3) SA 391 (CC),* Justice Chaskalson recognised that the greatest deterrent to crime is the apprehension, conviction and punishment of the offender. However, Justice Chaskalson rightfully pointed out that this form of deterrence is lacking in our justice system. Evidently, this study has illustrated that our justice system is barbed with several obstacles that restrict the conviction of perpetrators of rape. Notable improvements were suggested in the previous section; however, research in itself will not change the world, as it is the actual implementation of research recommendations that requires consideration and implementation. This study is by no means a product that will enhance the conviction rate, as various limitations existed, and therefore additional work is required to fill in the gaps that were highlighted by the findings. However, this study offers a contribution to the limited research currently in South Africa on rape conviction rates, and for this reason it can be used as a platform for further research in this important area.

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Annexure A

UNIVERSITY OF KWAZULU-NATAL
INYUVESI YAKWAZULU-NATALI

08 April 2014

Ms Reema Nunlall (207511862)
School of Applied Human Sciences
Howard College Campus

Protocol reference number: HSS/1211/013M
Project title: Perceptions of the 'conclusion' rate of reported adult female rape in Verulam, Durban

Dear Ms Nunlall,

Full Approval – Expedited

With regards to your response to our letter dated 17 December 2013, the Humanities & Social Sciences Research Ethics Committee has considered the abovementioned application and the protocol have been granted **FULL APPROVAL.**

Any alteration/s to the approved research protocol i.e. Questionnaire/Interview Schedule, Informed Consent Form, Title of the Project, Location of the Study, Research Approach and Methods must be reviewed and approved through the amendment/modification prior to its implementation. In case you have further queries, please quote the above reference number.

PLEASE NOTE: Research data should be securely stored in the discipline/department for a period of 5 years.

The ethical clearance certificate is only valid for a period of 3 years from the date of issue. Thereafter Recertification must be applied for on an annual basis.

I take this opportunity of wishing you everything of the best with your study.

Yours faithfully

.....
Dr Shenuka Singh (Chair)

/ms

cc Supervisor: Dr Jéan Steyn
cc Academic Leader Research: Professor D McCracken
cc School Administrator: Ms Ausie Luthuli

Humanities & Social Sciences Research Ethics Committee
Dr Shenuka Singh (Chair)
Westville Campus, Govan Mbeki Building
Postal Address: Private Bag X54001, Durban 4000
Telephone: +27 (0) 31 260 3587/8350/4557 **Facsimile:** +27 (0) 31 260 4609 **Email:** ximbap@ukzn.ac.za / snymann@ukzn.ac.za / mohunp@ukzn.ac.za
Website: www.ukzn.ac.za

Annexure B

QUESTIONNAIRE

Title of project: Perceptions of the conviction rate of reported adult female rape in Verulam, Durban.

Researcher: Ms R Nunlall Contact details: reema.nunlall@gmail.com 084 819 9165 Institution: University of KwaZulu-Natal School of Applied Human Science Department of Criminology and Forensic Studies Qualification: Social Science Honours	Supervisor: Dr Jéan Steyn Contact details: steynj@ukzn.ac.za 031 260 734 5 Institution: University of KwaZulu-Natal School of Applied Human Science Department of Criminology and Forensic Studies Qualification: Doctorate	HSSREC Research Office-Ms P Ximba Contact details: ximbap@ukzn.ac.za 031 260 3587

Dear participant

I, Ms R Nunlall, a student at the University of KwaZulu-Natal Howard College, pursuing a master's degree, invite you to participate in my research which is entitled – "Perceptions of the conviction rate of reported adult female rape in Verulam, Durban."

Section A: Purpose of study

The purpose of the study is to identify the conviction rate of adult female rape cases in Verulam and examine the factors that contribute to the conviction rate**.** The aim of the study is to contribute towards an improved conviction rate of adult female rape in Verulam by providing an empirical understanding of the phenomenon, including the identification of challenges that hamper the achievement of a higher conviction rate. This questionnaire has therefore been designed to identify the conviction rate of adult female rape in Verulam and examine the factors that influence the conviction rate.

Conviction rate is operationalised and applied to the current study as the percentage of adult female rape cases reported to the SAPS in Verulam, divided by the percentage of cases finalised by the Verulam Magistrate court with a guilty verdict.

