withdraw rape cases in Namibia



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- 4 Körner Street, Windhoek
- ⊠ P.O. Box 604, Windhoek, Namibia
- **2** 264-061-223356
- **264-061-234953**
- Email info@lac.org.na Website www.lac.org.na

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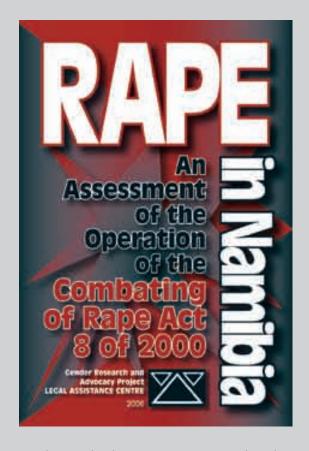
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Summary of Study Findings

This study follows on a 2006 study by the Gender Research and Advocacy Project of the Legal Assistance Centre entitled Rape in Namibia: An Assessment of the Operation of the Combating of Rape Act 8 of 2000. This study, which examined a sample of 409 police dockets, found that complainants requested withdrawals in more than one-third of rape cases. However, the reasons for these requests listed on the withdrawal statements contained in the dockets did not provide much information. This qualitative study follows on the previous study by attempting to explore the reasons for rape case withdrawals in more detail. In order to gain a broad understanding of the problem, the Legal Assistance Centre collected information from six different regions by means of focus group discussions, community member interviews and key informant interviews. The goal of the study was to better understand rape complaint withdrawal, and to develop recommendations which could respond to some of the issues raised.



Gender inequality is at the root of many women's decisions about whether or not to proceed with a complaint. Gender inequality in Namibia takes many forms. Although Namibia's progressive Combating of Rape Act was enacted in 2000, many people remain ambivalent toward the law and sceptical about a woman's rights over her own body. For instance, some people characterise the Combating of Rape Act as having "invented" the crime of marital rape. Gender inequality also fuels the stigmatization of rape as a shameful thing and breeds a culture of silence amongst rape victims and their families. In addition, gender inequality pervades the traditional practice of exchanging a small sum of money or livestock as compensation for a rape. Although compensation may be a legitimate response to rape in terms of customary law, the way that compensation is arranged in many communities today amounts to bribery and coercion, and converts a woman's right to sexual autonomy into a property right which is controlled by male members of her family.

Focus group discussions put forth 30 perceived causes to explain why women withdraw rape complaints. The ten most common causes identified in these discussions were: (1) the woman received compensation, (2) the woman was pressured by her family to withdraw the case, (3) the woman feels ashamed that she was raped, (4) the rapist physically threatened the woman to withdraw her case, (5) the timetable for the prosecution of a rape case is too long, (6) the woman feels that she has insufficient evidence to win her case, (7) the woman lacks the necessary information, (8) the rapist occupies a position of status in the community, (9) the woman was bribed to withdraw her case and (10) the woman is in a position of financial distress. Individual interviews with community members and key informants generally confirmed these reasons for rape case withdrawals and shed additional light on the issues.

The payment of compensation was cited most frequently as the key reason for rape case withdrawal. Compensation has several immediate advantages above criminal prosecution – it allows the matter to be finalized within a short time period, it is perceived as being more private than a criminal case, it is arranged by families or traditional authorities who are part of the community and share its values, and it can provide welcome financial assistance to the person who has suffered the wrong. However, the key drawbacks of this option are that it may be difficult to enforce the agreed-upon compensation, that the compensation may be given to the head of the household rather than to the rape victim and (most importantly) that this alternative does nothing to prevent repeat rapes since it allows the rapist to walk free. In some communities compensation was viewed as a respected and legitimate practice, but other communities spoke of it as a mechanism whereby a perpetrator with greater wealth or status than the victim can "buy" the victim's right to prosecute her case.

THE TEN MOST COMMON REASONS FOR RAPE COMPLAINT WITHDRAWAL

- 1. The woman received compensation
- 2. The woman was pressured by her family to withdraw the case
- 3. The woman feels ashamed that she was raped
- 4. The rapist physically threatened the woman to withdraw her case
- 5. The timetable for the prosecution of a rape case is too long
- 6. The woman feels that she has insufficient evidence to win her case
- 7. The woman lacks the necessary information
- 8. The rapist occupies a position of status in the community
- 9. The woman was bribed to withdraw her case
- 10. The woman is in a position of financial distress

The study concludes with a range of recommendations aimed at reducing the external pressures which may interfere with victims' exercise of free choice to decide whether or not to continue with their cases. The recommendations are aimed at different stakeholders, including the Law Reform and Development Commission, Parliament, Woman and Child Protection Units, the Office of the Prosecutor-General, traditional leaders, civil society and various other entities. Drawing support from international studies on case withdrawals and victim support, the recommendations centre around the primary goals of creating new programmes that provide direct assistance to victims of rape, strengthening and improving the many services already in place, identifying and eliminating institutional inefficiencies that have caused some women to withdraw their cases and educating communities to overcome the prejudice and the stigma associated with rape.

For example, to counteract the effect of compensation as a cause for withdrawal, the Legal Assistance Centre recommends that Woman and Child Protection Units inform victims of the societal benefits of continuing with a rape case rather than accepting compensation to withdraw the case, and require counselling of the rape complainant by a social worker before accepting a withdrawal statement. A recommendation to the Law Reform and Development Commission is to give consideration to a law reform which could bolster the existing law on obstruction of justice by specifically prohibiting "coercive compensation", where the accused attempts to pressure or coerce the complainant into accepting compensation in exchange for withdrawing a criminal charge of rape.

Summary of Study Findings iii

As another example, the study proposes steps that could reduce family pressures to accept compensation to withdraw a case. One suggestion is that traditional leaders should insist that the rape victim is directly involved in the compensation negotiation and agreement, rather than being represented by a member of her family. Additionally, the report suggests that civil society should develop programmes that would mediate between, and within, families through group counselling sessions.

Many of the recommendations involve the development of mechanisms and programmes which provide more information and support to rape complainants throughout the criminal justice process – such as

- greater responsiveness to complainants who are threatened by accused rapists who are out on bail;
- early assignment of a prosecutor who would meet with the complainant at an early stage;
- improved exchange of information with the complainant about the progress of the case;
- formal victim support programmes where trained volunteers provide information and assistance to the victim throughout the process; and
- counselling sessions which connect current rape complainants with past rape complainants who would like to help.

In considering these recommendations, stakeholders should remember that rape case withdrawals can have serious consequences for women and society at large. One focus group related the story of "Aster", a woman who was raped and went to the police to report the incident. Soon after she had laid the charge, the rapist offered her N\$1000 to withdraw the case. He still had not paid her several weeks later, so she returned to the police. They informed her that the man who raped her had raped other women as well. He was HIV positive, and many of his victims had become infected. All of the women had withdrawn their cases. The Legal Assistance Centre urges stakeholders to modify the current system so that women like "Aster" are encouraged to proceed with their cases, in the interest of justice and for the safety of the community.

Thousands of Namibian women stand to benefit from a criminal justice system that more effectively prosecutes their cases and a network of social services that supports them through the daunting process of being a complainant in a criminal trial.

Introduction

The man who raped Ingrid was arrested on the night of her attack. It was a holiday and nearly everyone in the small resettlement farm of Bernafey had gone to the shebeen to celebrate. Whilst Ingrid was walking home, a man appeared from the shadows. He grabbed her arms and forced her to the ground. Ingrid was raped, beaten and abandoned on a dirt road less than one kilometre from her home. Hours later, she went to the police to report her rape, and the police made an arrest. The following morning, Ingrid's family received a visitor – the mother of the man who had raped her the night before. She had come to bargain for her son's release. Ingrid's mother negotiated with the woman. The two agreed to a payment of N\$500. Ingrid withdrew her case. The man who raped Ingrid went free.\(^1\)

Maria, a San women, worked on a farm in the Omaheke region. The farmer came to Maria and told her how he desired her. Maria was afraid. He threatened to kill her if she did not have sex with him. Powerless, she agreed. For weeks, the abuse continued. The man offered her money to keep quiet. Soon, Maria became pregnant. The man disembowelled her and left Maria's body in the veld.²

Aster was raped by a man from a village outside of Oshakati. She went to the police to report the rape, but soon after she had laid the charge, the rapist offered her N\$1000 to withdraw the case. Several weeks later, he still had not paid her. When she returned to the police, they informed her that the man who raped her had raped other women as well. He was HIV positive, and many of his victims had become infected. All of the women had withdrawn their cases.³

A pressing difficulty in the prosecution of rape is the prevalence of case withdrawals initiated by complainants. In its 2006 study, *Rape in Namibia*, the Legal Assistance Centre reported that complainants had requested withdrawals in more than one-third of the cases represented in its sample of more than 400 police dockets.⁴ The reasons that women provided to police in their withdrawal statements were evasive and incomplete. Some women claimed to have withdrawn their cases because of a close family relationship with the perpetrator. Others requested withdrawals because they were, or had been, in a sexual relationship with their assailants. Often, the reasons that women provided were vague, such as "forgiveness" of the perpetrator, or a desire to "move on with life". In more than ten percent of the cases where withdrawal was requested, the complainant provided no reason at all for her request.

Introduction 1

¹ Ingrid's story has been adapted from a retelling of the event by several women on the farm. Her name has been changed to protect her identity.

² Maria's story was told by a woman in Corridor 13. Her name has been changed to preserve her memory.

³ Aster's story was told by a focus group in Ongwediva. Her name has been changed to protect her identity.

Rape in Namibia: An Assessment of the Operation of the Combating of Rape Act 8 of 2000, Legal Assistance Centre, 2006, at pages 388-ff. In some of the cases where complainants made requests to withdraw their charges, the case was actually discontinued for some other reason.



The findings of the Legal Assistance Centre's 2006 study illustrate the prevalence of complainant-initiated rape case withdrawals in Namibia. At first blush, this is quite surprising owing to the fact that the Namibian criminal justice system already has a mechanism in place to inhibit the withdrawal of complaints. Technically, once a police docket is opened, it is not possible for the complainant to withdraw the case. A complainant who wants to withdraw a charge must first give a reason for this request to the police. The police will complete a withdrawal statement, which is then referred to a prosecutor. The final decision on whether to withdraw the case is taken by the Office of the Prosecutor-General in Windhoek. But because so much of the evidence necessary for the prosecution of a rape may be acquired and presented only with the full cooperation of the complainant, even this ostensibly robust deterrent is not effective in practice. A prosecutor is unlikely to secure a conviction in a case with a reluctant complainant and so will seldom proceed if the complainant does not want the case to continue.

Curiously, complainant-initiated withdrawals in Namibia are not peculiar to the context of rape. On the basis of statistics provided by the Office of the Prosecutor-General, the Legal Assistance Centre estimates that the withdrawal rate for rape cases is only negligibly higher than the withdrawal rate for other violent crimes.⁵ So what are the causes for the high rates of withdrawals by the victims of violent crime? This study is an enquiry into that question.

The statistics provided by the Office of the Prosecutor-General for other crimes do not distinguish between complainant-initiated case withdrawal and other forms of case withdrawal, such as cases where the Office of the Prosecutor-General decides not to prosecute because of insufficient evidence. Thus, the comparisons of withdrawal rates for rape and other crimes must be treated with caution.

It seeks to establish the reasons why complainants withdraw rape cases and to put forward recommendations for addressing some of their concerns. Although the study is limited in scope to rape cases, it is the hope of the Legal Assistance Centre that the findings presented in this report will be instructive for reducing the withdrawal of cases in other criminal contexts as well.

The report is dived into six chapters. Chapter One provides a brief overview of the causal links between gender inequality and the prevalence of rape complaint withdrawal – highlighting at the outset of the report some key themes that emerged from the research. Chapter Two describes the methodology for the study. Chapter Three presents the findings from seven focus group discussions held in six different regions. Chapter Four presents excerpts from a sampling of 64 community member interviews conducted in eleven locations in six regions. Chapter Five provides a literature review and a discussion of international approaches to the problem of rape complaint withdrawal. Chapter Six offers recommendations aimed at reducing the high incidence of rape case withdrawal in Namibia, informed by the study findings as well as by interviews with several key informants.

It is acknowledged that men can also be victims of rape, but this report focuses on withdrawals of rape cases by women since the vast majority of reported rape cases in Namibia involve women as victims.

Namibia is rich in cultural and linguistic diversity. Although its population is just under two million people, many unique communities co-exist within its borders. To address the complex phenomenon of rape complaint withdrawal, stakeholders must approach the problem by considering both the causes that are particular to certain communities, and the causes that seem to apply nationally. This report marks a first step toward meeting this demanding challenge.

We hope that this study can be used to foster an understanding of, and to direct a response to, the problem of rape complaint withdrawal. While it is too late for Ingrid, Maria and Aster, the thousands of Namibian women who will experience rape in their lifetimes stand to benefit from a criminal justice system that more effectively prosecutes their cases and a network of social services that supports them through the daunting process of being a complainant in a criminal trial.

Introduction 3

"So why go and make a case when they can just take the money and let it go. Some girls, they don't have pride. . . . It's pressure also, maybe from the family side, friends.

Even from the guy who raped her."

Female interviewee, Keetmanshoop

"Sometimes the women withdraw cases because they are pressurised by their family. And sometimes they withdraw cases because they don't want to appear in the court. Sometimes women also withdraw their cases because they don't want to be known by people that they were raped. Sometimes it's about compensation. Sometimes cases are taking longer – one or two years. And sometimes women, they avoid revenge. . . . Once that guy get out of prison, he will make a revenge. Maybe he will harm that women."

Male interviewee, Oshakati

"It's like an exchange. I will give you the money so please, withdraw the case. Most of the times, it happens like that."

Female interviewee, Warmbad



Chapter One

Rape and Gender Inequality in Namibia

Understanding the causes of rape complaint withdrawal requires an appreciation of the problem in its context. In Namibia, that context is a nation still striving toward gender equality. The biases that relegate women to subordinate social positions may also influence their choice – or in some cases, their ability to choose – to go forward with a rape case. This chapter explores gender inequality in connection with the attitudes it engenders toward rape.

Gender inequality has many harmful effects, of which this Chapter considers three: (1) It fosters scepticism toward a woman's rights over her own body, and correspondingly, ambivalence toward the laws that protect these rights. (2) It fuels the stigmatization of rape and breeds a culture of silence amongst rape victims and their families. (3) It leads to the devaluation of women and reduces their sexual autonomy to a property right. As a result of these influences, some women may not identify their sexual violation as a rape. Others may recognise that they have been raped, but choose to keep quiet to avoid bringing shame on themselves or their families. Still others might come forward to seek redress for their injury, but – perhaps failing to see the social value of criminal prosecution – will opt for traditional compensation.

This Chapter engages some of the conceptual issues that affect the perception of rape in Namibia. Recognising these gender biases and identifying their influence on the behaviour of rape complainants, their families, and their communities makes it possible to design educational initiatives that can help to unpack – and hopefully, reform – discriminatory attitudes. Although the reasons that any one woman may choose to withdraw her case are deeply personal, the discriminatory backdrop against which Namibian women make this decision should not be overlooked.

1.1 Ambivalence toward the law

Although the Combating of Rape Act is amongst the most progressive rape laws in the world, the opinions documented in this study reveal a continued ambivalence towards this "new" rape law and the rights that it confers upon women. This ambivalence leaves many men and women suspended between two conceptions of rape. While one is rooted in what they know the law to be, the other stems from social, cultural, and historical attitudes that are antithetical to a full recognition of what constitutes rape.⁶ For example, in the case of forced intercourse within marriage, some women characterise the Combating of Rape Act as having "invented" the crime of marital rape, rather than as having changed a biased law to include a crime that was previously discounted. This suggests that at least some Namibians view certain types of rape – particularly rape between past and present sexual partners – as mere violations of new national regulations rather than as serious criminal offences. This understanding, which may contribute to low reporting rates, may also account for why some women choose to withdraw their cases.

In *Real Rape*, an analysis of attitudes toward rape in America, Susan Estrich presents the conflicting assumptions of two schools of thought within the social sciences. While one maintains that rape "is the single most underreported major crime", the other holds that the reporting rates for rape "are relatively high". What accounts for this disparity? And more interestingly, who is right? On Estrich's account, both theories are correct to the extent that neither has defined the parameters of its application. In effect, both fail to answer the preliminary question: What is rape?

While the text of the Combating of Rape Act leaves little room for ambiguity, the subtext of its enforcement reveals that its progressive message about a woman's control over her own sexuality has not been fully internalised in Namibian society. For example, three out of eight participants in a focus group in Keetmanshoop believed that a woman was obliged to sleep with a man who had paid for her drinks. So pervasive was this belief that the community had devised a disparaging name, "shirt tugger", to describe a woman who accepts a man's drinks but disappears at the end of the night before tendering her expected "payment". In another example, two out of ten participants in a focus group in Mariental believed that a husband could rightfully coerce his

The tendency not to recognise acquaintance and marital rape *as* rape is not peculiar to Namibia. Deborah Rhode writes, "Traditional understandings of rape have reflected a pronounced sexual schizophrenia. One form of abuse – intercourse achieved through physical force against a chaste woman by a stranger – has been treated as the archetypal antisocial crime. By contrast, coercive sex that has departed from this paradigm frequently has been denied or discounted." D Rhode, *Justice and Gender*, Harvard University Press, 1989, at page 245.

wife into sex.⁷ Moreover, at least one participant in every focus group believed that women use rape complaints as leverage to manipulate or take revenge against their husbands and boyfriends. Similarly, in all five of the mixed-sex focus groups, a male participant suggested that a likely cause of rape case withdrawal was that the woman had not, in fact, been raped. In short, feelings that the Combating of Rape Act expands the definition of rape beyond what many communities genuinely accept rape to be, coupled with the paranoia that women take advantage of these liberal definitions to lay unsubstantiated charges against men, pervaded discussions on rape complaint withdrawal.

Estrich suggests that prior to reporting, rapes are "screened" by their victims more so than other violent crimes. This is particularly true in the case of what Estrich terms a "simple rape", which she defines as a rape where the victim knew the perpetrator prior to the attack. According to the Legal Assistance Centre's 2006 study, rapes of this kind accounted for nearly seventy percent of the cases in the police docket sample. The reasons for "screening" are manifold. After a rape, particularly one in which the circumstances surrounding the act arouse suspicions of mutual blame, a woman may have lingering doubts that she has been the victim of a legitimate crime. An insensitive police officer, an incredulous parent, a meddling community member, or even an unsupportive friend could easily – and perhaps unwittingly – reinforce these doubts and decrease the likelihood that she will report the rape.

The pressures that dissuade women from initially reporting rape cases may also affect their decisions to withdraw rape cases. One might hypothesise that these pressures continue to amplify during the lengthy period between the time of reporting the rape and the final court date, which could be as long as two years after the incident. Thus, ostensibly, one explanation for why a woman might withdraw a rape case is that after months of criticism, obstacles, and threats, she simply gives up. But this assumption is unsupported by the facts. The Legal Assistance Centre's 2006 study determined that many women withdraw their cases after a period of only a few days, suggesting that the length of the process – in and of itself – is *not* a cause of rape complaint withdrawal. Yet even if women are not discouraged by the prospect of a lengthy legal procedure, they may still be apprehensive of the institutional response to the rape. As posited by one participant in a Katutura focus group, "it's not any one reason that causes a woman to withdraw her rape case, it's the whole

This attitude is not an isolated anomaly. Namibia's 2006-07 Demographic and Health Survey asked a national sample of men and women whether a wife has a right to refuse sex with her husband for the following three reasons: she knows her husband has a sexually transmitted disease, she knows her husband has sexual intercourse with other women, or she is simply tired or not in the mood. About 4% of the women and 64% of the men did not agree that a wife has a right to refuse marital sex under any of the three specified circumstances. Men were also asked about a husband's rights when a wife refuses to have sexual intercourse with him. Some 5% felt that he has a right to have sex with her by force. Other responses acceptable to significant numbers of men were to refuse financial support (16%), to have sex with another woman (16%) or to reprimand the wife (24%). Ministry of Health and Social Services, Namibian Demographic and Health Survey 2006-07, at pages 246-50.

S Estrich, *Real Rape*, Harvard University Press, 1987, at page 17. Rhode concurs: "Recent studies suggest that rape is the most underreported of all violent crimes, although the precise extent of underreporting is subject to dispute. Estimates of the percentage reaching police attention range from 5 to 50 percent, and much appears to depend on how one surveys possible victims." D Rhode, *Justice and Gender*, Harvard University Press, 1989 at page 246.

⁹ *Id* at 15. Estrich also notes, "Simple rapes are not only far less likely to be reported than aggravated rapes; if they are reported, they are less likely to result in a conviction."

process" – a process that is suspicious of the rights that a woman has in the first instance, and that victimises her all the more aggressively at each stage that she asserts them.

1.2 Beyond the victim: Stigmatization of the family

In every focus group discussion, participants raised the topic of the stigma associated with rape. This stigma brands the victim as tainted and suggests that the experience of rape, though beyond her control, is one that is deeply shameful.

For example, three out of eight participants in the Keetmanshoop focus group agreed that a man would not want to marry a woman who had been raped. While one participant explained that the reason for this was fear that the woman had contracted HIV/AIDS during the rape, other evidence suggests that the motivations for this attitude are more complex.

The shame of rape extends beyond the woman to her family. One woman in a Katutura focus group described the community's reaction to a rape victim as follows: "Look at the woman, she was raped and she doesn't even hide herself away. She still comes out of her house". This reveals both how the community perceives rape to be deeply shameful and how it expects the rape victim to react to this shame.

One woman in Katutura characterised her choice not to report her rape as a decision she made so as not to "hurt her family". While her circumstance is somewhat unusual, in that she was raped by her own uncle, her reaction is one that several focus groups perceived to be normal, even in the case of rape perpetrated by a man outside the victim's family.

While the shame that rape brings on a family in large part derives from the community's response to that rape, sometimes this shame comes from feelings of guilt within the family as well. A Mariental man described the anguish that a husband or father might experience upon the realisation that he was unable to protect his wife or daughter from rape. But as legitimate as his pain might be, these feelings are problematic when they influence a woman's decision to discontinue her case.