Section B: Ethical Considerations

The identity of all participants will be strictly held confidential. No personal identification will be used in either the dissertation or subsequent/parallel reports (published or unpublished). Participants are free to withdraw from the study at any time. All participants will also have the right to a copy of the study report on request.

PLEASE NOTE All participants have a direct link to the Criminal Justice System thus COMPLETE ANONYMITY of professionals cannot be assured.

Section C: Instructions and guidelines on how to complete the questionnaire

There are three (3) categories and under each category a list of questions. Please read each question and answer them according to the prescribed direction.

When answering the questions please remember the following:

1	Make sure you answer every question.
2	There is no RIGHT or WRONG answer! It is just a matter of how you personally react or respond to each question when expressing your opinion, perception or attitude that matters.
3	The information given in a question may not be as comprehensive as you would wish, but answer as best you can.
4	Try to avoid the option *"I do not have an opinion"* wherever possible.
5	Please apply your answer to only ADULT FEMALE RAPE AGE BETWEEN EIGHTEEN (18) AND THIRTY (30) YEARS.
6	Please apply your answer to the four year time frame between 2009 and 2013.

Section D: Biographical information

Please answer the following questions pertaining to yourself.

Name					
Race	Black	White	Indian	Coloured	Other
Gender					
Specialisation field					
Position					
Qualification, and/or additional training or skills					
Years of experience in rape cases					

Section E: Questions

Conviction rate

7. What is required for a conviction of rape, specifically adult female rape between the ages of 18-30 years?

8. What is the current conviction rate of rape in Verulam?

9. Is the current conviction rate acceptable?

Yes	No

FACTORS

10. What is the reason for the current conviction rate?

Improvements

11. What obstacles are in the way of achieving a higher conviction rate?

12. How can the conviction rate of rape be improved?

Section F: Declaration

Name..

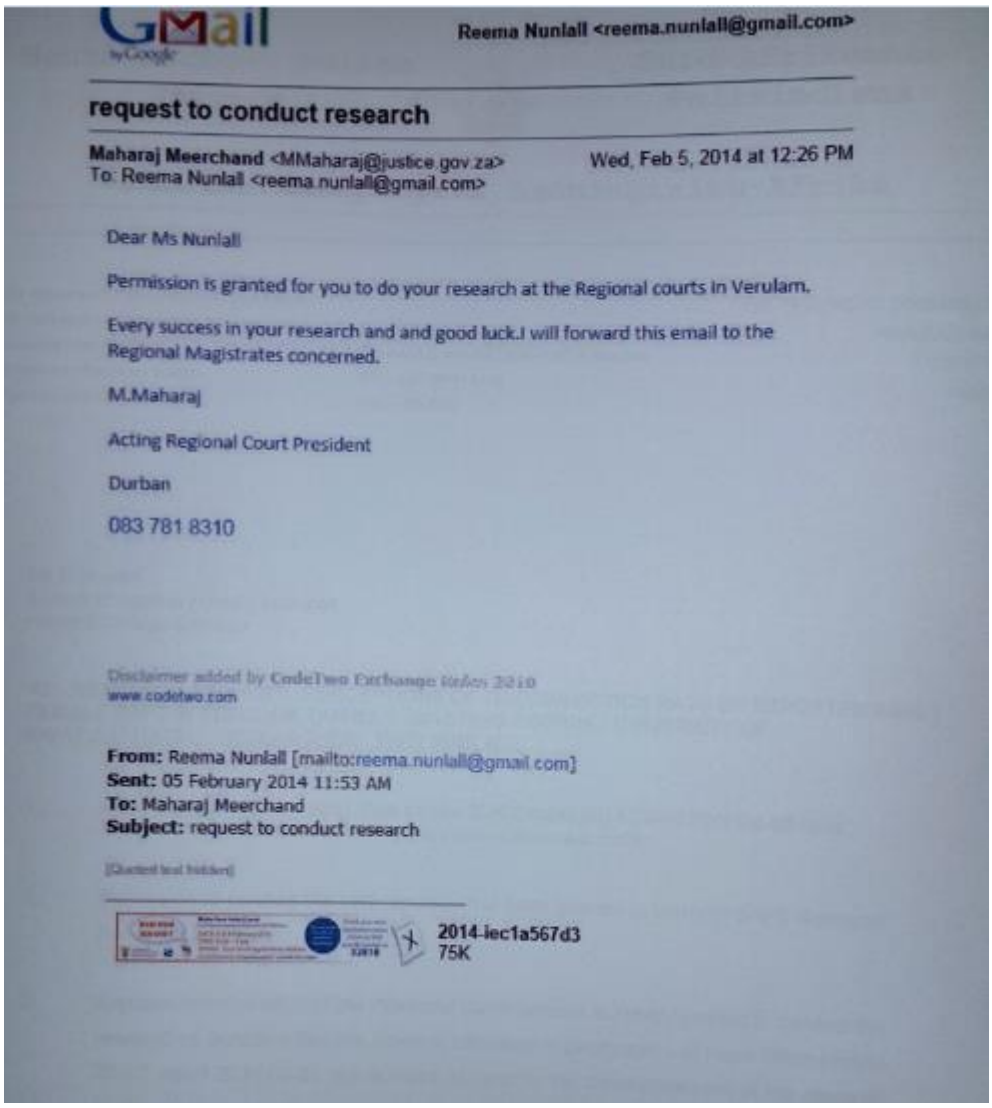
Signature...

Date...

Time of questionnaire...

End of questionnaire-Thank you

Annexure C



Gmail Reema Nunlall <reema.nunlall@gmail.com>

request to conduct research

Maharaj Meerchand <MMaharaj@justice.gov.za> Wed, Feb 5, 2014 at 12:26 PM
To: Reema Nunlall <reema.nunlall@gmail.com>

Dear Ms Nunlall

Permission is granted for you to do your research at the Regional courts in Verulam.

Every success in your research and and good luck.I will forward this email to the Regional Magistrates concerned.

M.Maharaj

Acting Regional Court President

Durban

083 781 8310

Disclaimer added by CodeTwo Exchange Rules 2010
www.codetwo.com

From: Reema Nunlall [mailto:reema.nunlall@gmail.com]
Sent: 05 February 2014 11:53 AM
To: Maharaj Meerchand
Subject: request to conduct research

[Quoted text hidden]

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75K

Annexure D

South African Police Service

Suid-Afrikaanse Polisiediens

Umbutho Wamaphoyisa Aseningizimu-Afrika

Our Reference / U Verwysing / Inkomba Yakho		THE PROVINCIAL COMMISSIONER
My Reference / My Verwysing / Inkomba Yami	25/7/12/2/3 (263	KWAZULU-NATAL
Enquiries / Navrae / Buza	Colonel A.D. van der Linde / CAC R. Moodley	P O BOX 1965
Telephone / Telefoon / Ucingo	031 – 325 4841 / 6116	**DURBAN**
Fax No / Faks No	031 – 325 6022	4000

Ms R Nunlall
School of Applied Human Sciences
Howard College Campus

RE: RESEARCH REQUEST: PERCEPTIONS OF THE CONVICTION RATE OF REPORTED ADULT FEMALE RAPE IN VERULAM, DURBAN: MASTERS DEGREE: UNIVERSITY OF KWAZULU-NATAL: RESEARCHER: MS R NUNLALL

1. Attached, please find Head Office minute 3/34/2 dated 2014-02-25 from the office of Major General Menziwa regarding the above-mentioned matter.

2. Permission to conduct the said research has been granted in terms of SAPS Research Policy (NI 1/2006).

3. Approval from the office of the Provincial Commissioner is hereby granted to conduct the research on condition that the contents stipulated in paragraph 4 of Head Office minute 3/34/2 dated 2014-02-25 are adhered to prior to the commencement of the research study.

4. For any queries, please contact Colonel A.D. van der Linde at the following number:

Office: 031 325 4841
Cell: 082 496 1142

5. Thank you.

.....MAJOR GENERAL
DEPUTY PROVINCIAL COMMISSIONER: OPERATIONS OFFICER: KWAZULU-NATAL
P.E. RADEBE

DATE: 2014-03-03

G.P.-S. 032-0222 SAP 21

SUID-AFRIKAANSE POLISIEDIENS SOUTH AFRICAN POLICE SERVICE

Privaatsak/Private Bag X94

Reference Nr Verwysing	3/34/2
Navrae Enquiries	Col J Schnetler Lt-Col GJ Joubert
Telefoon Telephone	012-393 3177/3118
Faksnommer Fax number	012-393 3178