In *Justice and Gender*, Deborah Rhode presents the traditional understanding of rape as a crime against both men and women: "Historically, rape has been perceived as a threat to male as well as female interests; it has devalued wives and daughters and jeopardised patrilineal systems of inheritance." The concerns identified by Rhodes are deeply imbedded in many Namibian communities. As an example of the devaluation that can result from rape, participants in a Katutura focus group reported that if a Herero woman comes forward to say that she has been raped, her community may taunt her by asking the question, "Are you a dog?". Rape also threatens the transfer of property from one generation to the next, especially when it results in pregnancy or otherwise affects a victim's future chances of marriage. This can be particularly problematic in Herero and San communities, where marriage arrangements are sometimes planned from youth. Moreover, members of a Herero community maintained that they had heard of at least one case in which marriage to the rapist was arranged as a resolution for the rape.

¹⁰ D Rhode, *Justice and Gender*, Harvard University Press, 1989, at page 244.

To the extent that a woman has a choice as to whether or not to continue with a rape case, this choice could be unduly influenced by her desire not to harm her family by pursuing prosecution for the rape. While the circumstances surrounding each rape are unique, a rape victim who places the needs of her family above her own interests engages in a dangerous self-denial that could severely impede her psychological recovery. While continuing with a case may be a source of embarrassment or humiliation for the family, the women who experienced the rape may find that her feelings about it can only be confronted and conquered through criminal prosecution. As articulated by a young woman in Corridor 13, "Once you are raped, that thing stays with you . . . that feeling of underestimation . . . that feeling that you were oppressed and that's not fair. Someone has to pay for what he did wrong."

1.3 The value of women and the vindication of rape

Although only two percent of cases in the Legal Assistance Centre's 2006 study were reported as being withdrawn because the woman had received compensation (such as money, cattle or goats), this statistic is widely perceived as underestimating the true role of compensation in rape complaint withdrawal. For example, one prosecutor interviewed for the 2006 study estimated that some form of compensation is exchanged in as many as eighty percent of the rape cases that are withdrawn.

The exchange of compensation is a complex issue involving various economic, historical, and cultural factors. Chapter Three examines the mechanics of compensation and the reasons why it remains the prevailing alternative to resolution of a rape case through the legal process. But the exchange of compensation also reveals how the intimately invasive crime of rape continues to be handled as an injury to property – the worth of which is assessed according to a predominantly male system of valuation. Compensation must thus be examined with respect to both how a woman arrives at the decision to accept compensation and how her compensation is calculated.

According to the participants of a Katutura focus group, women are excluded from both the initial decision to seek compensation and the subsequent determination of an appropriate amount. Although one traditional chief in the Omaheke region explained that amongst his people, the rape victim would always be consulted before a determination is made, most focus groups – excluding those in Epako – characterised traditional leaders as being strongly biased toward men; in several groups, the women were adamant that decisions regarding compensation for rape would be made by men alone.

Once the choice to seek compensation has been made (whether by the woman herself, the men in her family or a traditional council), the amount set for compensation was perceived by focus group participants as being related primarily to the wealth of the victim's family. For poor families, N\$500 to N\$1000 could be expected in most towns; in more rural areas, two to three goats. Sometimes compensation also varies with the severity of the crime. Cattle rather than goats would be offered if the woman had been a virgin at the time of the rape or had incurred an injury additional to the rape itself. Sometimes the woman's ethnic group would determine the amount of the compensation. This understanding was articulated by a group of San women. In effect, the less affluent the woman and her ethnic group, the less expensive the

vindication of her rape. In an interview in Corridor 13, one woman commented, "I think men rape us San ladies because we are the cheapest."

The phenomenon of compensation is not particular to Namibia and has been studied cross-culturally in histories of the crime of rape. Rhode writes, "Since a woman's status was to a considerable extent derivative, the vindication of her injury often depended on her relationship to men. So, for example, rape of a nobleman's serving maid cost twelve shillings; rape of a commoner's maid only five." In the same vein, since many women still occupy traditional positions inside the home, compensation for the rape of these women is determined, in part, by the value of the wealth produced by their husbands.

Both men and woman suggest that in many cases, the system of compensation does not reflect an inherent inequality between the sexes, but rather demonstrates a realistic recognition of a woman's needs. Unlike the legal process, which could continue for years after a rape, and (at least in its present condition) invariably leaves a woman empty handed, traditional compensation can be determined within a matter of weeks, thus providing a woman with immediate, practical redress for her injury. The countervailing practical problem is that compensation, whether settled between parties or ordered by a traditional chief, is not always paid. Moreover, even when paid, it is sometimes given to the men of the family – or even to the traditional chief – rather than to the woman who actually suffered the harm.



Whether compensation is better or worse than laying a criminal charge for a woman who has experienced rape is the subject of heated debate. It may even be possible to devise a system whereby traditional compensation is viewed as a supplement to the vindication that a woman receives through the criminal justice process. Regardless, the fact that compensation exists, and is so frequently sought as an alternative to prosecution, is, in and of itself, a profound statement about the way that rape is perceived. That a cow could ever be compensation for a rape was a deeply disturbing notion for many focus group participants.

Ironically, even when social and financial pressures are understood as the primary reasons for accepting compensation, some still view the accepting of compensation to be an indictment of a woman's character. When asked why compensation occurred in his community, one man in Keetmanshoop responded, "I shall say it is poverty. These girls need this money. So why go and report the case when they can just take the money." Strangely, although aware of the legitimate pressures that can drive a woman to accept compensation, he still found the choice to opt for compensation to be reprehensible, commenting, "Some girls, they don't have pride."

¹¹ *Id* at page 245 (citation omitted).



Chapter Two Methodology

The Legal Assistance Centre's 2006 study, *Rape in Namibia*, found that complaint withdrawal is the single most significant reason why a rape case does not proceed to trial.¹² Although the Office of the Prosecutor-General requires that complainants provide a reason for requesting withdrawal of a rape case, we suspected that these reasons do not always reflect the actual motivations of a complainant. This study was designed to look beyond the reasons that complainants provide officially for requesting withdrawal of their rape cases. Its objectives are to determine the underlying causes of withdrawals and to devise recommendations that respond to those causes.

Unlike the 2006 study, this study uses qualitative rather than quantitative methods. Consequently, this report offers insights into the causes of withdrawal that participants perceive to be most prevalent. By identifying the factors understood to dissuade women from continuing with their cases, the Legal Assistance Centre has developed recommendations for Parliament, prosecutors, Woman and Child Protection Units and civil society. These recommendations are presented in Chapter Six.

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Rape in Namibia: An Assessment of the Operation of the Combating of Rape Act 8 of 2000, Legal Assistance Centre, 2006, at page 362.

The Legal Assistance Centre employed three approaches to gather qualitative data for this report: focus groups discussions, community member interviews and key informant interviews. Focus group discussions gave community members the opportunity to offer suggestions on the causes of rape complaint withdrawal in a safe, collaborative environment. Community member interviews allowed for exploration of these causes in greater privacy and depth. Through key informant interviews, the Legal Assistance Centre drew on the expertise of key stakeholders to refine its understanding of the causes of the rape complaint withdrawal. The final step was to craft a set of recommendations based on the study findings.

The research was carried out by graduate student interns working under the supervision of the Gender Research & Advocacy Project of the Legal Assistance Centre. Throughout the study, the researchers maintained a log of notes from both the focus group discussions and interviews. This log was transcribed prior to the drafting of the written report. In addition, because the researchers were also compiling material for a possible future documentary on rape withdrawals, all of the interviews were recorded on film in full, and each of the focus group discussions was recorded on film in whole or in part.

The study is both national and regional in its focus. While many of the causes of rape complaint withdrawal recur throughout Namibia, the details may vary slightly with the unique cultures and practices of particular locations. For example, Chapter Three discusses the prevalence of compensation as an alternative to the prosecution of rape cases. In Epako, compensation is likely to be administered by a traditional chief and to result in the payment of livestock. By comparison, in Keetmanshoop, compensation is more likely to take the form of a sum of money that is agreed between the families of the complainant and the accused. While "compensation" is a cause of complaint withdrawal in both communities, there are relevant differences between the two situations that may warrant slightly different policy responses. As a result, the recommendations in Chapter Six attempt to address both the general causes of rape complaint withdrawal as well as some of their more specific manifestations.

Rape is a complex crime that inflicts a deep emotional injury on its victims. Some women who are raped will seek to withdraw cases for personal reasons that are beyond the scope of policy recommendations. However, the researchers attempted to design a methodology that could isolate the causes of complaint withdrawal that are endemic to the psychology of the crime. This is only of the many challenges that researchers faced in designing the study.

The researchers did not use the information available in police dockets to contact specific rape victims who had requested withdrawal of their cases because of the fear that this approach would be unacceptably intrusive. The participation of rape victims was solicited by means of invitations for interviews channelled though focus groups, and a few women who had suffered rapes agreed to give interviews. However, most of the information collected comes not from rape victims themselves, but from the perceptions of their communities on the causes of rape complaint withdrawal. This approach respected the privacy of rape victims and avoided the potential objectification of these women. Moreover, we believe that this indirect approach actually provided better information; whereas a woman might be reluctant to share her real reasons for withdrawing a rape case, community members were willing to share the reasons expressed to them by family members and friends who had been raped. Although community



members may not be able to reflect the precise motivation of a particular rape victim, collectively their perceptions allowed researchers to observe the tapestry in which individual case withdrawals are but single threads.

In some isolated cases, the causes for rape complaint withdrawal suggested by community members proved to be unsupported by factual analysis. For example, many community members felt that women withdraw cases because criminal prosecution "takes too long". Although it is true that more than three years often pass before a rape trial is brought to completion, the 2006 study showed that most rape victims who decide to withdraw their cases do so within the first six weeks after laying the charge. Nevertheless, the perception expressed by community members may not be completely baseless; some women could be influenced in their desire to withdraw their rape cases by a perception that the court process is going to go on for a very long time.

Overall, we can have confidence in the information provided by community members for many reasons. First, because rape is so pervasive in Namibia, almost every participant in the study knew someone close to him or her who had been raped. Second, although participants might not have knowledge of the specific motivations that lead a particular woman to withdraw her case, they were able to offer insight into how these victims behaved, what pressures they appeared to be responding to, and how the community responded – or in some cases, contributed – to these behaviours. Thirdly, the perceptions advanced by community members were broadly corroborated by the contributions of key informants interviewed for this study and for the 2006 study. Thus, despite the indirectness of our methodology, we believe that it elicited a diversity of valid qualitative responses on the causes of rape complaint withdrawal.

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2.1 Study sites and participation profile

Although national in its scope, the study includes only a sample of regions and locations throughout Namibia. Researchers selected the sites for focus groups discussions and interviews on the basis of data from the Legal Assistance Centre's 2006 study. The regions selected for the present study – Khomas, Hardap, Karas, Omaheke, Oshana and Erongo – exhibited a wide range in the prevalence of rape complaint withdrawal.

The three highest proportions of complainant withdrawal in the 2006 study were associated with the following study sites:

- Katutura, which accounted for 19% of complainant withdrawals while accounting for less than 14% of the rape cases in the study sample (supplemented by Wanaheda, a part of Katutura, with a withdrawal rate roughly equal to its share of rape cases);
- Swakopmund, which accounted for 13% of withdrawals in comparison to just under 7% of the cases; and
- Kuisebmond in greater Walvis Bay, which accounted for about 11% of withdrawals in comparison to just over 6% of the cases (supplemented by central Walvis Bay, which accounted for 6% of withdrawals in comparison to 3.5% of the rape cases).

These three locations all had 5-6% more withdrawals than their percentage of rape cases.

Locations with mid-level complainant withdrawal rates in the 2006 study – as measured by a percentage of withdrawals not far removed from their percentage of rape cases in the sample – included Rehoboth, Katima Mulilo, Keetmanshoop, Oshakati and Ondangwa.

Locations with lower levels of complainant withdrawal (rates of withdrawal significantly below their share of rape cases in the sample) included Gobabis, Khorixas, Ohangwena, Okahandja and Okatope.

Other locations studied had such a small number of rape cases reported during the study period that it was not possible to make meaningful comments on their withdrawal rates.¹³

The locations targeted for the present study included some associated with high rates of complainant withdrawal (Katutura and Mondesa in the Swakopmund area), some associated with mid-level complainant withdrawal rates (Keetmanshoop and Oshakati) and some smaller locations that were not part of the sample used for the 2006 study but were included to ensure that the views from more rural areas would be represented.

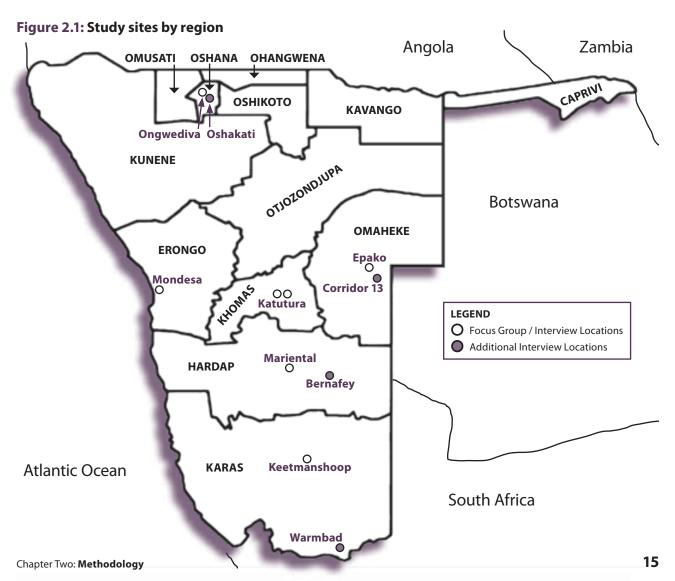
When selecting regions, researchers also tried to ensure that a diversity of language groups would be represented – although in a study of this nature it was not considered necessary to strive for language representation proportional to that of the nation as a whole. The home language of participants was not recorded, but languages used during the focus group discussions and interviews included English, Afrikaans, Oshiwambo, Otjiherero, Nama-Damara and San. English was utilised as a medium of communication wherever possible. Where participants preferred to communicate in a language other than English, translation was provided.

¹³ *Id* at pages 394-95.

Table 2.1: Withdrawal of rape complaints in Namibia

		Withdrawn	by complainant	Total rape cases	
		N	%	N	%
	Aroab	1	1.2	5	1.2
	Dordabis	0	.0	6	1.5
	Fransfontein	1	1.2	1	.2
	Gobabis	7	8.3	51	12.6
	Katima Mulilo	4	4.8	23	5.7
	Katutura	16	19.0	56	13.8
	Keetmanshoop	2	2.4	9	2.2
	Khorixas	3	3.6	29	7.2
	Kuisebmond	9	10.7	26	6.4
Police	Narraville	0	.0	3	.7
station	Ohangwena	0	.0	25	6.2
	Okahandja	7	8.3	42	10.4
	Okatope	3	3.6	21	5.2
	Ondangwa	1	1.2	9	2.2
	Oshakati	3	3.6	13	3.2
	Rehoboth	7	8.3	22	5.4
	Swakopmund	11	13.1	28	6.9
	Walvis Bay	5	6.0	14	3.5
	Wanaheda	4	4.8	18	4.4
	Windhoek	0	.0	4	1.0
tal	·	84	100.0	405	100.0

Source: Rape in Namibia: An Assessment of the Operation of the Combating of Rape Act 8 of 2000, Legal Assistance Centre, 2006, Table 12.21 at page 395.



While most focus groups were conducted in urban settings, more rural communities were included in the study through community member interviews. Our goal was to elicit a wide range of opinion. However, as in most research projects, our choice of study sites was constrained by the available staff, time and budget.

The following tables illustrate participation in the study according to a numbers of factors: gender, region and total number of participants. This information is presented to give the reader a better understanding of the sources of the findings presented in Chapters Two and Three.

Table 2.2: Total Participation by Gender

Participation Type	Women	Men	Total
Focus group discussions	68 (85%)	12 (15%)	80
Interviews	51 (76%)	16 (24%)	67
Persons who participated in both focus groups and interviews	19	5	24
Overall	100 (81%)	23 (19%)	123

Table 2.3: Focus Group Participation by Location and Gender

Focus Group Location	Women	Men	Total
Khomas (Katutura 1 & 2)	28	2	30
Hardap (Mariental)	7	3	10
Karas (Keetmanshoop)	6	4	10
Omaheke (Epako)	7	0	7
Oshana (Ongwediva)	9	2	11
Erongo (Mondesa)	11	1	12
Overall	68	12	80

Table 2.4: Interview Participation by Location and Gender

Interview Location	Women	Men	Total
Khomas	17	7	24
Hardap	11	2	13
Karas	4	2	6
Omaheke	8	2	10
Oshana	9	3	12
Erongo	2	0	2
Overall	51	16	67

2.2 Focus group discussions

Focus groups served as the starting-point for the research. They provided an opportunity to survey the perspectives of various communities with respect to the causes of rape complaint withdrawal.

Focus groups were assembled with the assistance of local churches, organisations and community leaders. Illustrating the grassroots nature of the groups, a prominent civil society member who observed one of the two Katutura focus groups described its participants as "unemployed young women and grassroots mothers who are either self-employed – selling *kapana* – or women who really are out in the settlement areas". In each location, researchers contacted several local non-governmental organisations (NGOs), asking their members to alert the community to the focus groups. The NGOs were informed of the group's targeted composition: grassroots community members. As the aforementioned source agreed, "That is the right target because the impact is really there. They feel disempowered and much more vulnerable [to pressures] to withdraw and [to] giving up easily." In the property of the property of the pressures of the pressure of the pressures of the pressure of the pre

The general structure of the focus group sessions was consistent from region to region. However, this structure was flexible enough to allow participants to direct the conversation toward topics not raised by the facilitators. One to two female moderators directed each discussion. Throughout the study, a total of four women took part in the focus group facilitation. To ensure consistency, one woman was present at all of the focus groups and all of the community member interviews.

Focus group discussions lasted between four and eight hours. Facilitators encouraged participants to explore a topic until no more comments could be made. Participants were encouraged to limit their responses to knowledge of specific cases or prevalent attitudes within their communities. Accordingly, some issues which aroused little interest in certain regions were the subject of extended discussions in others. For example, traditional courts were mentioned only briefly in Keetmanshoop and Mariental, but occupied nearly an hour of the focus group discussion in Epako. Similarly, the centrality of money as a cause for rape complaint withdrawal was discussed much more fully in Katutura and Keetmanshoop than in Oshakati, where tradition and pressure from the family were perceived to be greater causes of rape complaint withdrawal.

Researchers subdivided the focus groups discussions into four main topics: (1) the family, (2) the community, (3) compensation and (4) the public institutions that provide services to a complainant in the days, months and years after her rape.

These topics were derived from the reasons for rape complaint withdrawal that women provided on their withdrawal statements in the 2006 police docket sample, as well as from the reasons identified by key informants in the Legal Assistance Centre's 2006 study. Since the reasons provided by the rape complainants themselves were often lacking, key informant contributions to the 2006 study provided an invaluable supplement to their responses. For example, although compensation was rarely cited as a reason for withdrawal in official withdrawal statements, key informants believed that this was often a fundamental factor underlying the decision to request withdrawal. We therefore included compensation as one of the key topics for the focus groups in this study.

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¹⁴ For readers not familiar with Namibia, *kapana* refers to grilled meat. The sale of *kapana* by the roadside or in informal markets is a common source of informal income for unemployed persons.

¹⁵ Interview with Rosa Namises, community leader and former Member of Parliament, Katutura (16 June 2008).

Focus group methodology: Story completion

Before beginning discussions around any of the four key topics, facilitators read an open-ended scenario ("Story A") to participants. Story A describes the rape of a fictional character named Martha. It is deliberately incomplete and lacks critical details about the circumstances surrounding the rape incident, the reporting of the rape, and the withdrawal of the rape complaint. Through the discussion that followed this story, participants implicitly supplied the omitted details. In this way, moderators were able to learn why focus group participants believe that rape complaints are withdrawn without influencing their responses with suggestive details.

Story A

Martha lives in _____ [location of focus group]. Pieter, who also lives in _____ [location of focus group], raped Martha last month. Martha told Mary that Pieter raped her. Martha went to the hospital, where she met with Dr Smit. Martha went to the Woman and Child Protection Unit, where she spoke with Officer Van Wyk. Officer Van Wyk opened a docket for Martha's rape complaint. Yesterday, Martha withdrew her rape complaint.

After reading Story A, facilitators asked participants: "Why do you think that Martha withdrew her rape complaint?" Moderators allotted approximately 25 minutes of discussion time for this open-ended story. As discussion proceeded, facilitators asked directed questions as needed (such as "How did Pieter and Martha know one anther before the rape?" and "What does Martha think will happen at court?") to facilitate the conversation. Based on participants' responses to Story A, the moderators decided which topic to explore next.

Each of the four key topics was the subject of an additional, targeted story. All of the targeted stories began with Story A as a base, but with each adding a different significant detail. In Story B, that detail is that Pieter and Martha are members of the same family; in Story C, that Pieter and Martha live in the same small community; in Story D, that Pieter will compensate Martha for the rape; and in Story E, that one or more of the institutions that aided Martha failed to follow the protocol required by the Combating of Rape Act.

In short, focus group discussions would proceed as follows: When participants suggested that Pieter and Martha lived in the same house as a reason why Martha withdrew her rape case, facilitators proceeded to Story B and probed the topic of family issues. Similarly, when participants believed that the police had mistreated Martha, facilitators read Story E, which addresses institutional inadequacies. Where no particular issue emerged from the discussion of Story A, moderators read the stories in alphabetical order, dedicating equal time to each. The stories were read in order in both of the Katutura focus groups, as well as in Mondesa and Oshakati. In Mariental, the conversation began with Story C; in Keetmanshoop and Epako, with Story D.

Focus group methodology: List creation

In addition to the open-ended and targeted stories, participants were asked to generate a list of ten reasons why they believed women in their communities withdrew rape cases. The list was limited to ten so that it would be expansive enough to accommodate a diversity of perspectives and limited enough to spark debate amongst the focus groups participants about which factors to include. Through the process of creating the list, participants were asked to think critically about the intuitive responses that they gave to Stories A-E. Creating the list served the dual purpose of summarising the discussions from the story completions and clarifying for researchers how these responses should be interpreted.

For example, in response to Story C, the participants in the Oshakati focus group suggested that Martha had accepted money from Pieter to withdraw her rape case. But when creating the list of reasons why women withdrew cases, they cited traditional pressures from the community as a primary cause for the withdrawal of rape cases. This reason placed their previous comment in context, for as participants explained, victims of rape would be pressured to accept compensation according to an Ovambo tradition of forgiveness. Thus, the reason that a woman might accept compensation in Oshana could have more to do with her adherence to community norms than would the reason for a woman accepting compensation in Keetmanshoop, where poverty was listed as a primary reason for complaint withdrawal, or in Epako, where intertribal tension was perceived as the key reason. Understanding these contexts is critical for resolving the problem of rape case withdrawal. Still using the example of compensation, while some of the reasons for seeking compensation for rape could be resolved nationally, for example by making compensation part of the criminal justice process, others will require more regionally-specific solutions.

Once participants had created a list of the causes of rape complaint withdrawal, this list served as the basis for the "suggestions and recommendations for change" segment of the focus group. Participants were asked to suggest two or three approaches to help eliminate each of the problems identified. While some of the causes gave rise to clear recommendations, others were more difficult to address. Thus, in response to the concern that court cases take too long, participants suggested additional magistrates or specialised courts for rape cases. These clear and specific solutions vary from the more indirect types of recommendations that participants suggested in response to the problems of shame or community stigmatisation of rape. In these instances, the most commonly offered solution was an increase in the availability of counselling or educational services.

Focus group methodology: Games and role-plays

Moderators employed two other methods of information gathering during the focus groups: game-based discussion and role-play performance. Game-based discussion was designed both to energise participants and to gather background information on the understanding of rape within the community. Role-play performance was used to engage the group, as well as to provide facilitators with an opportunity to take note of participants' unarticulated attitudes and beliefs. While neither of these techniques provided as direct an examination of the problem of rape complaint withdrawal as the story completion and list creation methods, these approaches complemented the others with respect to the type of qualitative data that they elicited.

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Each focus group began with the game *Agree or Disagree*. During this game, moderators read aloud statements from a pre-determined list. After a statement was read, participants were asked to proceed to one of four corners, each marked with one of the following signs: strongly agree; agree; disagree; or strongly disagree. The statements, which were designed to be inflammatory, each drew from a stereotype concerning rape, gender or sexual practice. Statements included the following (amongst many others):

- A husband cannot rape his wife.
- Women are to blame for rape if they wear short skirts.
- If a man pays for a woman's drinks she must sleep with him.

After participants had selected a corner, a representative from each group was asked to defend his or her choice. Although the debate amongst participants was often lively and light-hearted, this game-based discussion served as a window into the darker realities of enduring gender inequality.

Participants were also asked to break into pairs and create two role-plays on an issue of their choice, drawing from possibilities which corresponded to the topics of targeted stories B-E. Thus, groups chose whether to create their role-plays about family issues, community attitudes, compensation or institutional responses. In large focus groups, such as Katutura 2, two additional topics were added; these were traditional courts and counselling. In Mariental, the participants chose to work together to create a small play.

Within each pair, participants acted out one scene to show how a rape victim might typically be treated, and one scene to show how she could be encouraged and supported to continue with her rape case. For example, a group portraying family issues might first act out a scene where a mother throws her daughter out of the house after she first reports a rape case against her breadwinning uncle, and next act out a scene where the mother chooses to throw out the uncle even though she realises that this will bring financial hardship upon the family. Role-plays, though theatrical and somewhat exaggerated, offered some key insights into, amongst other opaque issues, precisely how compensation is exchanged. While participants may never have engaged in the process of settling compensation, their insights were valuable for what they revealed about how compensation is perceived. For example, some groups illustrated a penitent Pieter grovelling at the feet of a female *Homba*, while others showed a disillusioned Martha, excluded from the discussion of compensation by her male elders.

Invitation to provide personal interviews

Following each focus group, participants were invited to participate in community member interviews if they had a specific story to share or an additional contribution that they wanted to see included in the study. Slightly more than one third of the focus group participants – or 24 in total – volunteered to give private, individual interviews.

2.3 Community member interviews

Community member interviews allowed researchers to collect information in a semi-structured forum. As compared to focus group discussions, interviews were conducted in a one-on-one, private setting. Through these interviews, women and men from different parts of Namibia shared stories of their own often painful and deeply personal encounters with rape and other forms of gender-based violence.

Throughout the study researchers conducted a total of 67 community member interviews in twelve locations – 51 interviews with women and 16 with men. These interviews were led by the graduate student intern who also facilitated each of the focus group discussions. The questionnaire for the interviews was semi-structured, oriented around four primary questions:

- Do you believe that men and women are equal in your community?
- Have you ever known of a woman in your community who was raped, and if so, could you explain what happened to her after the rape?
- Why do you believe that women in your community withdraw rape cases?
- What types of services would help a woman who has been raped to continue with her case?

Excluding participants who also took part in a focus group discussion, interview subjects were selected randomly or upon the recommendation of a previous interviewee. Researchers solicited individual interviews with women more frequently than with men, hoping to gather the intimate information that might be omitted in focus groups where men were present. We

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¹⁶ *Homba* is a traditional Oshiwambo word for "king".

were also eager to interview people who had direct experience as rape complainants, which pointed us primarily towards women.¹⁷

Four of the women interviewed identified themselves as having experienced rape or attempted rape. These interviews followed a more structured questionnaire that solicited specific information regarding the reporting of their case and their decision to continue with or withdraw the charge. One of the cases terminated in a successful prosecution, but because the case was filed prior to the adoption of the Combating of Rape Act, its minimum sentencing requirements did not apply and the convicted rapist was sentenced to only ninety days in prison. Two of the cases were never reported. In one of these cases, the woman was financially dependent on the rapist, and in the other, she was related to him by blood and did not want to bring shame upon her family. Another woman attempted to report her rape, but was confronted with derision by the police. The police ultimately refused to open a docket and the rapist was never prosecuted.

None of the men interviewed were themselves victims of rape. While many of the men interviewed for the study were understandably defensive, given the primary role of men as perpetrators of the crime of rape, others provided frank and helpful contributions to the conversation.

All interviews were video-recorded. Each lasted between ten minutes and one hour. While most interviews were conducted one-on-one, some participants requested to be interviewed in pairs or groups and some required the assistance of a translator. Where possible, interviews were conducted in a secluded location.

Although interviewers primarily adhered to a predetermined set of questions, each interview was personalised to respond to the knowledge and experiences of the interviewee, as well as to show sensitivity to the interviewee's willingness to share personal information.

Interviews were a critical feature of the study because, in contrast to the more formal organisation of the focus groups discussions, the interview structure and schedule allowed each participant to devote as much or as little time as he or she needed to any given topic. Moreover, since interview subjects in the same town or village did not communicate with one another during their interviews, the responses of any one interviewee were not influenced by the responses of others.

There are both theoretical and practical drawbacks endemic to the use of one-on-one interviews as a method of qualitative information gathering. In certain regions, language barriers resulted in imprecise translations of questions and responses. Likewise, cultural barriers – particularly in the Oshana region – accounted for a hesitance amongst many participants to engage interviewers in a honest discussion of rape and sexual violence. To correct for the first of these difficulties, the video record of the interviews was reviewed to allow for verification of the accuracy of the translations. To address the second problem, researchers asked a series of preliminary questions intended to allow interviewees to become comfortable with the subject matter of the interview.

¹⁷ Since the Combating of Rape Act made it possible for males to be identified as victims of rape, men have accounted for 6-8% of reported rape and attempted rapes nationally. *Rape in Namibia: An Assessment of the Operation of the Combating of Rape Act 8 of 2000*, Legal Assistance Centre, 2006, at page 6, based on national police statistics for 2003-2005. (Information on the sex of rape complainants was not systematically recorded prior to 2003.)

Comparison of focus group and interview data

Participants as a whole shared different types of information in one-on-one interviews than they did in focus groups. This was observed in some cases with respect to individual participants, who shared different information in the interview than they did in their focus group, and in other cases with respect to regions, where the opinions generally expressed by focus groups differed from the opinions generally expressed by those interviewed in the surrounding region. The best way to characterise this difference is that opinions in interviews were "amplified" – rape withdrawal stories were more intimate and detailed, and conversely, prejudices and stigmas were more pronounced. Because this is a qualitative study, neither type of response can be judged as more accurate. Rather, these two types of responses should be interpreted in association with one another, as a way to enrich understanding of community opinions and attitudes.

Based on the observations of the facilitators, it appears that some of the differences between opinions expressed by men and women in individual interviews as compared to opinions expressed by men and women in focus groups may be attributed at least in part to the subtle influences of sex ratios on group dynamics.

Although researchers anticipated that women might feel more free to talk openly about topics related to gender and rape in individual interviews, it transpired that the individual interviews also provided an opportunity for men to express themselves more freely than in some of the focus group discussions. The fact that the focus group discussions were predominantly comprised of women may have caused some male participants to refrain from sharing their views on gender inequality, rape and rape complaint withdrawal.

Concern about the censorship of male responses may seem somewhat peculiar, especially given the wealth of other information in this study that suggests that it is the female – not the male voice – that is often silenced with respect to rape. This phenomenon was most observable in two focus groups: Katutura 2, and Mondesa. In Katutura 2, the ratio of female to male participants was 20:1, and in Mondesa 11:1. In all focus groups where two males were present, this was sufficient to create a "critical mass" and no censorship was observed. In fact, the Ongwediva focus group, which had *only* two males, created the reverse effect of censoring nine females (and as a result, researchers conducted the second half of the discussion in small groups).

Although there are likely other causes for this effect, such as the male participants' superior proficiency in English or their perceived status in their communities, sex ratios did seem to play a role in participants' willingness to share their opinions. Female participants seemed most comfortable in female-only focus groups or in focus groups with only one male (such as Katutura 1, Katutura 2, Epako and Mondesa). Females in focus groups with two or more males spoke more freely in small, female-only groups (such as at Mariental, Keetmanshoop and Ongwediva). Male participants spoke more freely when at least one other male was present in the group (Mariental, Keetmanshoop, Ongwediva). Focus groups with more than two males created a silencing effect amongst some females, resulting in a need to separate the focus group into male and female sub-groups (Ongwediva especially, but also Keetmanshoop). Focus groups with three males or more tended to provoke defensiveness or antagonism amongst the male participants toward the issue of rape (Keetmanshoop especially, but also Mariental).

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An additional reason for the difference in opinions amongst the men who participated in the focus groups and those who gave only individual interviews is that the former were typically individuals who had received an invitation to attend the focus group through a women's rights organisation. Many of these participants were not only aware of the problems of rape, gender-based violence, and gender inequality, but were also advocates on behalf of these issues. In contrast, the men who provided community member interviews were more poorly educated, unemployed and available to be interviewed on a weekday afternoon (with the exception of one interview subject in Katutura, who was interviewed on a Friday night and appeared to be returning from work at the time). The men who participated in the focus groups displayed a greater sensitivity to the problem of rape complaint withdrawal as well an increased sympathy toward, and willingness to help, the victims of rape than the men who participated only in an individual interview (several men who took part in focus group discussions also provided individual interviews).

A full exploration of the role of sex ratios in focus group sharing and in the tendency to express more open and "amplified" response in a one-on-one interviews is both beyond the scope of this study and tangential to its findings. Recognising that the confluence of these effects could skew the results of the study, researchers have made every effort to both weigh the information provided with respect to the context in which it was given as well as to provide readers with as many direct quotations as possible.

2.4 Key informant interviews

In order to gain a more rounded perspective of rape complaint withdrawal in Namibia, two graduate student interns from the LAC conducted three key informant interviews specifically for this study. The interviewees were all based in Windhoek, and included (1) a police officer based at the Windhoek Woman and Child Protection Unit; (2) a Director at the Ministry of Gender Equality and Child Welfare; and (3) the Head of Special Prosecution Unit for Sexual Assault, Domestic Violence and Maintenance in the Office of the Prosecutor-General.

The present study also draws on input from the interviews conducted for the Legal Assistance Centre's 2006 study. One component of the data collection for that study was interviews with 58 key informants who included prosecutors, magistrates, police and social workers based in 10 of Namibia's 13 regions. Although the 2006 study was more wide-ranging, the interviews for that study also covered the topic of case withdrawals and some of the factors that contribute to them.

Information from key informants gave a more holistic perspective to this study by taking into account the views of representatives of different branches of government and those of the various service providers who are involved at different points in the criminal justice process.



Chapter Three

Focus Group Discussions

3.1 List creation: Perceived causes of rape complaint withdrawal

Analysis of withdrawal statements from police dockets sampled for the Legal Assistance Centre's 2006 study on rape produced a list of six basic reasons why women requested withdrawal of their rape cases:

- relation to the perpetrator
- wanting to "get on with life"
- forgiveness of the perpetrator
- acceptance of the perpetrator's apology
- retraction of a false charge
- receipt of compensation.¹⁸

In each of the seven focus group discussions conducted for the present study, moderators asked participants to create a list of the ten reasons that women in their community withdrew rape

¹⁸ Rape in Namibia: An Assessment of the Operation of the Combating of Rape Act 8 of 2000, Legal Assistance Centre, 2006, at page 389.

cases. Since most of the focus group participants had not experienced rape personally, unlike the complainants who made the withdrawal statements analysed in the 2006 study, the reasons that they provided were conjectural. However, their responses were also unencumbered by the fears and burdens that might dissuade a rape victim from providing police with the real reasons for requesting the withdrawal of her case.

For example, in five of the focus group, one of the reasons suggested for rape complaint withdrawal was the threat of physical harm by the rapist. Because this reason was independently suggested in a majority of the focus group discussions, there is reason to suspect that such threats do occur – despite the fact that no withdrawal statement in the 2006 police docket sample listed "threat of physical harm" as a reason for requesting withdrawal. Likewise, while only two percent of cases in the 2006 study were reportedly withdrawn because the complainant preferred to resolve the matter through compensation, compensation was suggested as a reason for complaint withdrawal in each of the seven focus groups, suggesting that the receipt of compensation is more prevalent than women might admit to the police. Additionally, while nearly five percent of women stated that they requested withdrawal of their cases because the original charge was false, curiously, this was raised as a possible factor in only one focus group.

While the reasons for rape complaint withdrawal suggested by focus group participants cannot explain why any individual woman might want to withdraw her case, they are invaluable for providing insight into both the factors that a rape victim might not provide to the police, and the prevailing community attitudes that may influence her decision. Moreover, they are useful to help clarify the reasons that were included in withdrawal statements analysed for the 2006 study. Focus groups have helped to illustrate, amongst other things, that "forgiveness of the perpetrator" may be interwoven with a complex array of other reasons for withdrawal. In Oshakati, such "forgiveness" was explained in the context of a traditional Ovambo maxim – "today my child, tomorrow yours" – which emphasises communal reciprocity above individual rights. In Mondesa, "forgiveness of the perpetrator" was perceived as resulting from the influence of evangelic ministers. In Katutura, "forgiveness" was seen as a necessity for women who are financially dependent upon their assailants.

This section presents and analyses a list of the causes of rape complaint withdrawal compiled from the lists constructed by the seven focus groups. While this compiled list is not exhaustive of the reasons that women seek to withdraw rape cases, it offers a close look at the most common perceptions about withdrawals. By combining and cataloguing the lists from each of the focus groups, researchers were able to look for similarities and differences amongst them, as well as to place each in its regional and cultural context.

The following tables compile every item included in the ten-item lists created by the seven different focus groups. A total of 30 different causes for rape complaint withdrawal were listed by these focus groups. Of these 30 causes, ten were proposed by four or more focus groups, as shown in Table 3.1. The remaining 20 causes were presented by three or fewer focus groups, as shown in Table 3.2.

Table 3.1: Causes of withdrawal identified by four or more focus groups

Number of focus groups citing this factor	Suggested reason for rape complaint withdrawal	
Seven	1. The woman received compensation.	
Six	 The woman was pressured by her family to withdraw the case. The woman feels ashamed that she was raped. 	
Five	4. The rapist physically threatened the woman to withdraw her case.	
Four	 The timetable for the prosecution of a rape case is too long. The woman feels that she has insufficient evidence to win her case. The woman lacks the necessary information. The rapist occupies a position of status in the community. The woman was bribed to withdraw her case. The woman is in a position of financial distress. 	

Table 3.2: Causes of withdrawal identified by three focus groups or fewer

able 3.2: Causes of withdrawal identified by three focus groups or fewer				
Number of focus groups citing this factor	Suggested reason for rape complaint withdrawal			
Three	 The woman fears going to court – particularly because of a perceived lack of privacy and the possibility of retribution after her testimony. The court is too far away and the woman does not know that she can receive a reimbursement for transportation from the court clerk. The woman is financially dependent on the rapist. The woman fears retribution through witchcraft. The woman is ultimately dissuaded from going forward by a traditional belief that the man is the head of the house and thus is entitled to have sex with her despite her resistance or non-consent. 			
Two	 The woman feels that she cannot win her case if the rapist has a private lawyer. The woman believes that the legal system is unjust. The rapist is HIV-positive; thus, by continuing with her case, the woman may worry that her own HIV status will be suspected or disclosed. The woman fears rejection by the community if she continues with her case. 			
One	 The woman fears that the prosecutor may be bribed to throw the case; that the prosecutor will not work hard to win her case unless the rape is uniquely heinous or public; that the prosecutor will not contact her until the date of her trial; that her trial will be postponed repeatedly, and without notice. The woman does not know the "the laws of Namibia" – specifically, the Combating of Rape Act. The woman fears retribution by the rapist whilst he is released on bail. The woman fears that she caused the rape. The police officers investigating her case have been bribed not to collect evidence for the case. The woman became pregnant from the rape. The woman pities the rapist, especially because of his socioeconomic background. The woman fears that she will not be believed. The woman is married or engaged to the rapist and fears destroying the relationship through continuing with her case. The woman fears that she will be raped again. The woman is lying and withdrew her case because it was a false charge. 			

Because this is a qualitative study, the findings from the "list completion" component of the focus group discussions cannot be used to estimate the frequency with which any particular cause induces a complainant to withdraw a case. However, the greater the number of focus groups that suggest a particular cause, the greater the perception amongst study participants that this cause actually contributes to the problem of rape complaint withdrawal. Tables 3.1 and 3.2 illustrate a consistency in perceptions across focus groups with respect to certain causes and an inconsistency with respect to others. For example, while 100% of the focus groups – seven of seven – believed that "compensation" contributed to the problem of rape complaint withdrawal, only one focus group suggested that complainants withdraw cases because the underlying charges are false. This does not mean that compensation contributes to the withdrawal of cases 100% of the time, or conversely that women lie about their rapes in as many as 15% of cases. The number of focus groups that suggested a cause in their list of ten is a proxy for the extent to which a cause is perceived as problematic – *it is not an indicator of the statistical prevalence of that cause with respect to rape cases overall*.

A better way to interpret these findings – and subsequently, to apply them toward creating recommendations for change – is to begin with an analysis of the causes presented by the majority of groups and then proceed to an overview of causes identified by the minority. Another way of quantifying the prevalence of the perception of the causes is that causes 1-10 in Table 3.1 represent sixty percent of the total causes listed by all focus groups, whereas causes 10-20, although more numerous, represent only forty percent of the total causes listed overall. The pie chart below illustrates the perceived contribution of a cause to the problem of rape complaint withdrawal.

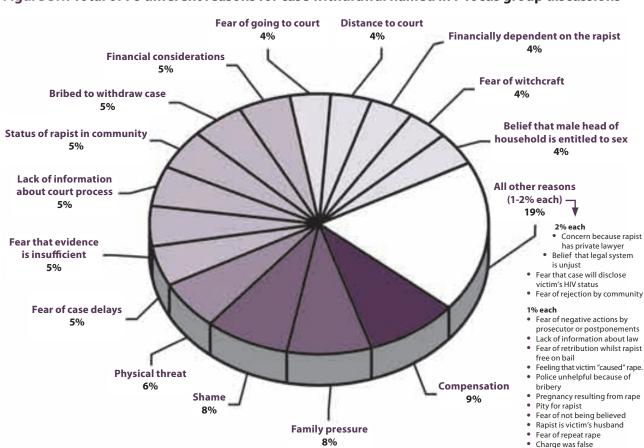


Figure 3.1: Total of 78 different reasons for case withdrawal named in 7 focus group discussions

Causes that were presented by fewer focus groups should be interpreted differently from the causes presented by a greater number. The fewer the number of focus groups that presented a particular cause, the less corroborated the perception that this cause contributes to the problem of rape complaint withdrawal, and the more likely that this cause represents a false perception or an idiosyncratic belief. Still, causes presented by a minority of focus groups are valuable for three reasons: First, they amplify some of the causes presented by a majority of groups. Second, they present additional causes that, although less common, may still need to be addressed in order to eradicate the problem of rape complaint withdrawal. Third, in some instances, these represent region-specific concerns. For example, only one group believed that prosecutors could be bribed to "throw" a case. This may indicate an isolated problem of corruption in a particular area that merits additional investigation. Also, only three groups feared retribution through witchcraft – these groups included San speakers in Epako, Oshiwambo speakers in Ongwediva and Otjiherero speakers in Katutura. Thus, witchcraft may be a very real problem within these particular communities, even if it is not generally perceived to contribute to the problem of rape complaint withdrawal.

Owing to resource and methodological constraints, further research is required to fully understand and explore the 20 causes presented by a minority of groups. In some cases, focus group participants explained or qualified these causes with personal anecdotes and examples, while in other cases, no additional information could be gathered beyond the participant's perception that the cause does in fact contribute to the problem of rape complaint withdrawal.

The following subsection provides a detailed analysis of the ten factors cited by a majority of focus groups and an overview of the additional 20 factors cited by three or fewer focus groups using the three values for these minor factors identified above – that is, their contribution to an understanding of the primary causes of rape complaint withdrawal, their identification of additional factors not captured by causes 1-10, and their indication of isolated or regional barriers to the successful continuation of a rape case.

3.2 List creation: Analysis of perceived causes of rape complaint withdrawal

Primary reasons for withdrawal

This subsection examines the ten perceived causes for rape complaint withdrawal most frequently cited in focus groups conducted for this study – that is, those reasons cited by four or more of the seven focus groups.

(1) Compensation

Compensation is the exchange of money between a rapist and a rape victim or her family. Conceptualised through the lens of Western jurisprudence, the payment is intended to be both compensatory and punitive. It bears some similarities to the damages that could be awarded in a civil action between the parties, although the amounts exchanged are not based directly

or solely on the harm suffered by the rape victim. Furthermore, under most circumstances, the purpose of exchanging compensation is to settle the rape case monetarily so that the rapist may avoid criminal prosecution. Thus, while it would be possible in theory for a rape victim to seek compensation at the same time as continuing with criminal prosecution of the perpetrator, many focus groups participants understand the two options for redress of the rape to be mutually exclusive.¹⁹

The practice of exchanging compensation is sometimes understood as deriving from the traditional courts. Here a traditional leader would hear testimony from the parties involved and determine an amount of payment for the victim. However, the Epako focus group held the opinion that the tradition of monetary compensation in Namibia is somewhat young owing to the fact that prior to Independence, many traditional courts imposed incarceration or death as a penalty for rape.