STRATEGIC MANAGEMENT COMPONENT
HEAD OFFICE
PRETORIA

The Provincial Commissioner
KWAZULU-NATAL

(Attention: Col Van Der Linde)

RE: RESEARCH REQUEST: PERCEPTIONS OF THE CONVECTION RATE OF REPORTED ADULT FEMALE RAPE IN VERULAM, DURBAN; MASTERS DEGREE: UNIVERSITY OF KWAZULU-NATAL; RESEARCHER: MS R NUNLALL

1. The research request of Ms Nunlall, pertaining to the above mentioned topic, refers.

2. The aim of the research is to explore and describe the conviction rate of adult female rape in Verulam and to provide an empirical understanding of the phenomenon, including the identification of challenges that hamper the achievement of a higher conviction rate. (See proposal attached).

3. The researcher needs permission to interview detectives and the social worker who deal with rape cases at Verulam SAPS, as well as the respective commanders of the Family Violence and Sexual Offence Units at the Verulam and Phoenix police stations.

4. The proposal was perused according to National Instruction 1 of 2006 by this office and it is recommended that permission be granted for the research subject to the final approval and further arrangements by the office of the Provincial Commissioner: Kwazulu-Natal and that the undertaking be obtained from the researcher prior to the commencement of the research that –

4.1. the research will be at his/her exclusive cost;

4.2 she will conduct the research without any disruption of the duties of members of the Service and where it is necessary for the research goals, research procedure or research instruments to disrupt the duties of a member, prior arrangements must be made in good time with the commander of such member:

4.3 the researcher should bear in mind that participation in the interviews must be on a voluntary basis.

4.4 the information will at all times be treated as strictly confidential;

RE: RESEARCH REQUEST: PERCEPTIONS OF THE CONCLUSION RATE OF REPORTED ADULT FEMALE RAPE IN VERULAM, DURBAN; MASTERS DEGREE: UNIVERSITY OF KWAZULU-NATAL; RESEARCHER: MS R NUNLALL

4.5 if information pertains to the investigation of crime or a criminal case, the researcher must acknowledge that he/she, by publication thereof, may also be guilty of defeating or obstructing the course of justice or contempt of court;

4.6 the final draft document will be tested with the Provincial Commissioner: Kwazulu-Natal to confirm whether the research ethics have been adhered to, prior to the publication of the dissertation, and

4.7 she will donate an annotated copy of the research work to the Service.

With kind regards,

_____**MAJOR GENERAL**
HEAD: STRATEGIC MANAGEMENT
M MENZIWA

Date: 2014 · 02 · 25

Annexure E

CONFIRMATION OF INFORMED CONSENT

Title of project: Perceptions of the conviction rate of reported adult female rape in Verulam, Durban.

Researcher: Ms R Nunlall Contact details: reema.nunlall@gmail.com 084 819 9165 Institution: University of KwaZulu-Natal School of Applied Human Science Department of Criminology and Forensic Studies Qualification: Social Science Honours	Supervisor: Dr Jéan Steyn Contact details: steynj@ukzn.ac.za 031 260 734 5 Institution: University of KwaZulu-Natal School of Applied Human Science Department of Criminology and Forensic Studies Qualification: Doctorate	HSSREC Research Office- Ms P Ximba Contact details: ximbap@ukzn.ac.za 031 260 3587

Date:

Dear Participant

I, Ms R Nunlall, a student at the UKZN Howard Campus pursuing a master's degree, invite you to participate in my research which is centred on the conviction rate of rape cases. I hereby request your written consent for the use of any information that may be acquired during this research.

Project description

The principle objectives of this project is to identify the conviction rate of adult female rape cases in Verulam and to establish factors that contribute to the rate of rape convictions. The purpose of the study is to explore and describe the conviction rate of reported adult female rape in Verulam. The aim of this study is to improve the conviction rates of adult female rape in Verulam by providing an empirical understanding of the phenomenon, including the identification of challenges that hamper the achievement of a higher conviction rate.

Your participation in this project will involve a face to face interview or a self administrated questionnaire. The interviews will be taped recorded.

Questions of project

- What is required for a conviction of adult female rape in Verulam?
- What is the current conviction rate of adult female rape in Verulam?
- What obstacles are in the way of achieving a higher adult female rape conviction rate in Verulam?
- How can the adult female rape conviction rate in Verulam be improved?