Compensation has several immediate advantages above criminal prosecution. One significant advantage is that its timetable for execution is very short. A request for compensation may be put to a traditional leader within days after the rape. Deliberation may occur over a period of one to two weeks, and payment is expected to be made immediately. Also, compensation is perceived to be more private than a criminal case because it allows the matter to remain within the community. Furthermore, in many rural areas, the traditional authorities who safeguard the culture and identity of the community are viewed as being more appropriate arbiters of rape cases than a government magistrate who may not share in those values or customs. Compensation also provides a woman with often-needed financial assistance in communities stricken by poverty; compensation in the amount of N\$1000 or two to three goats could have a substantial impact on the short-term wealth of the family and thus may be preferred to criminal prosecution that leaves a woman empty handed.²⁰

The drawbacks of compensation are also manifold. Traditional leaders often lack the authority to enforce payment. The rapist may not be able to pay the compensation at the time of the judgment, especially where a high payment is imposed with the intent of being punitive rather than compensatory. And even when paid, the compensatory amount provides women with only temporary relief from poverty. When the compensation is arranged between two families, sometimes the payment is rendered to the head of the house, or even to the traditional leader in the community, with the victim receiving no direct benefit. While some regions report gender balance in the composition of their traditional authorities (especially the San people in the Omaheke Region), in other regions traditional leaders are exclusively male and are perceived to be biased against women.

The theoretical possibility of obtaining compensation under customary law while still pursuing a criminal prosecution is discussed in Chapter 7.2 of *Rape in Namibia: An Assessment of the Operation of the Combating of Rape Act 8 of 2000*, Legal Assistance Centre, 2006, at pages 217-19.

Under existing law, it is possible in theory for a rape victim to receive compensation for *property* damage resulting from a rape as part of the criminal case, but not for bodily injury, which is more likely to have occurred. Criminal Procedure Act 51 of 1977, section 300. A new Criminal Procedure Act, which was passed by Parliament in 2004 but is not yet in force, would allow for an application for compensation for all forms of damages resulting from a crime as an adjunct to the criminal proceedings. Criminal Procedure Act 25 of 2004, section 326. See *Rape in Namibia: An Assessment of the Operation of the Combating of Rape Act 8 of 2000*, Legal Assistance Centre, 2006, at pages 125-ff and 532.

Amongst the most severe drawbacks to the system of traditional compensation is its inability to prevent repeat rapes. Since traditional courts lack the authority to detain, rapes that are settled through compensation allow the rapist to walk free. As reported in the Oshakati focus group, one woman went to a traditional court to seek compensation for her rape. After an amount was determined, the rapist refused to pay and instead raped her again. When she went to report this second rape to the police, the police informed her that the man had been charged with the rape of another woman who had subsequently withdrawn her complaint. Moreover, the rapist was known by the police to be HIV-positive and to have infected his previous victim. This case illustrates the potentially profound consequences of a system of redress that does not adequately protect the community.

Compensation also communicates a troubling message about the value of women and the vindication of rape. Women may feel devalued when the harm that they have suffered is redressed through the payment of livestock or a month's wages. Yet views of compensation as a shameful or degrading remedy tended to emerge from younger women or from urban areas rather than from the rural regions, where compensation is understood to be a respected and legitimate practice. Also, while poverty is severe throughout Namibia, rural villages are often isolated, and thus have none of the amenities of proximity to wealth such as access to hospitals, good schools and clean water. Compensation is more commonplace, and arguably more justifiable, in those regions where a relatively modest amount of compensation can have a substantial impact on a rape victim's capacity to provide for her basic needs and those of her loved ones.

Since compensation refers broadly to the exchange of payment after a rape, the term includes both judgments by traditional leaders or courts and more informal arrangements between families and individuals. Thus, some cases are resolved by a traditional authority while others are dealt with by what focus group participants referred to as "families coming together". Compensation of the latter type is understood as a conciliatory act and is often sought in cases where the families of the rape victim and the rapist have had a longstanding amicable relationship. However, in regions where tension between language groups is severe, compensation more closely resembles a payoff or bribe. In these instances, a perpetrator from a higher socioeconomic class "buys" the victim's right to prosecute her case. In Epako, this was often characterised as an exchange between a Herero man and a San woman. Participants in this focus group also noted that where the rape occurs between two members of a poor community, the woman might not receive compensation because the perpetrator is unable to pay.

From the focus group discussions, it appears that either the victim or the perpetrator may initiate an attempt to resolve the matter through compensation. While the choice of whether to accept compensation ultimately lies with the woman or her family, the initial offer may come from her assailant. Focus groups disagreed as to whether the woman would have any say in the decision to seek compensation. Some insisted that compensation is an equitable arrangement to the benefit of the woman, others that is it is a decision made either by male community leaders or male heads of households in which the woman has little agency or authority.

Focus groups also differed as to the degree of input that the rape victim would have into the amount decided upon, since this is fundamentally a result of either a deliberation by traditional leaders or an agreement between families. However, all agreed that the more penitent the

rapist appeared, the more likely it was that the compensation would be set at a lenient amount. Participants also agreed that more severe rapes – such as those in which the victim is particularly old, young, or otherwise vulnerable, or cases where she incurred physical harm – would be compensated through higher payments.²¹

The amount for compensation varies with the circumstances of the rape, the wealth of the rapist and the status of the rape victim. The median range for compensation was cited as being between N\$500 at the lower end in the small resettlement community of Bernafey, to roughly N\$2000 in more urban areas such as Katutura and Keetmanshoop. Amounts were reported to be as low as N\$200 and as high as N\$10 000. Where perpetrators lack access to cash, such as in the Omaheke Region, the exchange will be made in livestock rather than currency. A "normal" rape will be compensated in goats and a more severe rape in cattle.

Sometimes women withdraw their rape cases because they believe that compensation and prosecution are mutually exclusive. Other times, the woman or her family make a purposeful decision to insulate the rapist from criminal prosecution. The extent to which a woman feels that she has any authority to choose to continue with her criminal case if she receives compensation remains unclear. In a majority of focus groups, payment was understood to be contingent upon the withdrawal of the rape complaint. Thus, much education and attitudinal change will be required if compensation is to co-exist with criminal prosecution.

(2) Family pressures

Following compensation, pressure from the family is understood to be amongst the most prevalent and influential causes of rape complaint withdrawal. The pressures exerted by the family upon a rape victim are manifold. Where the rape occurs between two members of the same family, the victim may be encouraged or ordered to withdraw the case so as not to bring shame upon the family. Where the rapist is also a breadwinner within the house, a woman may be constrained to keep quiet to avoid being expelled from the home by her mother.

Family pressures contribute to a woman's decision to withdraw a rape case in many complex ways, since the interests of the family involve a number of practical and emotional considerations. Moreover, since a man typically heads family units²², the family's role in the decision may be

These perceptions seem to correspond with the empirical findings of the Legal Assistance Centre's 2006 study, which revealed that rape cases involving young women were somewhat less likely to be withdrawn. Anecdotally, the Katutura focus group convened for this study believed that state lawyers would only prosecute a rape case to the full extent of the law when it involved a vulnerable complainant. Moreover, in nine community member interviews in Warmbad, only one rape was described as having ever happened in the community. This involved the rape of a defenceless, mentally ill, middle-aged woman. These attitudes seem to suggest a lingering discomfort in recognising rape in all of the manifestations articulated in the legal definition of the crime. Although the Combating of Rape Act sought to expand the definition of rape, community members still tend to recognise rape only in its unambiguous presentations.

According to the 2001 census, 55% of Namibian households nationally are headed by males – with 60% of urban households and 52% of rural households being male-headed. The head of household was defined as being "the person of either sex who was looked upon by the other members of the household as their leader or main decision-maker". Central Bureau of Statistics, National Planning Commission, Republic of Namibia, 2001 Population and Housing Census: National Report, Basic Analysis with Highlights, 2003, at pages 46 and 81.

based primarily on a male perspective, thus reinforcing a traditional conception of gender roles that may counteract a more progressive understanding of a woman's rights under the Combating of Rape Act.²³

In addition to its other functions, the family unit also serves as an interface between the individual and her community. When the rapist and the rape victim are members of the same family, it may be in the interest of the family not to report the crime owing to the shame that it could bring upon their name. Conversely, when a man outside of the family unit perpetrates rape, both the victim and her family may be seen as weak for failing to prevent an outsider from injuring the family and its reputation. In both types of circumstances, families might also discourage women from reporting or continuing with the prosecution of a rape in cases where the alleged rape has some ambiguous elements that might, in the eyes of an unsympathetic community, elicit criticism of the victim's moral character.

Some of the sources of family pressure are rooted in the financial interdependence of its members. If the rapist is the breadwinner, it may not be possible to expel him from the house and the family's dependence on his income may be a strong deterrent to a criminal prosecution. On the other hand, if the family is in need of financial assistance, a rape victim might opt to accept compensation from someone outside the family in the interests of the entire family unit.

(3) The shame and stigma of rape

Across each of the focus groups, rape was a mark of shame for the rapist, the rape victim and their families. Persisting community attitudes hold that a woman, once raped, has been spoiled. These sentiments are particularly strong where the woman is understood to have brought the rape upon herself, either through her appearance or her behaviour. This shame is often intertwined with the fear of possible HIV/AIDS transmission through the rape.²⁴

Although HIV-antibody seroconversion has been reported among persons whose only known risk factor was sexual assault or sexual abuse, the risk for acquiring HIV infection through a single episode of sexual assault is likely low. The overall probability of HIV transmission during a single act of intercourse from a person known to be HIV-infected, however, depends on many factors, and in specific circumstances could be high. These factors may include the type of sexual intercourse (ie, oral, vaginal, or anal); presence of oral, vaginal, or anal trauma (including bleeding); site of exposure to ejaculate; viral load in ejaculate; and presence of an STD or genital lesions in assailant or survivor. Children may be at higher risk for transmission, because child sexual abuse is often associated with multiple episodes of assault and may result in mucosal trauma.

Sexually Transmitted Diseases Treatment Guidelines 2002, available at < www.cdc.gov/STD/treatment/8-2002TG.htm>.

²³ Some of the progressive innovations of the Combating of Rape Act 8 of 2000 include its gender-neutral definition of the crime of rape, its removal of consent as an element of the crime, its sensitivity to the victim's perspective on bail, measures aimed at reducing the trauma of the trial for the victim and strict limitations on the introduction of evidence about the victim's character or sexual history.

Most people in the community are aware that the possibility of transmission of HIV is higher through rape than through consensual sex, but few focus group participants were able to articulate the reasons for this – that is, the rape is likely to be violent, the woman is unlikely to be aroused (both creating the possibility of blood transmission through cuts and abrasions) and the rapist is unlikely to use a condom. See, for example, Julia Kim & Lorna Martin, "Rape and HIV Post-Exposure Prophylaxis: Addressing the Dual Epidemics in South Africa", 11 *Reproductive Health Matters* 101 (2003). According to the Centres for Disease Control and Prevention in the USA:

Many focus group participants felt that it is incumbent upon a rape victim to remove herself from the community for a period of time following the rape – a peculiar type of mourning for her lost self. Yet this norm differed widely from region to region, as well as from language group to language group. It was most prominently noted within the Herero community in both of the Katutura focus groups as well as in the Katutura community member interviews. Amongst the Herero, rape is deeply shameful. Some key informants noted their surprise at the candour of the Herero participants in the focus groups and interviews in light of strong cultural norms that discourage frank discussion of these topics. Yet while many Herero women expressed disgust for rape victims who continued to leave their homes or to dress provocatively after a rape, this idea seemed quite alien to the San. The women in the Epako focus group believed that the community would come to the aid of a rape victim and would in no way reject her. One possible cause for this difference is that while the Herero culture exhibits many characteristics of male dominance, the San community makes fewer distinctions between its male and female members.

Many focus group participants felt that a rape victim would feel uncomfortable continuing with her case because reported rapes become public knowledge, and so subject the rape victim to public ridicule. In other cases the shame felt by the rape victim might result from her own psychic struggle in the aftermath of a trauma.²⁵ Unlike community attitudes, which may be addressed through general education, it is possible that a deeply felt sense of personal shame on the part of the rape victim may only be resolved with the assistance of time and supportive counselling.

(4) Threats of physical harm

According to the focus groups, rapists may threaten to harm either the rape victim or her family. Sometimes these threats are made at the time of the rape, while in other cases, such threats come only after the crime is reported, typically after the rapist has been arrested and then released on bail.²⁶

Focus group participants were confident of a rapist's ability to make good on his threats. For example, in Keetmanshoop, participants noted the frequency of "random" stabbings at shebeens. In short, rape victims fear being harmed by their assailants in shebeens. Here, the environment is perceived to be so dangerous and chaotic that a planned murder might appear to police to be a random act of violence.

After a woman decides to continue with the prosecution of her case, for the period that the rapist walks free – which is not uncommonly up to two years - she is in danger of retribution. Even if the woman is not confronting an immediate threat of physical harm, she may suffer from the perception of such a threat as a consequence of her trauma.

This was called psychic trauma in Mondesa, where three social workers were present. Other focus groups and interviewees characterised symptoms as "fear in her heart" or a "bad thing that stays with you". These responses suggest that the participants were describing "rape trauma".

²⁶ Although information on bail in the police dockets examined for the 2006 study was scanty, it appears that bail is granted to rapists more often than not.



Focus groups participants seemed unaware of the possibility of petitioning for the revocation of bail for a rapist who makes threats to the complainant or other potential state witnesses. The assumption made in discussions was always that once the rapist was out on bail, the victim could be in danger.

(5) Protracted timetable for prosecution

Community members believed that rape cases would take about two years to prosecute on average. Focus groups participants provided anecdotes of women who waited up to five years for a case to be prosecuted, having experienced repeated postponements. These community perceptions accord with the facts. The Legal Assistance Centre's 2006 study found that verdicts in criminal cases were typically given about one and a half years after the rape took place, while there were some rape cases that were finalised as long as three to four years after the crime occurred. This study also found that one to six postponements were common in rape cases (which is typical of criminal cases in general), while some rape cases had up to 27 postponements.

One perceived cause for this delay in hearing rape cases is the limited number of magistrates available.²⁷ All rape cases in Namibia are heard in either a Regional Magistrate's Court or the

There is an absolute shortage of magistrates in Namibia, which has been reported in the press. This may have influenced public perceptions on this issue. See, for example, "Justice lacks magistrates," *The Namibian*, 28 April 2008 where the Ministry of Justice reported that it had a shortage of 68 magistrates but had managed to recruit 12 on a contract basis. Other reasons cited by the Ministry for the backlog of magistrate's court cases included a lack of training for police officers, legal practitioners who tend to double book their cases and witnesses who agree to testify but change their minds at the last minute.

High Court, depending on the severity of the rape. Since individual Regional Court Magistrates are required to hear cases in several locations, focus group participants believed that they are likely to be weary and over-burdened, and thus disposed to look favourably upon requests for continuance. Likewise, some magistrates were perceived to be too young and inexperienced to keep the courts running efficiently (although in fact, the Regional Court is generally staffed with Namibia's more senior and experienced magistrates).

Participants also believed that seeking postponement of the court date was a deliberate technique employed by private lawyers to frustrate state prosecutors and decrease the likelihood of a case ever going to court. They perceived a great disparity between the degree to which a private lawyer hired by the rapist would fight to delay the progress of a case and the prosecutor's commitment to keeping the case moving forward; they thought that while the private lawyer would be adamant in seeking a continuance, the state prosecutor would be passive in the face of his request. Consequently, the case would be delayed indefinitely, increasing the probability that the rape victim will become disillusioned and withdraw her case.

Focus group participants noted the range of difficulties which can accompany a long time frame for case resolution – such as the degradation of physical evidence, the difficulty of locating witnesses years after the crime, the rape victim's own fears about her ability to remember the incident clearly (coupled with the likelihood that her recollection will be highly disputed in court) and the likelihood that the rapist will seek retribution in the years preceding the completion of the trial. This final concern is exacerbated by the ease with which rapists make bail, or are perceived as being able to do so. Once a rapist is out on bail, his victim feels that she has reason to expect retribution unless she withdraws her case.

(6) Evidentiary concerns

Rape is a cruel and humiliating crime. Those who have experienced rape often suffer from a loss of self-esteem. Since something both intimate and intangible has been taken from the victim – her feeling of security and her sense of right over her own body – the woman may be unable to articulate not only how she feels, but also what she experienced. Even sharing the details of her rape with a sympathetic close friend, family member or counsellor may be traumatic. Thus, the possibility of heavy scrutiny before an impartial court is likely to dissuade at least some woman from going forward with their cases.

Since corroborating evidence in rape cases is often very minimal, a high premium is placed upon the testimony of two people – the rapist and the victim. Ironically (and as noted by several women in the Mondesa focus group), as a result of the nature of the crime itself, the rape victim may feel "unable to speak". The rape victim may lack confidence in her ability to provide testimony that will withstand attempts to impugn its accuracy or truthfulness, leading her to fear that the prosecution has no hope of garnering a conviction without additional, incontrovertible evidence. Thus, she may pre-emptively withdraw the case. While the adversarial system that engenders these problems is necessary to preserve the constitutional rights of the accused, rape victims, even more than the victims of other violent crimes, may become disillusioned with a legal process that they perceive to favour the rapist.

Women likely perceive the evidentiary threshold for conviction to be very high because of lingering sentiments from the previous rape law in Namibia, which allowed a victim's past sexual activity to be considered as evidence. Because of the old law, women may also fear that they will risk being humiliated if they testify at court. While we are not suggesting specific community awareness of past or present law on admissible evidence, women tend to assume that anything about their sexual past is fair game for questioning once they testify in court to having been raped. Women fear that lawyers will say things such as "He couldn't have raped you because you have sex with many men", or "He couldn't have raped you because you had sex with him before", or as expressed in one Corridor 13 interview, "How can you say that? He is your boyfriend". Because there was no legal protection against such questioning prior to the enactment of the Combating of Rape Act in 2000, it is understandable that women still think that they will be treated this way if they go to court now, even though the new law (at least in theory) shields complainants from such lines of enquiry.

Participants in the Katutura focus groups believed that police could be bribed not to collect all of the evidence necessary for the prosecution of rape cases. They also believed it likely that crucial evidence would be damaged, misplaced or collected too tardily in the first instance.

(7) Lack of information and support

Focus group participants agreed that most women know what basic steps to take in the immediate aftermath of a rape – that is, not to bathe, to go to hospital so that a doctor can collect evidence and to report the case to a Woman and Child Protection Unit. Yet few women know how to proceed after the case has been reported.

The fact that women do not know what steps to take beyond these initial few is not so much a reflection on the lack of information available to rape victims, as an indication of the lack of services available to such women in the months and years between the reporting of the case and its ultimate conclusion. At present, women have a limited awareness of the court process, access to few sources of victim support, only minimal contact with the prosecutor and little guidance by the police. In short, rape victims are unsure where to turn after reporting the case to the police, and both government institutions and civil society are providing insufficient guidance and support for them beyond this point.

In theory, Woman and Child Protection Units are supposed to refer rape complainants to social workers for counselling, but as of 2006 only the Windhoek and Walvis Bay Units had a social worker specifically assigned to them. Several others had social workers who could be summoned to assist, but this approach does not generally work well in practice as it is hard for these social workers to juggle their many official duties given the severe shortage of social workers nationwide. Even where a rape complainant is lucky enough to receive some assistance from a social worker, follow-up after the initial contact is virtually non-existent because of individual social workers' huge caseloads.²⁸

²⁸ Rape in Namibia: An Assessment of the Operation of the Combating of Rape Act 8 of 2000, Legal Assistance Centre, 2006, at pages 255-ff.

Women in two focus groups specifically pointed to the need for better victim support services to provide information and comfort to rape complainants.

(8) Status of the rapist

Most focus group participants believe that the status of the rapist is a primary contributing factor to the withdrawal of rape cases. Participants recounted rapes by schoolteachers, ministers and men of wealth and power. Since rape is a crime of dominance and control, it is disturbing but not surprising that the very status that allows an individual to perpetrate rape also decreases the likelihood of conviction for that crime.

(9) Bribery and corruption

Bribery is a factor in several different causes of rape complaint withdrawal listed by focus groups. Focus group participants believed that the rapist might seek to bribe police, prosecutors, other witnesses or even the victim herself to evade a conviction. Bribery, as distinct from compensation, was felt more likely to be involved in cases of ongoing sexual abuse.

It is difficult to establish whether or not there is any factual foundation for this perception. Although there is anecdotal evidence that bribery does take place in the context of criminal cases, there has been no systematic study or investigation of this factor in Namibia. However, it is likely that the general climate of petty corruption – as evidenced by widespread improper use of government vehicles, to name just one very visible example – has influenced this perception.²⁹

(10) Poverty

Namibia suffers from amongst the greatest economic disparities in the world. A culture of opportunism has emerged wherein those of a higher socioeconomic class are well-positioned to take advantage of the rights of those in lower socioeconomic classes. The problem is reducible to a disturbing truism – some lives are worth more than others. Discussions in the focus groups indicated that this type of economic-based abuse tended to be most frequent in situations where the perception of disparity is greater than the actual disparity. The most commonly cited example was the rape of a San woman by a Herero farmer. Even if the wealth of the Herero farmer is only a fraction of the wealth of a prosperous Afrikaner farmer, and a fraction of what the San family perceives it to be, the actual difference in wealth is enough to relegate the San to a subordinate position, making the San woman feel that the continued prosecution of a rape against a Herero perpetrator would be impossible.

Poverty also contributes to the likelihood that a woman will seek or accept compensation or bribery, as well as the legitimacy of her fears that the police will not protect her from harm

See for example, "Insight Corruption Tracker," February 2008, available at <www.insight.com.na/uploads/media/Feb2008.pdf>. In 2008, Namibia was ranked 61 out of 180 countries surveyed for corruption (with a rating closer to one indicating a higher level of corruption). The country with the lowest score is the one where corruption is perceived to be greatest among those included in the list. The rating of 61 is better than previous years, with Namibia being ranked 57 in 2007 and 55 in 2006. Transparency International. 2008 Perception Index, available at <www.transparency.org/>.

should the rapist seek retribution or that key government role-players can be bribed to scuttle the case.

In short, poverty creates desperation, decreasing the capacity of the rape victim to make a viable choice as to whether to continue with her case.

Additional reasons for withdrawal

This subsection examines the 20 additional causes of rape complaint withdrawal presented by a minority of focus groups according to: (1) what these causes reveal about the primary causes of rape complaint withdrawal; (2) their indication of factors not captured by the list of ten causes; and (3) their indication of possible regional or isolated causes that contribute to the problem of rape complaint withdrawal.

(1) Additional factors related to the list of ten primary causes of rape withdrawal

Of the 20 additional causes of rape complaint withdrawal, nine of these are related to one or more of the ten primary causes discussed in the previous subsection. These include the following:

Three focus groups

- The woman fears going to court particularly because of a perceived lack of privacy and the possibility of retribution after her testimony.
- The woman is financially dependent upon the rapist.

Two focus groups

- The woman believes that the legal system is unjust.
- The woman fears rejection by the community if she continues with her case.

One focus group

- The woman does not know "the laws of Namibia" specifically, the Combating of Rape Act.
- The woman fears retribution by the rapist whilst he is released on bail.
- The woman fears that she caused the rape.
- The woman fears that she will not be believed.
- The woman fears that she will be raped again.

Nearly half of the 20 additional causes of rape complaint withdrawal are related to one or more of ten primary causes analysed in the preceding subsection. Some of these illustrate a confluence of primary causes. Others alert us to the effects emanating from a single primary cause.

For example, a woman's fear of going to court results from an interplay of several primary causes. The first of these is a lack of information (Cause 7). In several focus groups, participants were unfamiliar with the privacy requirements of the Combating of Rape Act, which mandates that the court be closed unless the complainant requests otherwise and makes it illegal to publish information about the rape complainant. Although Namibians have been alerted to these changes to the law – including through the Legal Assistance Centre's *Guide to the Combating*

of Rape Act – three focus groups still perceived a lack of privacy at court to be a cause of rape complaint withdrawal. The fear of going to court may also be related to evidentiary concerns (Cause 6), in that rape complainants may fear that they will have to answer very personal or humiliating questions in front of others.

Privacy concerns are also related to the rape victim's feeling of shame (Cause 3). The strong desire for privacy derives in part from the belief that rape is something shameful that ought to be kept quiet. A local jazz musician from Katutura who participated in a Katutura focus group discussed the need to "break the silence" that keeps women from prosecuting their rape cases and asserting their rights.

Women may also fear court because of the possibility of retaliation by the rapist. This fear is one example of a threat of physical harm (Cause 4). Since the rapist's ability to execute such a threat is also greatly increased if he is acquitted rather than convicted and imprisoned, if the victim believes that she lacks the necessary evidence to obtain a conviction (Cause 6), she may feel that proceeding with the case carries too great a risk of future harm.

As another example, belief that the legal system is unjust also probably results from the compound effect of many primary causes. Amongst these, that police and prosecutors have not been able to effectively eradicate threats of physical harm (Cause 4), that woman are ill-informed and unsure how to proceed with their cases (Cause 7) and that police and prosecutors may make special allowances for those who occupy positions of status in the community (Cause 8).

Rejection by the community – to the extent that it is a *psychologically perceived* rejection rather than an actual rejection – could be related to a victim's feelings of shame (Cause 3) or the lack of supportive counselling services (Cause 7). If this cause is actual rather than perceived, it is likely community-specific. While additional research is required to substantiate these claims, focus group moderators noted hostility within the Katutura Herero community toward victims of rape. The strongest contrast to this hostility was the professed acceptance of rape victims amongst the San of Epako.

Feelings by the rape victim that she will not be believed may result from her own shame and doubts (Cause 3), pressure or lack of support from her family (Cause 2) or a lack of physical evidence (Cause 6).

A rape complainant's fear that she will be raped again is likely psychological, and thus may result from a lack of information and supportive counselling (Cause 7). If this is a justified fear, it is best understood as a threat of physical harm (Cause 4).

Many more of the causes provided by a minority of focus groups seem to be a particular manifestation of a concern addressed by one of the ten primary causes. A victim's financial dependence on the rapist is an example of a position of financial distress (Cause 10). Lack of knowledge about the laws of Namibia is an example of a lack of information (Cause 7). Retribution by the rapist whilst he is released on bail is yet another illustration of a threat of physical harm (Cause 4).

As variations on the themes raised in the ten primary causes, this set of additional factors should be addressed by the measures proposed in relation to the ten most commonly-cited causes of rape withdrawal.

(2) Additional factors not captured by list of primary causes

Some of additional causes of withdrawal – roughly 13% of the causes suggested overall – were not addressed in, or directly related to, the list of ten primary causes:

Two focus groups

- The woman feels that she cannot win her case if the rapist has a private lawyer.
- The rapist is HIV-positive; thus, by continuing with her case, the woman may worry that her own status will be suspected or disclosed.

One focus group

- The woman became pregnant from the rape.
- The woman pities the rapist, especially because of his socioeconomic background.
- The woman is married or engaged to the rapist and fears destroying the relationship through continuing with her case.
- The woman is lying and withdrew her case because it was a false charge.

Less is known about these causes because participants gave few, if any, examples of their effect. Often, these causes derived from a set of circumstances that is not common to all rapes, such as the impregnation of the victim or the transmission of HIV. One cause in particular – that women lie about the rape underlying a charge – seemed to be the result of a lingering misogynist stereotype, as it was only presented in one group and was unsupported by any specific evidence or examples.

Two focus groups believed that a woman could not win her case if the rapist had a private lawyer. Where the defendant pays a private lawyer, as opposed to being represented by a legal aid lawyer paid by the state, participants believed that the lawyer would spend more time working on the case and thus would be a more effective advocate and able to pressure the overworked government prosecutor into accepting a continuance. The validity of this perception could be further studied by conducting a survey of lawyers to ascertain the number of hours spent in preparation of a rape case by a private lawyer as compared to a government-appointed legal aid lawyer or a Namibian prosecutor. The study could also compare the number of convictions against private lawyers as compared to legal aid lawyers. Because focus group participants were sensitive to the timetable for the prosecution of rape, an additional indicator that merits further study is the number of times that a private lawyer requests, and receives, a postponement of a rape case. This figure could be compared to the number of postponement requested and received by legal aid lawyers. The number of mutually advantageous and prosecutor-recommended postponements might also be examined. Absent this additional research, the best recommendation to counter the belief that private lawyers will always defeat prosecutors is to strengthen the Office of the Prosecutor-General. Chapter 6 presents several approaches for doing so, including increasing the number of prosecutors (to decrease the caseload on any given prosecutor) and creating incentives for experienced attorneys to remain or to become prosecutors (to increase the Office's expertise).

Two focus groups also believed that if the rapist is HIV-positive, the rape victim will be less likely to continue with her case; the explanation offered is that the victim will fear that her own status will be made public if it is known that the perpetrator has HIV/AIDS. Increasing both the awareness, and the enforcement of the privacy requirements of the Combating of Rape Act might help to counteract this cause – although because Namibia is a country with small communities, there may be no realistic way to ensure total privacy on this score.

One focus group believed that a woman would be less likely to continue with her case if she became pregnant from the rape. In the Ongwediva focus group, a participant recounted such a story, wherein the rapist compensated the pregnant victim with a few thousand Namibian dollars. This cause could be resolved by increasing awareness of the opportunity to receive maintenance payments from either the rapist, or, in the case of his incarceration, from the government in the form of a state maintenance grant. Because compensation is often little more than N\$1000, it generally amounts to less than a year's maintenance for one child. Even so, victims who fall pregnant may still wish to settle the rape privately to avoid the hassle of obtaining a paternity test or compelling the accused to make monthly payments. They may also wish to sever any ties to the accused, reducing their willingness to accept regular maintenance payments.

One focus group felt that a woman might withdraw her case because she "pities" the rapist. This seems related to the vague concept of "forgiveness," which was found to be one of the causes for withdrawal listed in the police dockets in the Legal Assistance Centre's 2006 study. Little is known about this cause, and it likely has only a small effect on the problem of rape complaint withdrawal on its own. However, it should be noted that some women might withdraw their cases as a result of such feelings toward their assailants.

Feelings of tenderness toward the rapist may be even more common in the context of an ongoing romantic or domestic relationship. If the victim is engaged or married to the perpetrator she may forgive him and withdraw the case in the hopes of preserving the relationship. One extreme example of this was offered by social worker in the second Katutura focus group. She described the rape of a nine-year-old girl by a full-grown man whom the child desired to marry. As a minor, had the case been reported, the girl would not have been able to make a request for withdrawal without the cooperation of a parent or guardian, or some other responsible adult. Because of her "love for him," she was able to plead that no docket be opened.

Because of time and resource constraints, focus group moderators were unable to explore these causes with the same depth as those causes identified by the majority of the groups. Further research is warranted to understand the extent to which these issues cause women to withdraw cases.

Additional factors indicative of regional or isolated problems

Five of the additional causes are likely isolated or regional concerns:

Three focus groups

- The woman fears retribution through witchcraft.
- The woman is ultimately persuaded by a traditional belief that the man is the head of the house, and is thus entitled to have sex with her despite her resistance or non-consent.
- The court is too far away and the woman does not know that she can receive a transportation reimbursement from the court clerk.

One focus group

- The woman fears that the prosecutor may bribed to throw the case; that the prosecutor will not work hard to win her case unless the rape is uniquely heinous or public; that the prosecutor will not contact her until the date of her trial; and that her trial will be postponed repeatedly without notice.
- The police officers investigating her case have been bribed not to collect evidence for the case.

Fear of retribution through witchcraft is perceived to be a problem within certain communities, including the Herero in Katutura, the Ovambo in Ongwediva, and the San in Epako. Interestingly, while the Herero and Ovambo participants feared "being witched" by the mother or aunt of the rapist, the San participants feared being accused of witchcraft if they reported a case. This idea was corroborated in an interview with a San man in Corridor 13 who explained that if a man rapes a women, sometimes the witch doctors say that someone has "witched him" to behave that way. Somewhat perplexing is how it could be believed that a woman would "witch" a man to rape her, yet the belief that such an accusation could be made was adamantly maintained in the Epako focus group. Understanding the effect of witchcraft would require a focused anthropological investigation that is beyond the constraints of this study. For the purpose of offering a recommendation to counteract this problem, it is important that service providers and stakeholders be aware that beliefs in witchcraft persist. The Namibian Police and the Woman and Child Protection Units should respond to a threat of witchcraft or witchcraft allegations with the same seriousness that they use in response to a threat of physical harm, whether as a species of threatened assault or a violation of the Witchcraft Suppression Ordinance 27 of 1933.³⁰

Three focus groups also believed that even if a woman made a case, she would ultimately be persuaded by traditional or religious beliefs that the man has the right to her body, and thus that his action was not a crime. The best examples of this were given by an Ovambo community in the North. Participants in this focus group described a one-week, church-mandated class for parishioners who are planning to marry which teaches that a wife may not continually refuse her husband sex, and that if she does so, he has the right to take sex by force.

³⁰ The Witchcraft Suppression Proclamation 27 of 1933 makes a number of practices related to witchcraft criminal offences. For example, it is an offence for a person to make someone believe that he or she is going to use witchcraft to cause harm to a person or property. Depending on the circumstances, the punishment could be a fine or imprisonment for up to five years.

One focus group believed that women withdrew cases because the court is too far away. Women in remote regions should be specifically advised about the opportunity to receive a transportation reimbursement from the Clerk of the Court, as well as some – if not all – of the wages lost because of her need to appear at court.

One focus group also believed that both police and prosecutors could be bribed to lose a case docket or ensure the acquittal of the accused rapist. Since no specific cases were provided, the best way to address this concern is through an internal review of the Woman and Child Protection Units and prosecutors responsible for the cases in this location (Katutura). Individual interviews in Corridor 13 also suggested gross corruption at the police station for the Corridors. In that instance, a particular review of the job performance of certain officers may be required.

3.3 List creation: Analysis by category

In order to put the 30 reasons listed by the focus groups into perspective, we organised the list in Table 3.3 according to six broad topics: 1) legal process; 2) economic pressures; 3) police response; 4) community attitudes; 5) family influence and 6) factors personal to the individual rape victim.

Of the 30 reasons for rape complaint withdrawal contained in the compiled list of focus group responses, 31% are attributable to a failing in the legal process; 22% to some type of economic pressure; 19% percent to a failing on the part of the police; 16% to a pernicious community attitude; 9% to the influence of the family and only 3% to the rape victim's personal difficulties.

Figure 3.2: Causes by Category

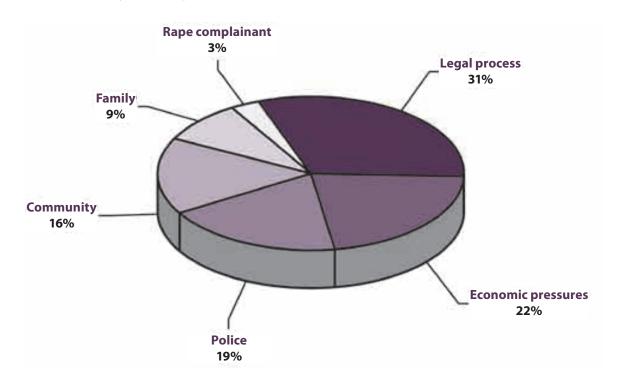


Table 3.3: Causes by Category

Table 3.3: Causes by Category					
The Legal Process	The Criminal Justice System	Economic Pressures	The Community	The Family	The Rape Victim
 The timetable for the prosecution of a rape case is too long. The woman feels that she has insufficient evidence to win her case. The woman lacks the necesary information on how to proceed with her case. The woman fears going to court, particularly because of a perceived lack of privacy and the possibility of retribution after her testimony. The court is too far away and the woman does not know that she can receive a transportation reimbursement from the Clerk of Court. The woman feels that she cannot win her case if the rapist has a private lawyer. The woman believes that the legal system is unjust. The woman fears that the prosecutor may be bribed to throw the case. The woman does not know the laws of Namibia. 	 The police officers investigating the case have been bribed not to collect evidence. The rapist physically threatens the woman to withdraw her case. The woman fears going to court. The woman fears retribution by the rapist whilst he is released on bail. The woman fears that she will be raped again. The woman fears that she will be raped again. 	 The woman received compensation. The woman was bribed. The woman is in a position of financial distress. The woman is financially dependent upon the rapist. The rapist occupies a position of status in the community. The woman pities the rapist because he is poor. The prosecutor or police office has been bribed. 	 The rapist occupies a position of status. The woman is persuaded by traditional beliefs to withdraw her case. The rapist is HIV positive and the woman seeks to hide her status from the community. The woman fears rejection by the community. The woman fears that she will not be believed. 	 The woman was pressured by her family to withdraw the case. The woman is married or engaged and fears destroying her relationship with the rapist. The woman became pregnant from the rape. 	• The woman feels ashamed that she was raped.

Examining the causes of rape complaint withdrawal by type reveals that many of these causes result from problems and insufficiencies within the legal process and the criminal justice system. Because the institutions involved are within the direct oversight of the government, by adhering to the targeted recommendations in Chapter 6, there is hope that government will be able to drastically improve the problem of rape complaint withdrawal. However, since the systemic problems are so widespread, there is also reason to suspect that the prejudicial attitudes identified by several of the focus groups have permeated the institutional processes for the prosecution of rape. If this is the case, change will require both a systematic campaign to alter public attitudes and time for these new attitudes to become accepted.

3.4 Story completion: Analysis of responses

In each of the focus groups, participants were asked to supply the missing details from each of five rape complaint withdrawal scenarios. Discussion of these stories preceded the creation of the lists exhibited in the preceding section. Through comments on these stories, participants explained the factors that might contribute to a woman's decision to withdraw a rape case under different circumstances. This section provides a survey of the comments and personal experiences that participants shared in response to each of these stories.

Story A

Martha lives in _____ [location of focus group]. Pieter, who also lives in _____ [location of focus group], raped Martha last month. Martha told Mary that Pieter raped her. Martha went to the hospital, where she met with Dr Smit. Martha went to the Woman and Child Protection Unit, where she spoke with Officer Van Wyk. Officer Van Wyk opened a docket for Martha's rape complaint. Yesterday, Martha withdrew her rape complaint.

Questions that participants were asked to consider:

- How might Martha and Pieter have known each other before the rape?
- Did Pieter contact Martha after she reported her rape?
- What did Pieter tell Martha when he contacted her?
- What is the relationship between Martha and Mary?
- How do you think that Mary reacted to what Martha told her?
- What is Dr Smit like?
- How do you think Martha felt when she went to the hospital?
- What is Officer Van Wyk like?
- How do you think Martha felt when she met with Officer Van Wyk?
- What does Martha think about going to court?
- Did Martha tell her family what happened?
- What do they think about what Martha should do?
- Do people in her community know what happened to Martha?
- What do they think about what Martha should do?

In response to Story A, participants in several focus groups identified an insensitive response by Woman and Child Protection Units (WCPUs) as a reason why Martha withdrew her rape complaint. They noted that police would have likely asked Martha: "What were you wearing?", "Have you been drinking?", "Were you carrying a condom?" and other questions to disparage her character and discredit her claim. A Katutura participant recounted that when a woman she knew went to the WCPU to report her rape, she was taunted because of her clothing and asked, "Would you like some more?". A Herero woman interviewed for this study told of a friend who, when reporting her rape, was asked by police at the WCPU to "undress and show them how it happened".

In both Katutura focus groups, participants believed that the rape victim would be questioned at the desk near the waiting area rather than in a quiet and private room. The police on duty would likely be male, and participants thought that if the victim began explaining the rape, police at the charge desk might invite other male friends to come and listen. Overall, with the exception of the Ongwediva focus group, participants were adamant that police are unsympathetic to rape victims. One participant expressed her belief that the cause for this is not that police are particularly prejudiced, but rather that police share the prejudices of the community, and the prejudices of the community fall below the standards of the law.

A police officer at the Windhoek WCPU explained that when someone reports an incident of rape, the victim is taken to a private office where the intake interview is conducted. However, it appears that this policy is not consistently applied since so many focus groups and community members indicated otherwise. It may be that not all WCPUs have suitable private rooms, or that respondents' perceptions date in part from previous years when an intake statement in a rape case could be taken at any police station. Now, official procedure is that only WCPUs handle rape cases. If a rape victim goes to any other police station, arrangements will be made to transport her to the nearest WCPU.

It should also be noted that the 15 WCPUs located throughout Namibia are staffed mostly by women.³¹ Thus, the accounts of insensitive responses by male police could represent a minority of cases, or date from the past when rape complaints could be made at any police station. However, it must also be remembered that the simple fact that a police officer is female does not necessarily mean that she will react sympathetically to a report of rape, since both men and women are influenced by prevailing community attitudes.

Participants in the first Katutura focus group also believed that police would force a rape complainant to make her statement (and answer any questions) in Oshiwambo – thus ostracising members of other language groups. Likewise, in the Mariental role-play performance, the rape complainant had difficulty reporting her rape because she spoke only Damara/Nama. In a community member interview, a San woman in Corridor 13 recounted being forced to speak English to report her rape case. After she explained that her rapist was also San, the Ovambo police officer responded, "You San, you are speaking the same language. Go now and solve this together."

Focus groups perceptions on this topic are well-founded. While the Windhoek WCPU has present capacity to conduct the initial interview with the complainant in Oshiwambo, Afrikaans, Damara/Nama or Otjiherero, this degree of diversity is not present in smaller locations. Concerns about the language of police statements emerged strongly in key informant interviews conducted for the Legal Assistance Centre's 2006 study. In addition to the problem of availability of police who speak the complainant's home language, the current practice of requiring that police statements must always be recorded in English means that essential details often become garbled or "lost in translation". Both of these language issues can be alienating for complainants.

³¹ Confirmed by personal communication with Windhoek Woman and Child Protection Unit, September 2009.

Participants further believed that police would not go and look for the accused rapist for several hours, or even days, after the rape is reported. This perception corresponds with the practice at both WCPUs and other police stations, whereby the police force member who does the initial intake of the case only later assigns it to a police detective for investigation. Key informants also reported that the promptness of the arrest depends on the availability of police transport, with a shortage of sufficient transport being a common problem.

While participants had far fewer concerns about medical professionals than about law enforcement officials, many similar responses emerged across the focus groups; participants thought that the doctor would be cold or abrupt, or provide the rape victim with little guidance on health issues which might follow the rape. Many participants were concerned that the doctor would not explain the need for post-exposure prophylaxis (PEP) to reduce the chance of HIV infection from the rape, or the possibility of a legal abortion should a woman fall pregnant from rape. In the Mondesa focus group, a social worker commented that a doctor could reviolate a woman who has been raped – even if he acts with the best intentions – because of the invasiveness of the physical exam, which must be performed as soon as possible after the rape. In Katutura, women felt that rape victims should be provided with a social worker whilst in hospital for the examination. They believed that under current practices, a rape victim would be sent from police to hospital, back to police and eventually to court without anyone ever informing her of the possibility of receiving counselling and other services.

Story A also elicited numerous misconceptions about the Combating of Rape Act. Amongst these was the belief that rape, by law, required vaginal penetration by a penis through force. Several of the older participants expressed views ostensibly beholden to apartheid propaganda. Some argued that there "had been order under the whites", which they attributed to more severe sentencing for rape.³² Participants were unfamiliar with the sentencing guidelines in the Combating of Rape Act. In short, as one participant summarised, "Women don't know the law, and neither do the doctors and police officers."

Participants perceived pressure from the community to be another factor that contributed to Martha's decision to withdraw her rape case in Story A. In Keetmanshoop, participants were sceptical that a woman would be believed if she said that her husband or boyfriend had raped her. Women were also widely held to be doubted or distrusted if they were known to have been drinking or wearing "a short skirt and a tight top" at the time of the rape. In Katutura, women felt that even a rape victim's friends would gossip and ridicule her for having been raped. As explained by a Mariental participant, after a rape, women "feel ashamed, they feel lonely, they feel like they can trust no one anymore". Criticism from the community exacerbates these fears. In Mondesa, participants explained that in small towns, since both the rapist and the rape victim will be known in the community, rape becomes a particularly divisive and uncomfortable subject. In Ongwediva, although participants said that the community would be supportive to a rape victim, when asked how they had reacted to rape victims in the past, one woman explained, "When I was at school, a girl said she was raped. So we laughed at her."

In fact, average sentences for rape in the pre-independence era were lower than those imposed after independence, even before the Combating of Rape Act provided for stiff minimum sentences. See *Rape in Namibia: An Assessment of the Operation of the Combating of Rape Act 8 of 2000*, Legal Assistance Centre, 2006, at page 441.