Selection of research participants

You have been purposively selected to participate in this research study as you meet the required criteria namely: you have first-hand experience in the process of rape investigations and/or determining the end result of rape case.

Procedure

The researcher will make an appointment for the interview or self administrated questionnaire. The interview or self administrated questionnaire will take place at the office of the participant, which will last approximately 45 minutes.

Possible benefits

You will provide valuable information on the conviction rate of adult female rape cases in Verulam. Recommendations and improvements can possibly be used to aid the rate of rape convictions.

Ownership and documentation of research data

All data gathered will be used solely for the purpose of the above-mentioned research study. Research data will be filed in the department of criminology and forensic studies at the UKZN. Data will be kept for five (5) years after which it will be destroyed by means of shredding.

Research findings will be documented in a form of a dissertation and possible publications. The research will not divulge the names of any research participant unless they indicate that they want to be named in any publication.

Research findings

All participants have a right to a copy of the research findings which will be made available on request.

Confidentiality

The identity of all participants will be strictly held confidential with anonymity guaranteed. No personal identification will be used in either the dissertation of subsequent/parallel reports (published or unpublished). Participants have the right to withdraw from the study at any time without any negative consequence.

If you require any further information or if you have any concerns regarding this research project, you can contact me Ms R Nunlall or the research supervisor, Dr Jéan Steyn.

I greatly appreciate your input into this research project.

Declaration

I.....hereby confirm that I understand the contents of this document and the nature of the research project, and consent to participating in the research project.

I understand that my taking part in this project voluntarily. I also understand that I am free to refuse to answer any questions and also free to withdraw from the project at any time, should I desire, and that doing so will not have any negative consequences for myself. I also **consent / do not consent** to have this interview recorded.

Please print name and sign to confirm your participation in this project.

Name **Signature**

..... **.....**

Date

.....

Please answer the questionnaire found on the next page.

Annexure F

ANNEXURE E

SEXUAL OFFENCE STATEMENT CHECKLIST

Please note that the checklist should only be used as a guideline, and that it remains the responsibility of the investigating officer to take a full statement in every case.

Item	Detail
1	Paragraph statements.
2	Do not prime the victim - it must be his or her own statement. (Never ask leading questions.)
3	Full names (Maiden name, if applicable) - Age and date of birth - Identity number - Occupation - Residential & postal address - Telephone number and code - Place of employment, if applicable - Cellphone number - Facsimile number
4	Detail of events leading up to the incident. (This will vary according to circumstances and there will be more information in some cases than in others.)
5	Describe the scene of crime prior to the attack.
6	Fully describe the victim's clothing and the victim (this may assist forensic identification).
7	Describe the other victims (if more than one victim was involved).
8	Day and date. Specify the day of week.
9	Clarify time - how did the victim know what the time was?
10	Describe, if possible, any route taken by the victim prior to attack.
11	Witness - any known to victim, describe other witnesses and give their names (if possible), witnesses may link the victim to the suspect.
12	How the suspect approached victim.
13	How the suspect maintained control of the victim.
14	If restraints were used, did the suspect bring them with him or her or did they belong to the victim?
15	Weapons, etc, used, displayed, mentioned.

Item	Detail
16	Exact words spoken by the suspect . Use direct speech.
17	Exact words spoken by the victim to suspect. Use direct speech.
18	If there is more than one suspect, briefly identify each one by some distinguishing feature such as a moustache, facial mark, colour of shirt.
19	**Details of anything left at the scene by the suspect.**
20	Describe anything touched by the suspect.
21	Did the suspect have an escape route prepared prior to the attack?
22	Describe the victim's state of mind throughout the entire incident. What was the victim feeling or thinking in relation to each event as it occurred?
23	Threats made by suspect - exact language.
24	Was there any resistance by the victim? Include reasons for resisting or not resisting.
25	If the victim resisted, explain the suspect's reaction (speech, facial expression, physical reaction).
26	Did the suspect force the victim into any particular physical position?.
27	Did the suspect photograph the victim?
28	Describe if and how clothing was removed and by whom, and in what order - where the clothing was placed or left.
29	Was the victim made to dress in any specific items of clothing.
30	Were these items brought to the scene by the suspect?
31	Were any items of clothing stolen by the suspect?
32	Did the suspect force the victim to use any specific words or sentences during the attack?
33	Fully describe the sexual assault. Describe the acts. Was the victim given any options?
	Consider: Touching — Where and by whom; Victim by suspect. Suspect by victim. Kissing — Suspect by victim. Victim by suspect.