Several shortcomings on the part of the court and prosecutors were also suggested in response to Story A. These mirror many of the reasons that appeared in the compiled list of reasons for complaint withdrawal described in Section 3.2. In several of the focus groups, notably Katutura 1 and Epako, participants were confused about the role of the prosecutor as compared to a hired, private defence attorney. Many were under the impression that for the wealthy, it would be possible to hire a private prosecutor. Several were also distressed by the fact that the rapist would have legal representation in court while the rape victim would not. Many did not agree with the values of an adversarial system or the reasons for allowing the rapist to be heard. In a similar vein, many participants advocated fewer procedural protections for accused rapists and use of the death penalty if they were convicted.

Participants raised many other concerns in response to Story A, such as the possibility that Martha had become pregnant from the rape and would like to Pieter to pay maintenance for the child rather than go to jail. The possibility of HIV transmission was raised as a concern in Katutura 2, Keetmanshoop, and Ongwediva. In Epako, San women worried that they would be accused of witchcraft if they said they had been raped. In Katutura, Ongwediva, and Epako, participants noted the possibility of being "witched" by an elder woman in the rapist's family should they continue with the case. Consistent with the lists of reasons for rape complaint withdrawal drawn up by the focus groups, all focus groups indicated that Martha had received money to withdraw her complaint.

When asked about the relationship between Martha and Pieter, most participants recognised a variety of possibilities while still identifying rape by someone known to Martha as the most common scenario. The focus groups in Ongwediva and Epako, with participants from small communities, commented on the likelihood that the families of Martha and Pieter are well acquainted, or even friends. In every focus group, participants emphasised that the closer the relationship between Martha and Pieter prior to the rape, the greater the chances that Martha will not be believed and hence that she will withdraw her case

When asked about the relationship between Martha and Mary, participants in each group varied in their responses as to whether Mary was a family member or close friend. No participant independently suggested that Mary was a social worker or counsellor.

With respect to how Martha might feel one month after the rape, participants described the complex emotional responses that they had experienced personally or observed in their family members and friends. Martha may feel that she did not do enough to seek help, she may believe that she is partly responsible for the rape and she may not know what to expect – legally or psychologically – in the long months ahead.

Story B

Martha lives in _____ [location of focus group]. Pieter, Martha's uncle, lives in the same house as Martha. Last month, Pieter raped Martha. Martha told Mary, her mother, that Pieter raped her. Martha went to the hospital, where she met with Dr Smit. Martha went to the Woman and Child Protection Unit, where she spoke with Officer Van Wyk. Officer Van Wyk opened a docket for Martha's rape complaint. Yesterday, Martha withdrew her rape complaint.

Questions that participants were asked to consider:

- Does Pieter financially support Martha or her family?
- Does Mary believe Martha when she explains what Pieter did?
- How old are Pieter and Martha?
- Were Pieter and Martha close before the rape?
- Why might Martha worry about Pieter going to prison?
- What does Martha's father think about what Martha says has happened?
- What will happen to Pieter now that Martha has withdrawn the complaint?
- What if Pieter were Martha's stepfather rather than her uncle?

Participants generally agreed that Story B would be most common in a rural environment, though several participants noted that they had heard of such incidents occurring in Windhoek and throughout the Khomas region. Discussion of Story B focused on three issues: (1) Martha's right to stay in the home, (2) the relationship between Mary and Pieter and (3) Mary's financial situation – which participants perceived as being intimately linked to her ability to help Martha or to act on her behalf.

Many participants were of the opinion that since the house was not Martha's, she did not have a right to lay a charge of rape against a man who financially supported the house. Some participants stated that since a man is traditionally the head of the household, a woman within the household cannot refuse to provide him with sex. In Keetmanshoop, this was ultimately cited as being amongst the ten most common causes of rape complaint withdrawal.

Most interesting in the response to this scenario was the way that participants interpreted Mary's role. Many believed that if Martha told her mother that she had been raped, her mother would ask, "Where did you hear about rape?", "What were you wearing when your uncle approached you?" or "Why were you with your uncle alone?". Participants cited two reasons for Mary's response: (1) her desire to maintain her emotional relationship with Pieter and (2) her financial dependence on Pieter. As one woman said, "If Mary does not need Pieter's money, she will believe Martha." Many women feared that if Martha did not withdraw her rape complaint, she would be cast out of her house. They foresaw her future under those circumstances as one of extreme poverty, shame and desperate measures – such as turning to sex work to support herself.

When asked about Pieter's status within the family, all focus groups agreed that he was probably the breadwinner. Because of his economic power over them, Mary and Martha will choose not to go forward with the rape case, or Mary will prevent Martha from doing so. In this way, Pieter will continue to provide for them as he did before. He may even offer additional bribery – for example, if Martha is still a learner, he may guarantee payment of her school fees.

In the second Katutura focus group, participants commented on the likelihood that Pieter was not the one who raped Martha, but was rather the uncle who allowed Martha to be raped. He might send a young Martha to the shebeen, providing her with ample money to drink, expecting that she will be raped and that he will be able to collect compensation money for this. Moving beyond the scope of this study, the same focus group also noted the possibility of a more formalised system of sex work, whereby Pieter might bring men to the house and use his position of status in the family to force his niece to provide for the family as he prescribes. Beyond these more extreme cases, Pieter could also exert other types of economic pressures on Martha to dissuade her from continuing with her case. If Martha were a domestic worker, participants believed that he would tell her employer that she had been stealing to ensure that she would be fired.

Story B also led participants to discuss the issue of domestic violence. If Martha were to continue with her case, she or Mary might be severely beaten or killed. Like other forms of violence in the home, women may feel that maintaining silence helps to protect the family from shame.

Overall, fear of bringing shame on the family name and financial pressures within the house were perceived to be the two greatest cause of rape complaint withdrawal where the rape occurs within a family. The enduring belief that rape is a private matter also stands as an obstacle to the continuation of rape cases. Even when someone outside the family perpetrates the rape, the family stands to endure a loss of respect if the case is reported. This is coupled with the sentiment that respect must be paid to the husband, or male head of the household, no matter what he has done.

Story C

Martha lives in a small community within _____ [location of focus group]. Pieter lives in the same small community. Pieter raped Martha last month. Martha told her friend Mary that Pieter raped her. Martha went to the hospital, where she met with Dr Smit. Martha went to the Woman and Child Protection Unit, where she spoke with Officer Van Wyk. Officer Van Wyk opened a docket for Martha's rape complaint. Yesterday, Martha withdrew her rape complaint.

Questions that participants were asked to consider:

- Does the community believe that Martha has been raped?
- How does the community respond to Martha?
- How would they react if Pieter and Martha were in the same family?
 - If they left a bar together on the night of the rape?
 - If they were boyfriend and girlfriend?
 - If they were husband and wife?
 - If they had never met?
- If Martha is unmarried, will other men in the community still want to date her?
- If Martha is married, how will the community expect her husband to treat her?
- Will Martha be stigmatized because of her status as a rape survivor? How?

In discussing Story C, participants commented extensively on the shame associated with rape. One Katutura participant stated that if a woman had been raped and continued to remain a part of the community, people would comment, "Look at her. She was raped and she doesn't even hide herself away." Another woman expressed her disgust for a woman who before her rape had dressed very conservatively, but after her rape began dressing in short shorts and tight tops. She expressed her belief that the rape victim was "asking for more".

Some participants felt that since the fall of apartheid, community values have eroded. This view seems particularly unsuited to the context of a post-apartheid Namibia. Still, comments of this nature percolated during the various conversations – especially from participants over the age of 45.

Many groups commented on the positive aspects of a small community's response to rape, dispelling the myth that rape victims would always be more likely to withdraw complaints when the rapist is a member of the same small community. For example, many participants noted the capacity of small communities to come together in support of a rape victim. But overall, participants seemed in general agreement that communities acting alone, without the support of government or professionals, have insufficient capacity to respond to all of a rape victim's needs.

In Katutura, participants felt that rape victims are likely to be labelled as having asked for rape. In Mondesa, many individuals commented that the community would not believe a woman who said that she had been raped if she had agreed to have sex with the man in the past.

Because the community is likely to discredit a claim of acquaintance rape, participants felt that the influence of the community could cause a woman to lose confidence in her charge.

The status of the rape victim in the community was also addressed in the Mariental, Keetmanshoop and first Katutura focus groups. Where the rapist is someone well respected in the community, participants doubted that he would ever be successfully prosecuted. In an interview in Katutura, one woman recalled being asked to keep quiet about the rape of the adopted daughter of a Christian minister on whose land this woman stayed with her husband (who worked on the minister's farm). A Keetmanshoop man told a story of a prominent schoolteacher and community figure who raped a 14-year-old learner. The parents of the child were persuaded not to go forward with the case, and instead accepted compensation – thus preserving the teacher's reputation.

In Mondesa, the group suggested the possibility that in a small community, Pieter could be related to the prosecutor. In both Katutura and Mariental, this "relation" was characterised as more distant – something evidenced by a shared family name. The fact that four of the seven focus groups believed prosecutors to be susceptible to this type of bias suggests the that there may be some truth to this perception.

Communities are also the preservers of customs and traditions within language groups. For this reason, the attitude of the community may be less progressive than that of any one individual community member. For example, while many women in Ongwediva recognised that rape could exist within marriage, these women also noted that the community understands marriage as creating an obligation for a wife to have sex with her husband at his will. Thus, due to the influence of such traditional beliefs, people in an insular town or remote region may not come forward with a rape case because the community does not recognise forced sex by a husband as rape.



Community attitudes are also reinforced by religious commitments and practices. In Mondesa, many participants felt that the influence of pastors on community ideals has led many people to think that the appropriate response to rape, especially rape within a marriage, is forgiveness.

Story D

Martha lives in _____ [location of focus group]. Pieter, who also lives in [location of focus group], raped Martha last month. Martha told Mary that Pieter raped her. Martha went to the hospital, where she met with Dr Smit. Martha went to the Woman and Child Protection Unit, where she spoke with Officer Van Wyk. Officer Van Wyk opened a docket for Martha's rape complaint. Pieter will compensate Martha. Yesterday, Martha withdrew her rape complaint.

Questions that participants were asked to consider:

- What is Martha's financial situation? What is Pieter's?
- How old is Martha? How old is Pieter?
- How did Pieter decide to compensate Martha?
- Did Pieter and Martha go to a traditional leader?
- Did Pieter's family coordinate compensation with Martha's family?
- How did Pieter compensate Martha?
- Did Pieter offer Martha or her family money? Cattle? Goats?
- How did Martha feel after she received the compensation from Pieter?
- Could Martha have accepted this compensation and not withdrawn her rape complaint?
- Did Martha want to withdraw her complaint?

Participants in both Katutura focus groups began discussion of this story by noting the bias of traditional leaders toward men. One woman said, "If you are raped, they don't talk to you, they just talk to your father." Several women expressed dissatisfaction at the fact that the rape victim is frequently absent from the discussion of compensation. Since all of the participants were female, none had precise information as to how compensation was arranged. All offered vague statements like, "the rape is handled within the families", or "the woman's family is given a cow and that's the end". It seemed from their comments that a woman has little say over whether or not compensation will be accepted as an alternative to continuing with the rape complaint.

All participants saw compensation as an alternative to proceeding with a court case, rather than as a possible adjunct. Since compensation was presented as an arrangement to keep a rapist out of jail, it is unlikely that compensation would be offered if a court case were to continue.

Few participants offered any insights as to how a traditional leader would decide on compensation. Compensation was characterised by many as an arrangement between heads of households rather than through a traditional court. In both Keetmanshoop and Mariental, participants believed that compensation would more often be settled between families than by a traditional leader.

The Keetmanshoop focus group placed particular emphasis on the centrality of money in rape – both with respect to its causes and its resolution. For example, if a woman is drinking with a man and he pays for her drinks, she is expected to have sex with him. Participants agreed that both men and women are aware that they are entering into an informal agreement to this effect, especially if the man spends N\$100 or more on the woman. Because the woman is expected to have sex with the man after he has paid for her drinks, if he forces her to have sex in this context, few people would recognise it as rape. If the woman does report the case to the police, men and woman agree that she is merely holding the case over the man as a threat to extract more money from him. An amount of N\$500-1000 is typically agreed to and the case is quickly withdrawn. The centrality of money in rape was so pronounced in the Keetmanshoop group that much of the conversation about "compensation" for rape would have been indistinguishable from a conversation about sex work. In short, the community has so conflated the two issues that compensation assumes a different connotation in Keetmanshoop – one that is more shameful – than in other locations.

In stark contrast, compensation in Epako was perceived as a favourable alternative to continuing with a rape case. The traditional courts in this area are composed of both men and women at a near 50:50 ratio. These courts not only handle rape, but also physical assault, theft and child abuse – especially when this entails a parent keeping a child from attending school. The woman in the Epako focus group were confident that only the rapist, the rape victim and their families would be permitted to appear before the traditional authorities. They believed that the decision would be quick, fair and to the woman's advantage.

Story E

Martha lives in_____ [location of focus group]. Pieter, who also lives _____ [location of focus group], raped Martha last month. Martha told Mary that Pieter raped her. Martha went to the hospital, where she met with Dr Smit. Dr Smit didn't explain to Martha why she would need a medical exam. Dr Smit gave Martha four pills, but did not tell her what they were for. Martha went to the Woman and Child Protection Unit, where she waited for 5 hours to speak with Officer Van Wyk. Officer Van Wyk told Martha that Mary – who went with Martha to report the rape – could not sit with Martha whilst she gave her statement. Officer Van Wyk didn't seem to listen to Martha when she explained what happened, but still opened a docket for Martha's rape complaint. No one told Martha what to expect when she went to court. Yesterday, Martha withdrew her rape complaint.

Questions that participants were asked to consider:

- How did Dr Smit make Martha feel?
- How did Officer Van Wyk make Martha feel?
- What does Martha think about going to court?
- Is Martha scared that people won't believe her testimony?

In response to Story E, participants commented, "sounds like real life". The issues raised by Story E are best encapsulated by the list of reasons attributable to the legal process and the police response, discussed in Section 3.2. Participants cited concerns involving all of the key service providers who respond to rape cases. There were fears that doctors would be insensitive, rushed or unintentionally violative of the rape victim. Police might ridicule the victim, fail to investigate her claim, accept a bribe to lose evidence or arbitrarily decide not to open a docket. Prosecutors were perceived as being overworked, with little time for rape complainants; participants correctly understood that many prosecutors do not meet with their clients until the day of the trial. Moreover, as expressed in the second Katutura focus group, prosecutors were perceived as being susceptible to bribery.

3.5 Summary and application of focus group findings

The findings from the focus groups illustrate that the causes of rape complaint withdrawal are more complex – and more extensive – than the reasons that victims provide in their withdrawal statements to police. While 30 possible causes for withdrawal were discussed amongst the seven focus groups, ten causes were discussed by a majority of the groups. Many of these causes are developed and explored in the community member interviews in Chapter Four. Taken together, these ten causes serve as the targets toward which the recommendations in Chapter Six are directed.

In addition to their specific findings, the focus groups also provided an opportunity to observe how a grassroots victim's advocacy group or a rape survivor support group might operate. Especially in the all-female focus groups, women were eager to work together with one another, to share stories and to collaborate on possible solutions to the problem of withdrawal. Many participants requested that the Legal Assistance Centre offer additional meetings like the focus group discussions, so as to provide more opportunities to come together at community level to engage in these types of conversations.

In an interview following the Katutura 2 focus groups, well-known community activist Rosa Namises felt that the women in the group "could talk honestly and openly and quite freely" about rape, despite the fact that "sexuality is a taboo". She also commented of the participants – herself included – that, "A positive thing that I have seen is that we were all able to express ourselves, and a lot of issues have come out." ³³ In short, the effectiveness of the focus group format suggests that there are a wealth of possibilities for creating sustained dialogue groups amongst women like those who took part in the present study. Such groups could have a tremendous impact on educating women about their rights, on raising awareness about the difficulties that endure despite these rights and on connecting women to one another to foster a collaborate approach to claiming the equality to which they are entitled.

Many focus groups participants also left the discussion imbued with a clear message to share with survivors of rape. This was not a message that they had been taught, but rather one that they developed through the course of their conversation. Ms Namises summarised this message in her interview:

³³ Interview with Rosa Namises, community leader and former Member of Parliament, Katutura (16 June 2008).

For women who continue to withdraw . . . there is a need for them to know that they do not always have to accept what the community, traditional leaders, family members and friends are telling them when they have been raped. It is *finally* the law that will take its course. The more you keep silent, the more the law will not be able to [help]. Even if you have to challenge the police officer for not helping you in a proper way, even if you have to challenge the medical service providers for the fact that they don't help you, you have to find additional support.

As a rape survivor, if you withdraw, [your case] will never come to the attention of any support service or organisation, it will haunt you for the rest of your life, and it will have a very bad impact on the improvement of other women. Your case might be one of those cases that save many more women and children that go through violence. So, don't easily withdraw cases. Make sure that you find the necessary support – by counselling, information, and sharing with somebody – and let the case go on.³⁴

³⁴ *Id*.



Chapter Four

Community Member Interviews

Through comparison and analysis of the responses provided by various individuals, a set of common themes on problem of rape complaint withdrawal emerged. While some of these are specific to certain communities, many are relevant to Namibia as a whole. Although the perspectives voiced in any given interview were particular to the participant, this chapter focuses on salient issues raised in multiple interviews.



Although the findings from these interviews lack the consistency of the responses provided through the focus groups, what they offer is an intimate glimpse into the lives of many women and their individual encounters with gender inequality, sexual and gender-based violence and rape complaint withdrawal, as well as a deeper understanding of the justifications that animate some of the enduring prejudices toward rape complainants. To preserve the voice of each of the interview subjects (many of whom speak English as a second or third language) the quotations have been transcribed without alteration of grammar or word usage.

The interview findings corroborated many of the reasons for rape complaint withdrawal revealed through the focus group discussions. First amongst these is the prevalence of informal monetary compensation as an alternative to rape prosecution. Throughout Namibia, women receive payment to withdraw their rape cases. While the precise method of compensation may vary by locality, the structure of the compensation agreement transcends these regional variations: A woman or her family is given a small sum of money (between N\$200 and N\$1000) or a modest award of livestock (usually between 3 goats and a few head of cattle) to withdraw her case.

Additional themes that emerged through the interviews included the effect of the status of the rapist on the likelihood that a case would be

withdrawn and the influence of extreme poverty on a woman's decision to accept compensation. Also, several men expounded on their expectations of sex in cases where a woman takes drinks from a man, the ways in which women are perceived to provoke rape and the tensions that have emerged between men and women as the result of a rapidly-developing gender equality movement. Several interviewees, too many to be individually cited, also addressed concerns about the insufficiency of the compensation model to deter repeat rapists, as well as the lack of sensitivity of the service providers – and of the community as a whole – to the needs of women who have been victimised by rape.

In addition to providing an overview of themes and issues from the individual interviews, this chapter presents excerpts from 16 of the 67 individual interviews. Although only 15 of the total 67 interviews were conducted with men, the following sections include interviews

with an equal number of men and women. Men are over-represented in this component of the report to highlight the some of the opinions that were not expressly in the predominantly female focus groups.³⁵

The portions of the interviews transcribed in each of the following sections offer a sample of the responses from some of the interviewees. All of the interviewees were young, between the ages of 16 and 35. This age group was specifically targeted for two reasons: (1) the results of the Legal Assistance Centre's 2006 study show that this demographic is disproportionately affected by rape, and (2) persons of this age group tend to have a higher rate of English language proficiency. A brief "regional summary" is included for each location. Although these interviews are presented by region, in most cases issues raised by an interview in one region are also relevant nationally.

4.1 Keetmanshoop

In Keetmanshoop, money plays a central role in sexual relationships. Women are compensated through cash rather than livestock. Since women anticipate this compensation, the categories of rape-compensation and sex work tend to overlap. Interview subjects identified an interrelation between the financial status of the woman and the likelihood that she would be abused (and later receptive to compensation).

Interview with a 30-year-old Nama man (who was also a focus group participant)³⁶

Q: Why do women withdraw rape cases?

I shall say it is poverty. These girls need this money in order to make a living. So why go and make a case when they can just take the money and let it go. Some girls, they don't have pride. . . . It's pressure also, maybe from the family side, friends. Even from the guy who raped her. . . . [Rape] is a great problem here in Keetmanshoop. Mostly it tackles the youth and the unemployed. Sometimes circumstances force women to be raped. Maybe it's also the community we live in.

³⁵ This proportion of male to female interviews presented in this chapter (1:1) is substantially higher than the ratio of male to female interviews conducted in the study overall (1:4). These specific male interviews were included for a variety of reasons. The reason for including the male interview in Katutura is to shed light on a perspective that was not given by the Katutura focus groups - namely, insight into the causes of the "acquaintance rape" culture that is developing in the shebeens. The reason for including the three male interviews in the Oshana region is to illustrate the contrast between the opinions of the two male Ongwediva focus group participants and opinions of an Oshakati man with no formal exposure to issues of woman's rights. In Keetmanshoop, although the focus group was evenly divided between men and women, researchers suspected that the men in this group were withholding their opinions for another reason – a reluctance to appear *too sympathetic* to the plight of rape victims while in the presence of many other men. Thus, the interview with the man in Keetmanshoop was conducted for the purpose of eliciting the details of a story that a participant had alluded to in the focus group but had declined to share in much detail. Of the eight male interviews excerpted in this chapter, three of the men interviewed also attended a focus group: Keetmanshoop Interview 1, Oshakati Interview 2, and Oshakati Interview 3. As discussed above in Section 2.3, this is relevant because the men accessed through the focus groups tended to have some prior contact with women's organisations and gender issues and so tended to have a deeper understanding of some of the issues surrounding rape than men who were accessed through other channels.

The ages in this section of the report are a best-guess approximation.



And the other thing is, these perpetrators are not brought to justice, because there is always a way for them to get what they want and there is nothing that [anyone] can do to prevent these things not to happen. Because in most cases, these people are the ones that are prominent figures in the community, and in order to see that their names are not dragged around through the media, they pay a sum of money to these victims and these victims accept this money. This is bribery. . . . In some houses, it is only the grandparents who are working. They are also making a living out of their pension money. So these girls, in order for them to make a living, they go and report these cases, and at the end of the day, they accept this money. Well, in some cases, they also became pregnant through this raping. For them, they won't go and report the case. They just accept the monthly income that they get from the guy who rape her.

Q: How much money might a woman receive for a rape?

It depends, I shall say, N\$500, N\$1000, N\$200, it depends also on the guy's status. Maybe she can get AIDS through this raping.

4.2 Bernafey

The resettlement farm of Bernafey is marked by sexual violence within intimate family relationships. Poverty, hunger and social and economic isolation exacerbate the problem of violence and increase the willingness of women to tolerate this abuse. Marriages are understood to guarantee a continuous sanction of all sexual activity between husbands and wives – even when sex is taken by force. This understanding, compounded by women's dependence on their husbands for material support, makes women unlikely to proceed with prosecution for marital rape. Rape is usually coupled with violence in addition to the rape act itself (such as a severe beating). Consequently, women are also likely to withdraw cases because of the threat of future physical harm.

Culturally, women feel restrained by norms that render them unable to share in the same work as men. Because this makes men eligible for a broader range of jobs, it operates to keep women in a financially subordinate position.

Men and women in the community clearly had differing perceptions of rape and gender relations. While woman characterised communication between the sexes as "very bad", most of the young men interviewed described communication as adequate or even strong. Likewise, while women were forthcoming with stories of rape and violence, all but one young man denied ever having heard of an incident of rape on the farm.

Interview with a 24-year-old Nama mother of four children

Q: How do men treat women here in Bernafey?

Men are speaking to womans like dogs . . . and saying things to the womans, punish the womans. They are also not looking after the womans nicely.

Q: Can you explain more?

The men . . . they are coming to the lady – maybe they are having a relationship [with her] – and the lady says, 'No, I don't want [sex].' And then, maybe they pick up a stone, and they hit the lady with the stone, or take the lady on the hand and broke her hand. . . .When the men are drinking they want sex with the ladies. And the womans feel very very very bad.

Q: Do women feel that there is anyone they can talk to if they have been raped?

No.

A nearby woman who overheard the question commented that sometimes a woman might tell her mother or aunt. However, both women agreed that a woman would feel uncomfortable reporting a rape case to the police.

Q: Have you ever heard of a woman withdrawing a rape case after the case was reported to the police?

Yes.

Q: Why was that case withdrawn?

Some money had been given to the lady.

Q: How is money given to those women?

When you go to the police . . . they are asking, "Will you leave the case?" and then after, the man will pay you back.

Q: Can you tell me of a rape here in Bernafey where a woman withdrew her case?

It was a holiday, and the lady was too drunk. And the man was coming at the lady. And he asked because he wanted to have with the lady some sex. And the lady said, "No, I don't want it." And after that, [he was] forcing the lady and the lady is crying. [He was] taking the lady with a knife and rip the lady's panties off and kick her on the side and take her and making sex with the lady. . . . And after that she went to her home and she tell her mother. And they take



the phone and police was coming and they take the boy and lock [him] up – for the night. And when it get morning, the mother of the lady and the mother of the boy . . . they were talking each and other. And the boy gave the lady some money for that case. It was maybe N\$500.

Interview with three young Nama women between the ages of 18 and 22

Q: What is life like here in Bernafey?

We are very happy but there are several things that break down us. We are too many poor families.

Q: Why do you think that men hurt women here in Bernafey?

It's maybe when the guy is drunk but the woman is not drunk. Those guys are just, I don't know, are they crazy or what? But, when they came at home, maybe they ask for food and they know there is no food at home. And the girl is replying, "No, there is no food. You know also there is no food." And then he start beating the girl.

In response to the question, "Do you think that it is possible for a husband to rape his wife?" all three interviewees responded with an emphatic "No". As one explained, "They are already married. It's not rape." Furthermore, the women believed that if a married woman reported a rape case to the police, "they will not take it as a case because the man and woman are married". One interviewee explained police reluctance as follows: "Some people say, the others who are outside, they must not come and interfere in the marriage. The two people must correct the problem [rape] by themselves, and when they don't correct it, they must go to the elder people."

Q: How does a woman feel if she has been raped?

She will be shy to be around too many people. They will say things like, "Just look at this girl, she was already raped, but she still dance here in the club."

A second woman interjected: "They also know what to do and what is right for them, but they are scared. They are scared they will be beat, maybe chased out of the house. Maybe the guy will take all of the clothes he bought for her back."

Q: What is the status of a man in a family?

He is the head because he is the one who struggles for the food and the money, and everything. And some mens, they think, that maybe if they are married, they have the right to do whatever they want with a woman

The women also felt shackled by their tradition. All three women had the perception that gender equality was stronger in the North. One interviewee used the example of construction jobs. In the "northern side", she explained, men and women may do the same work, but in the "southern side", by comparison, "a Nama girl must not go and building houses".

Q: What could men and women do to bring an end to the violence here in Bernafey?

Men and woman must try to understand each other. They must start communicating about right things, and maybe the guy must control the girl, but the girl must also control the guy. [The men] must stop the unfairness they have. [Men and women] must be fair to each other.

Q: What can the government do to help?

The government must tell people about the "dronk"ing. The alcohol must be stop. Then we will live better.

Interview with a 30-year-old Nama mother of six young children

Q: What causes sexual violence between men and women here in Bernafey?

Sometimes if the men is drinking, or sometimes, if the woman is drinking, there is a lot of violence. . . . If the men is drinking, and he is coming late, and the woman ask him, why are you coming this time, and they start to fight. . . . If the man is not nice in the bed, then the men and women are quarrelling. Even me, with my boyfriend, if I don't want to give him sex, we are also quarrelling. That's part of life. . . . If I don't want sex, he want to beat me and say that I was with another man. I don't know why he says like that. . . . A lot of mens is beating womans and raping childrens, just like that. . . . The biggest problem is just like that, if the man is not working. There is lot of problems. You don't know where to get food, where to get clothes to wear. You don't know. It's too much problems. . . . The violence does not stop. TB is there, AIDS is there, we have to stop those things, and get Namibia free. Even the government can also help us to get work here . . . then everything will stop, the violence also will be stop.

Q: How do women react to the way men treat them and the family?

Most of womans, if the men is also sleeping with their own daughter, they don't worry. . . . Because he is the chief of the house, he bring food for us . . . he is bringing everything at the house. But he is not having a right over a woman's body.

Q: Have you ever heard of a women being paid to withdraw a rape case?

If maybe the hunger is on my side and I don't have anything, I don't have any job, that thing is happening. . . . Even here at Bernafey, the girls, they are sleeping with the mens because it's the hunger. . . . In Windhoek, I have seen with my eyes, even my friends, they are doing such of jobs. They are getting hunger, and then they are going with the Boers and give sex to them and they are getting maybe N\$100; maybe N\$50 they are getting. . . . Even the minister is having sex with the girls, even the minister. . . . Because my boyfriend is not working I think, 'Oof, this one is not working, he didn't give me anything, what must I do?' I have suppose to go there to another guy's and go and sleep with them and get food. Sometime is just like that.

Interview with a 16-year-old Nama farm-worker and learner

O: How do men and women interact here on this farm?

Some boys are very cruel to the girls and they are beating the girls because they have more power than girls.

Q: Do men treat their wives well?

No, I don't think so. They don't behave good with their wives. And they don't have good manners with each other. They don't show respects and good manners. Living good with them. The women, they don't think anymore they are peoples. [The women] don't think good things and they can easily harm themselves.

Q: Have you ever heard of a story of a man who raped or harmed his wife?

First, the man and the woman was sitting in the house. And then the wife said, 'We must make food now.' And she get out of the house and she begins to make the food. And then the man come out with the plate and says, 'Give me the food, I want to eat.' And the wife said, 'Wait a bit, I will make the food now.' And he was angry about that. And he starting to begin talking to the woman, swearing, and then he take the thing, and then he begin to abuse the wife.

Q: Why do you think that women who are raped withdraw their rape cases?

Although they are going to tell the police that they have been raped, they don't want to make a big harm for the men.

4.3 Katutura

As an urban environment, Katutura, like Keetmanshoop, is affected by a prevalence of alcoholrelated acquaintance rapes. Because of the ambiguity surrounding the circumstances of these rapes, which occur between young couples or drinking partners at shebeens, many rapes are resolved quietly through compensation. Katutura also suffers from abuse within the family, as well as from traditional gender roles that discourage women from coming forward with cases against the wishes of husbands and fathers.

Interview with a 30-year-old Herero man

Q: In your community, do you ever hear about rape?

Yes, it happens very frequently. Every weekend you hear of women who have been raped.

Q: Do you even hear about women who withdraw rape cases?

Yeah, I do hear it. For instance, the woman has been raped, but somehow the man is so wealthy, and you know, a wealthy person is always having an influence on certain factors. That man can even [bribe] that certain woman and say, "Ok, you can even go to the police and drop the charges and I will bring you [money]." And when she looks at her background, she says "Ok. I am willing to drop the charges as long as I get my [money]."

Q: If a woman goes out and a man buys her drinks, is she expected to have sex with him?

Mmmmm (*long pause*) let me talk nicely what I know about this – especially this location where we are staying. We are in Katutura. This is the heart of Katutura. In here, in Katutura, those things are very, very common. If I am sitting there in the bar with my beer, or I ask a lady to accompany me to a bar (especially us, the men of this area) we tend to think that if I buy that lady certain drinks – or two drinks – I am expecting her to go home with me. And that is very, very wrong. That is unacceptable. But that is what we are doing. I used to be one of them, but now I am a changed man.

Q: What do you think that men can do to encourage women to go forward with their rape cases?

Men can play a big part in helping these poor women to go to court. Sometimes it is a fear that the woman – once raped – that she has in her heart. And she's afraid to talk out. I think we have to come up with an initiative of trying to educate women on these issues; to educate them about their rights. Sometimes they feel that they don't have the rights, especially the uneducated women. A man can just come there, grab her, throw her to the ground and rape her [because] she don't know about her rights. Men have to help and say if your husband or your boyfriend in whatever way is mistreating you, the Ministry of Gender Equality, the Woman and Child Protection Units, these are places that you can go for help. Or [abused women] can even talk to the church pastor. There are a lot of ways that men can help these poor women to get their voices heard.

4.4 Warmbad

In the remote location of Warmbad, many of the interview subjects who were solicited declined to discuss rape. Compensation as well as threats of physical harm were highlighted as possible causes of withdrawal. Although the community is very small, women expressed fears that it was not safe to walk alone at night. Many of these fears appeared linked to two isolated and particularly horrific cases of rape involving middle-aged women.

Interview with a 30-year-old schoolteacher

Q: Have you ever known anyone who has been raped here in Warmbad?

Yes, already there was maybe four or five cases here in Warmbad. Even the last one was last year. It was an old aunt. An old lady, she's disabled, but she was raped by a drunk man. She was took to the hospital, and the man is still in jail up to now. She was up to Keetmans hospital.

Q: Why do you think that women withdraw rape cases?

I know very well. I didn't expect that he will rape me, but then later it happens, and then later on, maybe his family came to me, "Please, Please. We will give you how much, please withdraw



the case for him, and we will talk to him. Make peace with him." Most of the times, it's from negotiations. Often the family or the particular person who rape me. I feel also sorry for him, whether it was me who was a victim. It's like an exchange. I will give you the money so please, withdraw the case. Most of the times, it happens like that.

Q: Why do you think that women accept the money to withdraw a rape case?

Maybe because of poverty. There are a lot of needs. Maybe they have children to look after at school, or their household needs something. There are a lot of things. . . . If you start approaching the lady, and maybe she refuse. Leave her, because it's her right to refuse. That's what I think. . . . Some of us are afraid of the court, or we became shy. The people must not know I've been raped, or I will come out in the newspapers, or in the police reports. Maybe I don't want to let them know. And hide it.

Interview with a 30-year-old Warmbad police officer

Q: What is the role of the police with respect to protecting women and children?

The job of the police officer is to protect everything that is going wrong in Namibia, including women and children. We don't want women to be harmed.

Q: Have you referred any rape cases from your community to a WCPU?

This year we are having two women which is raped. The first lady, she was forty something years. The other . . . both of them is from those forty years ages. We immediately act. Both of them we arrested. And we are having both of them in our custody. . . . Always we tell the women that everything which is happening to them, they must come to the police so that we can help them quickly so that the police can take action. . . . We use to advise people, especially women, not to withdraw the cases.

Q: Why do you think that women withdraw rape cases?

Sometimes the women are convinced by the families. Relatives. "No, you must not to do like that. No, you don't go ahead with the case so that they can pay you money." You see, especially this place of us, people they are suffering. You see, there is no job. If a person hear, "No, I'm going to pay such an amount of money", then later on she comes back to the police, "No, I want to withdraw the case."

4.5 Corridor 13

Corridor 13 suffers from ethnic tensions, predominantly between the San and the Herero communities. Most of the rapes described took place between a man of a dominant language group and a San women. Although women seek compensation for rape, they are also likely to be threatened with violence should they refuse to withdraw a rape case. Community members also maintained that Corridor 13 is characterised by pervasive corruption amongst local government and law enforcement.

Interview with a 25-year-old San man (raised by a Herero family)

Q: What are relations like between men and women here in Corridor 13?

Men and women, the way that they are reacting to one another, sometimes it is difficult, sometimes it is easier. If I am married and I am a drinker, the communication between me and that woman will not be easier. . . . The way that I am treating my girlfriend and the way that she is treating me, it is just equal. But what I observe here in Corridor 13, the man is just the boss.

Q: Have you ever heard of a man paying a woman to withdraw a rape case?

Sure, sometimes it might happen between me and you. I rape you but it is just the traditional issues. My father will just tell the father of the lady that I'll pay you a goat. Then something will just be stopped by not even arresting me to the police or reporting me to the police. Cultural things. I rape that one, and the father of the lady says that I have to pay a cow so that the story can end. What I observe here in Corridor 13, around the whole constituency, [is that] things are happening that way.



Q: Can you tell me a story of a time that happened?

One guy raped a lady whereby the lady did not even come to the police. The lady just returned back to her mother telling her that she was raped. And the guy was also staying in the same village, whereby the mother of the lady said, "If you don't want to go to the prison just pay for us a cow so that the story can end." It was here in our place – not especially Corridor 13, but another Corridor.

Q: What is the cause of rape here in the community?

I don't know, but what the witch doctors says here in our place, they say, the way that he is raping, raping – maybe the family witch him.

Q: Why do you think that some men rape women?

[They think] that lady is beautiful. The way that she is, the way that she is walking, the reacting; maybe I propose her once upon a time but she did not accept me. In that case, let me just take the sugar, how is the sugar with the tea?

Interview with a 24-year-old San mother of two

Q: Have you ever heard of a story of a woman being paid to withdraw a rape case?

They are [withdrawing cases] because they have been given money. A San lady was working under a Herero man. The Herero man just keep that girl at home and tell her, "If I have sex with you, don't tell my wife, or don't tell anyone. If you tell someone, I will just kill you." And the lady just tell us, the friends, "The Herero man is sleeping with me, but he is saying that I must not tell anyone, and I'm afraid to go and tell someone else." And then we say, "Just go and report", and [she says], "Uhn-uh. No. I am afraid." And the Herero man just sleep with her and give her money. When she get pregnant, she has just been killed and just been buried there at the farm. We don't know where.

Q: What do you think about the problem of rape here in Corridor 13?

This story of rape is not good for me, ney, because I have seen with my own eyes what rape is. The guy with I have the first child of mine, the guy was trying to rape me. He have taken out the knife he was holding the knife like this and say, "Put off the trouser," and I say, "No. Why must I took off the trouser?", and he say, "Put off the trouser. . . . I am raping you now and I will kill you just now." Then he turns me. Then I fall down. When he was on top of me with the knife, I scream. Then the people run. When the people came, he was already gone. Rape is not a nice thing, really. You can be raped and killed. After that, I was just afraid of anything. When I just hear someone is knocking at the door, I was just getting those bad feelings, of someone would come and rape me, those things. I have tried, and I have taken a long time to forget that.

When I get this second child of mine. But she is not his child, it is only the first one. When I was sitting in the room feeding the child, he just came in, in the house. And when he came in I ask him, "What do you want?", [and he said,] "Uhn-uh. I'm looking for something." But while he is saying that, he is opening his belt. Then I scream and I put the child on the bed. And I go to the police station and I tell the police. But that policeman just say, "No, it is your boyfriend. How can you say that? You are lying." And that guy was saying, "You are lying! How can I take a dog back? A San! Which is having an ugly house like that. Do you think that

I will go to that ugly house of yours and go and rape you there? I will rape someone which is better. Not you. You is just a dog." [He said that] in front of the police.

That officer is having that guy's sister and they are married. [That is] why the man is just saying, "No. It is your boyfriend. Just talk nicely to him. He won't rape you. Just take each other back."

Q: Have the police not listened to other women?

What happened, it is very bad. A man, it is a man which has been married with my cousin. They have married and they have five children. But that man do a thing which is . . . I don't know. Evil can also love someone who is doing such a thing. The man just hear stories from other people which is not true. The other day, we just hear that he kill the woman. And put out the things which was inside her. She was pregnant. And this is the brother of the man who was doing such of things to me. While the man was beating her, she was reporting. But the police was just taking it as a joke. They didn't even go to the guy and ask him, or just lock him up for few month. They were just leaving him like that and say, "Just go back. It is your husband. Just go back and talk nicely. You will understand each other. We don't believe that a husband can do something like that to his beloved." . . . All of them, they are just the same. If you are a San, they are not taking those things to heart. They are just taking it as a joke. And the traditional leader, he is the brother of those guys which are doing those such of things.

[Also] the womans are beens given beer. And they drink, drink. And they have just been raped by those small kids which is . . . let me say, from other tribes. But if you hear that a San have do that, he is going to be locked up or beaten. If both of them are San, then [the police] are saying, "You San, you are talking the same language, so go and stay there and take care to each other."

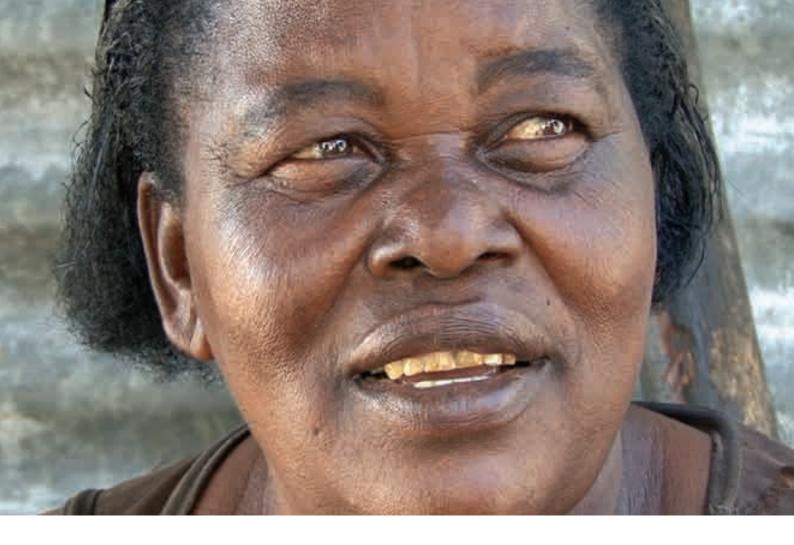
Q: Why do you think women withdraw rape cases?

Some women are just doing things which hurts me. They will just go nicely to the police station and say, "No, I been raped," when the police say give me your statement, and the police finish with the statement. After two days she will just come back and say, "No. Drop the case. . . . Just leave the case, drop it." Some women are doing this. Is that why the men are also getting stronger, to give us pressure.

They are going to be told by the man, "No, if you don't drop that case, when I go to jail, and after that, when I come back, I will come and kill you. I will follow you and I will ask anyone at which place do you stay. And I will go there, go and kill you." And the women are getting afraid, and saying, "Mmm, mmm. Now let us go and drop the case."

4.6 Oshakati and Ongwediva

Of all the regions studied, Oshana exhibited both some of the most pronounced prejudices against women and rape victims as well as the greatest diversity in attitudes amongst interview participants. This chasm may be attributable to the disparity in the educational level of the different participants. While professionals who attended the focus group seemed highly aware of, and sensitive to, the needs of rape victims, persons living in the surrounding township were sceptical of both women's and victims' rights.



Interview with a 35-year-old Ovambo professional woman (who was also a focus group participant)

Q: Can you tell me what the church says about sex within a marriage?

Before we are married, we have to [take a] course. Here, the pastor tell you how to behave with your husband, and how the husband will have to react to the feeling of the woman. But they encourage the men that if the women doesn't want the sex for more than three days but she just say "I don't want", you have to take an action. Because the purpose why he come to the marriage is for sex.

Q: Do people think that the husband "taking action" is rape?

Now they are saying it is rape. But even the husband is asking, "Why are you coming to my house if you don't want sex?".

Q: Do you hear about a lot of rape in the community?

I hear about one man who was raping a six-year-old girl. He say that he was raping the lady because he was having a feeling of sex, but he don't have a girlfriend, so what can he do.

Q: What did the community do?

The traditional leader causes him to pay. He say, "If you take someone's private parts, you have to pay as if you have killed someone." He was given [a chance to say that] what he did to this child is wrong – "What I have did to this child is very bad to me."

Q: Can you tell me about a woman who you know who was raped and withdrew her case?

Yes. She is 25 years alive here. She was raped by her neighbour. Then after they realise she was raped by the neighbour. Then after they go to the protection units. The lady was encouraged by the parents to forgive the man. Then she forgive. After that, when she forgive – because of the relationship, or, the neighbourhood, she had to forgive. But it was not her willing. It was just for the willing of the parents.

Q: Why do you think that women withdraw rape cases?

Sometimes they want to forgive. Sometimes they are forced by the community members to drop the case. Or sometimes, she is paid by the one who was raping her.

Interview with a 30-year-old professional man (who was also a focus group participant)

Q: Why do you think that women withdraw rape cases?

I think women withdraw rape cases because they are compensated. If they are involved in rape, then somebody who was raping the woman later goes to the woman and says "No, my friend, can you withdraw the case so that I can pay you a certain amount. Then the woman can even agree. So that is done because of poverty.

Q: How does poverty affect a woman's decision to withdraw a rape case?

I say poverty is contributing to this withdrawal of cases because of lot of womens, they need money for paying the school fees of their childrens.

Q: What do you think about the problem of rape complaint withdrawal?

I think they shouldn't withdraw the cases because this is what's making the rapist continue to rape the womens.

Q: Why do you think that women withdraw rape cases?

I think that women withdraw cases because they are afraid of other consequences. After they are raped, somebody will come and, maybe, killing them, or maybe beating them. Those are some of the consequences which women are afraid of.