	Use of Instruments	Foreign objects used or placed in vagina, anus, etc.
	Digital penetration (Fingers)	In vagina or anus.
	Fetishism	Particular attraction / request for certain object (clothing / perfume / baby oil).
	Voyeurism	Watching a particular act (eg suspect watching victim masturbate).
	Cunnilingus	Mouth to vagina
	Sexual sadism	Beatings, burning, whipping, biting, twisting breasts, asphyxiation (strangulation) until victim is unconscious, painful bondage (tied up).
	Annullingus	Licking anus.
	Urination	Urinating on victim.
	Defecation	Defecation of human waste matter (faces) on victim.
	Bestiality	Forced to perpetrate sexual act with animal.
34	If sexual intercourse took place, exact description of how the victim felt (force, fear, fraud).	
35	How penis entered vagina (or other orifices) - position of bodies - position of hands - position of legs	
36	Was the suspect's penis erect?	
37	Was any lubricant used?	
38	Was the suspect circumcised?	
39	Did the suspect have difficulty in achieving an erection or maintaining it or experience premature ejaculation?	
40	Was the victim forced manually to masturbate the suspect to achieve or maintain his erection?	
41	Did suspect ejaculate? How did the victim know that the suspect had ejaculated?	
42	Did the suspect use anything to wipe his penis after the offence?	
43	Was anything done by the suspect to remove or stop semen being left behind, Eg forcing the victim to wash, combing victim's pubic hairs, using a condom?	

44	If tissues were used, what happened to them? Where did they come from?

Item	Detail
45	If oral sex occurred, did the victim spit out semen or vomit - if so, where?
46	Did the suspect tell or force him/her to take any drugs or medication or alcohol?
47	Was there any blood anywhere ? Describe whether it was on the victim or suspect or scene of crime.
48	If a number of sexual acts were carried out, describe the exact position in which they were committed and the speech used towards the victim, prior, during and after these acts.
49	Any specific threats made to victim not to report the offence. The exact words used must be given.
50	Any actions or words used to prevent that the victim recognize the suspect.
51	Did the suspect take steps to avoid leaving fingerprints?
52	Was any of victim's property taken to assist the suspect in locating him or her again? Was this taken to stop the victim from reporting the incident? Was this specifically mentioned by the suspect?
53	Did the suspect suggest they meet again ? Give specifics.
54	Was the suspect curious about the victim's life, family or previous relationships, sexual or otherwise?
55	Did the suspect pay any compliments to the victim?
56	Did the suspect make excuses for what he had done or apologize for it?
57	Did the suspect make any mention of Police procedures?
58	How did the attack end?
59	How did the victim leave the scene?
60	How did the suspect leave the scene. Was it by foot, by car, or bicycle?
61	Did the victim tell anyone and when did he or she do so?
62	A full description of the suspect(s) from head to toe.
63	Include a description of the suspects clothing. It may be necessary to state what the suspect was not wearing, eg a jacket.
64	Did the suspect speak in language known to victim? Clarify.
65	Did the suspect have an accent? Clarify, if possible.

Item	Detail
66	Did the victim know the suspect? If the answer is in the affirmative, give details. Would the victim be able to recognize suspect again?
67	How was the incident reported to police?
68	Permission from victim for the examination of the scene or his/her property and for the removal of items for evidence and forensic examination.
69	Fully describe all property taken, including serial numbers, colours, sizes, identifying marks.
70	Get the victim to formally identify any property left by the suspect at the scene.
71	Describe all the injuries inflicted on the victim.
72	Include the fact that victim did not consent, even if this is obvious.
73	Record the absence of consent for the removal of any of the victim's property by the suspect.
74	Is the victim willing to attend court?
75	Make sure that the victim reads the statement thoroughly and that it is signed in all the right places.
76	When was the last time the complainant had sexual intercourse? If within 72 hours before the incident, control blood samples are required from all the partners.
77	Victim's consent to forensic testing of articles seized for examination and that the victim knows that the articles may be damaged in the process of the forensic examination.