Q: Have you heard stories of women that have withdrawn cases?

Of course I have heard some – of women who have withdrawn cases because of briberies. Or a woman has withdrawn a case because of the family; they are related to one another and they are afraid of destroying this relationship. Sometimes the victim is afraid of the rapist if he have an expensive lawyer who can defend him in court.

Interview with a 25-year-old man (who was also a focus group participant)

Q: Do you think that men and women are equal in Oshakati?

In our community, I don't think women and men are equal because, in my opinion, women they think that they are not able to do whatsoever. But in Namibia here, everyone has equal rights.



Q: Have you heard about rape in Oshakati?

In our community, I hear many stories about rapists.

Q: Why do you think that women withdraw rape cases?

Sometimes the women withdraw cases because they are pressurised by their family. And sometimes they withdraw cases because they don't want to appear in the court. Sometimes women also withdraw their cases because they don't want to be known by people that they were raped. Sometimes it's about compensation. Sometimes cases are taking longer – one or two years. And sometimes women, they avoid revenge. . . . Once that guy get out of prison, he will make a revenge. Maybe he will harm that women.

Interview with a young Ovambo father of one child

Q: Do you think that men and women equal here?

Yes, because we are all human beings. The only difference is just the gender.

Q: Do men treat women the same way that they treat other men?

No. We treat women differently according to our culture. The men is the head of the house, ney. And the women must be ruled by men.

Q: If men and women are equal, why does the man rule the woman?

(*Long pause*) Now, everyone wants to be equal. We mens, we accept about that. We accept that women are equal. It's like what I said. We are equals because we are all human beings.

Q: How do men treat women?

We treat them nicely, ney. But sometimes they treat us badly.

Q: How do women treat men?

They treat on us to provoke beatings and rape. They eat up our monies. You find them in the bars, they can drink your drink, and later she want to run away. What do you think? The men is going to beat her or rape her.

Q: If a man rapes a woman like that, is that fair?

It's not fair, but the woman is the one who provoked the situation.

Q: So, do you think that women cause rape?

Yes.

Q: Can you explain why you think that?

Yeah. Womens of today, the way they are wearing, short things, mini skirts – even you can see them in the street, how they wear. Even during the night, they are just wearing mini skirts. And they can cause it – to be raped. Womens, they way they wear mini skirts and those short tops, they can attract mens, or to provoke the situation to be raped.





Chapter Five

International Perspectives

In order to contextualise the Namibian findings, this chapter surveys studies of criminal case withdrawals in other countries, and provides some examples of victim support initiatives which have been used elsewhere.

5.1 Literature review: International studies on case withdrawals

(1) Studies outside Africa

The types of threats and concerns that rape victims in Namibia face are not uncommon. However, while many international studies examine causes of attrition in rape cases, few examine the specific causes of rape complaint withdrawal.

Kerstetter and van Winkle, 1990 (Chicago, USA)³⁷

Kerstetter and van Winkle's 1990 study on victims' decisions to prosecute in rape cases in Chicago is one of the earliest reports focusing on factors that influence complainant decisions. Rather than examining all factors that might influence a complainant's course of action, this study focused on three possible explanations for how officials influence complainant action:

Feminist conflict theory

Women who did not follow traditional sex role norms would be discouraged from pursing their rape complaint while women who do fall into traditional roles – such as married women or young women – would be encouraged to prosecute.

Black's "behaviour of law" hypothesis

Whether or not the victim chooses to prosecute is largely influenced by social conceptions of what constitutes a "conventional" rape, taking into account details such as the race of the victim and offender and their social and economic status.

Need to allocate resources efficiently

Police may screen cases and discourage some women from pursuing prosecution based on the need to allocate scarce resources efficiently.³⁸

It remains unclear as to why these three explanations were selected, but this study is one of the first to develop the theory that a complainant's decisions may be influenced by police attitudes, rather than being based on victim volition alone. Using a random sample of 587 sexual assault complaints placed by women in Chicago in 1981, Kerstetter and van Winkle read and coded each case by completing a 171-item questionnaire documenting the characteristics of the victim and the offence, the availability of evidence and the circumstances surrounding the case. The statistics were then analysed by each variable to see which of the three proposed theories above were most likely to have influenced complainant decisions in each case. Kerstetter and van Winkle also included a qualitative element in their study, which consisted of interviews with detectives, prosecutors and a victims' advocate regarding motives behind official behaviour. Based on both qualitative and quantitative findings, the study concludes that "while the complainant's decision is a crucial factor in the official decision to invoke the criminal law, that decision must be seen as much more complex than a simple statement of personal volition. It appears frequently to be subject to official influence for a variety of purposes."

W Kerstetter & B van Winkle, "Who decides? A study of the victim's decision to prosecute in rape cases", 17 *Criminal Justice and Behaviour* 268 (1990).

³⁸ *Id* at pages 270-71.

³⁹ *Id* at page 272.

⁴⁰ *Id* at page 277.

⁴¹ *Id* at page 281.

Horney and Spohn, 1996 (Detroit, USA)⁴²

In a 1996 study in Detroit, Horney and Spohn examined whether the nature of the rape influenced blame and believability factors for police officers; they wanted to find out if the characteristics of the rape – whether it is a simple rape (rape which is committed "by a lone acquaintance with no weapon and no injury to the victim") or an aggravated rape (rape which "involves either an attack by a stranger, multiple assailants, the use of a weapon, or injury of the victim") – affected official response.⁴³ Horney and Spohn initially suggested that complainants' decisions not to pursue prosecution, or their lack of cooperation with officials, may be influenced by the "feedback or treatment they receive from police or prosecutors".⁴⁴ However, they were unable to reach a more concrete conclusion about this factor because of the difficulty in obtaining data about the circumstances surrounding rape complaint withdrawals – a limitation which is a key obstacle in most research on this topic.

Lievore, 2005 (Australia)⁴⁵

Some studies rely solely on quantitative data, which can provide only limited information about the factors that influence decisions made by the complainant or the prosecutor at any given point. Lievore conducted a 2005 study in which data from sexual assault cases in Australia were compiled in a quantitative analysis to better understand the variables and case characteristics that might affect prosecutorial decisions. Lievore's report focused on statistics showing how a range of variables correlate with case outcomes, but it also included some brief generalisations about withdrawn cases, noting that fewer cases in which the alleged offenders were strangers resulted in withdrawals, and that "almost half of the cases were withdrawn due to the victim's reluctance to proceed . . . and the majority of these involved current partners". ⁴⁶ A primarily quantitative study such as Lievore's can highlight case characteristics that correlate with a higher likelihood of withdrawal, but cannot identify the specific factors that influence a complainant's decision to withdraw.

Kelly, Lovett and Regan, 2005 (United Kingdom)⁴⁷

The most comprehensive study located on attrition is a 2005 study by Kelly, Lovett and Regan, which examines the attrition of rape cases in the United Kingdom. In contrast to other studies that generally relied on one to two data sources, researchers here employed a sophisticated combination of qualitative and quantitative analyses by incorporating seven different sources of data:

⁴² J Horney & C Spohn, "The influence of blame and believability factors on the processing of simple versus aggravated rape cases", 34 *Criminology* 139 (1996).

⁴³ *Ibid*.

⁴⁴ Ibid.

D Lievore, *Prosecutorial Decisions in Adult Sexual Assault Cases*, 2005, available at <<u>www.aic.gov.au/</u> publications/reports/2004-10-decisions.pdf>.

⁴⁶ Thid

L Kelly, J Lovett & L Regan, *A gap or a chasm?: Attrition in reported rape cases*, 2005, available at <<u>www.</u> homeoffice.gov.uk/rds/pdfs05/hors293.pdf>.

- analysis of historic data in the police database
- prospective case tracking using a special database
- questionnaires sent to investigating police officers for completion
- questionnaires given to service users, such as complainants who came to Sexual Assault Referral Centres
- interviews with staff at Sexual Assault Referral Centres, police officers and other key informants
- examination of a sample of forensic medical reports
- analysis of sample of victim/witness statements.⁴⁸

Researchers used the quantitative data to narrow down areas for focus, while the qualitative data helped them better understand how the specifics of interactions between officers, professionals (including general service providers, legal and medical practitioners) and victims can affect case outcomes.

Kelly, Lovett, and Regan identified six key points of attrition, one of which is early withdrawal. Of the total number of cases reported to police, 34% (633 cases) were lost at an early stage due to complainants opting out of the investigative process. Of these 633 cases lost in the initial stages of investigation, half of them ended because victims declined to complete the process (a process which may include "making a formal complaint; forensic examination; giving a statement; or withholding information"). ⁴⁹

Notably, the researchers observed that a higher rate of victims declined to complete the process in areas without an integrated Sexual Assault Referral Centre. Responses to the service user questionnaires indicated that the presence of women as service providers – police officers, crisis workers and forensic examiners – was important for the majority of respondents. They found that preferences for female service providers were particularly pronounced with respect to the medical examination.⁵⁰

In addition to gender preferences, police attitudes also played a role in precipitating case withdrawals. Responses to the questionnaire suggested that police attitudes (either discouragement or disbelief) influenced 16 of the 188 respondents not to make a formal statement. Many victims felt discouraged from proceeding with their cases because of the interminable delays in case progress without status updates, or because an officer had told them that a conviction was unlikely. Researchers observed that, "In the context of uncertainty and trauma, professionals need to be skilled in order to build rapport and trust, and police officers have a responsibility to conduct a thorough investigation." Fear of the court process, fear of being judged or simply wanting to take back control were also cited as other reasons why complainants withdrew their complaints.⁵¹

In their concluding assessment of what their study revealed about complainants' values and needs, Kelly, Lovett and Regan note a troubling trend amongst study participants who had dropped cases at an early point in the investigation: "Many of them were profoundly dissatisfied with the responses

⁴⁸ *Id* at pages 4-5.

⁴⁹ *Id* at page 59.

⁵⁰ *Id* at pages 59-60.

⁵¹ *Id* at pages 61-62, 69.

they encountered, reporting that if they were ever sexually assaulted again they would not report, and that they would discourage any friend from doing so."⁵² The researchers recommended greater integration or cooperation between police and specialist support agencies so that they can work together to provide greater support for rape victims, both at the time of reporting and by providing updates on case status.⁵³ In addition, they recommended the development of a system through which all complainants would receive proactive follow-up contact by Sexual Assault Referral Centres and Rape Crisis Centres so that "practical support, advocacy and case tracking" can be provided to complainants in one place.⁵⁴

Heenan and Murray, 2006 (Victoria, Australia)55

The fact that withdrawals in rape cases were on the rise in Victoria, Australia, prompted a comprehensive study of police investigations of rape complaints. In 2006, Heenan and Murray analysed rapes reported to Victoria Police from 2000-2003 to examine factors that influence case outcomes. The quantitative portion of the study involved a random sample of 850 case records drawn from the Victoria Police Law Enforcement and Assistance Program database. Heenan and Murray also examined corresponding case narratives from the Sexual Offences and Child Abuse Unit and the Criminal Investigation Unit. One of the limitations of their study was that data was not recorded consistently by police officers. Because the amount of detail included in each case varied depending on the officer who recorded it, it was difficult for researchers to achieve consistency in coding information across cases. Furthermore, privacy concerns raised at the beginning of the study limited what data researchers were allowed to access.

Using the available information, Heenan and Murray produced statistics that correlated various case characteristics with case withdrawals, in the same manner as the studies mentioned above. They correlated factors such as age of victim, relationship between victim and alleged offender, sex of victim, completion of medical examination and use of alcohol or drugs.⁵⁶ In order to look beyond statistics to better understand what might be prompting the statistical trends, researchers focused a portion of their study on police influences and victim-centred influences.

Heenan and Murray found that in nearly one third of the cases they examined, "wishes about proceeding were heavily mediated by the police response".⁵⁷ Unsurprisingly, they found that the greater the perceived level of disbelief on the part of police, the more likely it was that the victim would express a wish to withdraw the complaint.

Another third of withdrawn cases were attributable to victim-centred influences. Victims cited the following factors as reasons for withdrawing their complaints:

⁵² *Id* at page 88.

⁵³ *Id* at page 89.

⁵⁴ *Id* at page 90.

M Heenan & MS Murray, *Study of Reported Rapes in Victoria 2000-2003*, 2006, available at <<u>www.women.vic.gov.au/web12/rwpgslib.nsf/GraphicFiles/Study+of+Reported+Rapes/\$file/StudyofReportedRapes.pdf></u>.

⁵⁶ *Id* at pages 22-23.

⁵⁷ *Id* at page 30.

- feelings of self-blame or doubt
- feeling disbelieved or pressured by family members to discontinue
- concern about the offender being prosecuted
- continued trauma & shock resulting from the rape
- wanting to get on with their lives
- fear of the offender.⁵⁸

Despite producing a list of factors that may precipitate rape complaint withdrawal, the researchers stated that there is still more work to be done to better understand why police might choose not to proceed with a case or why a victim might withdraw the case. They noted that their study was hampered by the "absence of standardised procedures that allow for a systematic approach to recording the details of rape reports and investigations, including any requirement to record the reasons why an investigation did or did not proceed".⁵⁹ Rather than putting forward specific recommendations to reduce case withdrawals, researchers suggest that a more comprehensive protocol for the recording of details in rape reports should be the first step towards better understanding the reasons behind the withdrawal of rape cases.

Feist, Ashe, Lawrence, McPhee and Wilson, 2007 (England & Wales)⁶⁰

A 2007 study by Feist, Ashe, Lawrence, McPhee and Wilson relied solely upon quantitative data to uncover information about the attrition of rape cases in England and Wale. Using case files collected from eight police forces in England and Wales (numbering 676 cases in total), researchers coded each case and tested for statistically significant relationships between specific case characteristics and case outcomes.⁶¹ The researchers noted that there are drawbacks to the pure use of case files as a data source, as the contents of each file vary greatly between and within each police force. Further, "there are important aspects of the investigation which are likely to be 'unobservable' from the information in the file," such as the quality of investigations and possible police influence on complainant decisions.⁶²

Nevertheless, by examining information in each case file about whether and why a victim withdrew his/her case, researchers found that 39% of rape cases were withdrawn and that more than half of these withdrawals took place during the police investigation stage. The reason for withdrawal was not available in over one-third of the cases that had been withdrawn. Focusing on those cases that did record reasons for withdrawal, researchers coded and considered 26 variables in their efforts to find statistically significant relationships between case characteristics and case withdrawals. They identified six factors that were strongly associated with rape case withdrawal:

- offender-victim relationship
- whether the offence was linked to a sexual assault against a different victim
- whether or not the victim was injured

⁵⁹ *Id* at page 43.

⁵⁸ *Ibid*.

⁶⁰ A Feist *et al*, *Investigating and Detecting Recorded Offences of Rape*, 2007, available at <<u>www.homeoffice.</u> gov.uk/rds/pdfs07/rdsolr1807.pdf>.

 $[\]overline{Id}$ at page ii.

⁶² *Id* at page 5.

⁶³ *Id* at page 56.



- time between offence and report to police
- single or multiple offenders
- police force area.⁶⁴

The study findings concluded that the six factors above distinguish victims who are more likely to withdraw their complaints. Researchers also noted that victims were less likely to withdraw their cases where they made the report of the crime to a specially-trained police officer.

This study was conducted primarily to uncover reasons behind why detection and conviction rates vary so dramatically across different police force areas. Even though researchers note that there is "no single 'silver' bullet of action that can work to drive up investigative performance" and thus make conviction rates in different areas more consistent, they do offer some suggestions to take into consideration when forming a police agenda for future action. ⁶⁵ For example, the study found that withdrawals were particularly likely in instances where the perpetrator was a partner, ex-partner or friend of the victim. However, at the same time, withdrawal rates varied significantly across different police force areas despite the fact that all of these police forces served diverse populations. This suggests that police conduct and attitudes have the potential to affect withdrawal rates regardless of case characteristics. On this point, the researchers recommended improved victim care, better communication and efforts to tackle victim concerns over fear

⁶⁴ *Id* at pages 59-60.

⁶⁵ *Id* at page 87.

and reprisal as possible ways to minimise case withdrawals. Researchers further advised police to "give thought to how victim care strategies may need to be tailored to victims in particular types of relationship with their offender," given that the victim-offender relationship is such a significant predictor of case withdrawal.⁶⁶

(2) South African studies

Although we were unable to locate focused studies on rape complaint withdrawal in other African countries, there is some information from South Africa that may lend perspective on the problem of rape complaint withdrawals in Namibia. In South Africa as in Namibia, the problem is a serious one that has given rise to concern; in 2003, it was reported that rape and serious assault cases in South Africa are most likely, out of ten crimes, to be withdrawn in court.⁶⁷

South African Law Reform Commission, 2000⁶⁸

A research paper published by the South African Law Commission provides some information on rape case withdrawals in South Africa, although the broader aim of the report was "to measure the progress and outcome, including conviction rates, of a representative sample of crimes reported to the police in South Africa".⁶⁹

In order to assemble data on progress and conviction rates in South Africa, researchers drew on a sample of 15 529 cases from eight police areas (chosen based on the prevalence of crime in each of those areas). The outcomes of these cases were tracked using the Crime Information Analysis Centre of the South African Police Services.⁷⁰

The case sample included the following crimes: murder; rape of girls (under age 18); rape of adults (age 18 and older); robbery involving the use of a weapon; and fraud.⁷¹ Researchers compiled statistics showing the percentage of cases in each crime category that did not go to court, were still ongoing at the time of the study, had been withdrawn, or had resulted in verdicts. The study found that 15% of rape cases involving adult victims were withdrawn, compared to 18% of rape cases involving victims under 18. ⁷² The researchers did not specify whether the cases that were withdrawn were done so at the request of the complainant or at the initiation of the prosecution authority.

Noting that there was insufficient data for analysis of the reasons behind the case withdrawals, the researchers made several general observations about possible motivating factors. With

⁶⁶ *Id* at page 88.

⁶⁷ C Benjamin, "Legal safety net lets SA women down", *Business Day*, 10 December 2003, available at <<u>www.</u> businessday.co.za/Articles/TarkArticle.aspx?ID=921589>.

⁶⁸ South African Law Commission (subsequently re-named South African Law Reform Commission), *Research Paper 18: Conviction Rates and Other Outcomes of Crimes Reported in Eight South African Police Areas*, 2000, available at <www.doj.gov.za/salrc/rpapers/rp18.pdf>.

⁶⁹ *Id* at page 6.

⁷⁰ *Id* at page 8.

⁷¹ *Id* at page 10.

⁷² *Id* at page 18.

respect to rape cases that are withdrawn by the complainant, they asserted that "this may happen where the rape survivor is intimidated by the perpetrator, particularly when known to the survivor, or if the rape survivor is afraid of the possible reaction of unsupportive partners or parents". They also noted that some withdrawals might result where the original charge was false, or where police discourage the complainant from pursuing a weak case. Ultimately, the authors claim that these factors, despite having a significant impact on conviction rates, are "often beyond the control of the police and prosecutors". This claim runs counter to the findings and recommendations in several of the similar studies cited above, and the reasoning behind the somewhat defeatist claim in the South African is not explained.

Ultimately, the researchers concluded that "South African criminals . . . tend to get away with their crimes", as only 6 out of every 100 cases involving violent crimes result in a conviction after two years. They posit that "the failure of the criminal justice system to effectively hold perpetrators of crimes accountable for their actions fuels a perception by criminals of impunity from the law," which is a principal cause of additional crime. The authors quote the then-President of the Constitutional Court, Justice Arthur Chaskalson, who claims that "the greatest deterrent to crime is the likelihood that offenders will be apprehended, convicted and punished."

Francis & Baird, 2000

A 2000 study of rape investigations in the Western Cape by Francis and Baird reveals a little more information about the nature of rape complaint withdrawal in South Africa.⁷⁷ The aim of this study was to discover how services for rape victims could be improved. Researchers chose three police stations in the Western Cape that process a large number of rape reports as their study sites and traced rape victims for a month after their initial report at the police station. A total of 15 adult rape survivors were interviewed for the study. The authors explain that the small sample size ensured that they could "assemble detailed case histories" for each person, while a larger sample "would have made it difficult to ask the kind of in-depth questions that would reveal the complexity of the victims' experiences".⁷⁸ Researchers did not follow the cases to completion but instead closely tracked the first month of investigation in order to determine how victims are treated in the initial stages after laying a charge of rape.⁷⁹

Because this study was qualitative in nature, no statistics were provided about rape case outcomes or withdrawal rates. However, several reasons for rape complaint withdrawal emerged in interviews with the 15 participants about their experiences with police and other service providers. Researchers cited four cases in which victims were drinking at parties prior to being raped, three of which involved victims who went to sleep at the party as a result of being drunk,

⁷³ *Id* at page 19.

⁷⁴ *Id* at page 26.

⁷⁵ *Id* at page 27.

⁷⁶ Ibid.

⁷⁷ V Francis & M Baird, *A rape investigation in the Western Cape: A study of the treatment of rape victims at three police stations in the Cape Flats, South Africa*, 2000, available at <<u>www.vera.org/publication_pdf/westerncape.</u> pdf>.

⁷⁸ *Id* at page 2.

⁷⁹ *Ibid*.

including two where the victims were not consciously aware of the rape. One case involved a victim who "states that she found her clothes in the perpetrator's room and then suspected that she had been raped", while another case involved a victim who was told she was raped by others. Many of these charges were later withdrawn due to a lack of evidence, but researchers found that these factors regarding the circumstances of the rape called into question the victim's credibility and may have contributed to the case withdrawal.⁸⁰

In another case examined, a member of the perpetrator's family pressured the victim to refrain from reporting the rape or telling anyone about the incident. The victim nevertheless reported the rape to the police, with the initial support of her own family, but eventually withdrew the complaint before it went to court.⁸¹ While the direct reasoning behind this withdrawal remains nebulous, it seems likely that pressure from the families involved influenced the victim's decision to withdraw. In interviews with investigating officers, researchers were told that "where the perpetrator is an ex-boyfriend, victims often eventually withdraw the charge".⁸² However, the researchers also observed one case in which "a female police officer was unwilling to take a statement because the perpetrator was an ex-boyfriend" and asserted that the "reluctance of police to proceed with a charge in such cases surfaced consistently throughout the study".⁸³

In an even more troubling finding, one of the victims interviewed related the following narrative of her experience with detectives who visited her home:

One of the other detectives also humiliated me by asking me, "Yes, why do you make a rape charge against your ex-boyfriend? Before you slept with him 200 times, or 100 times or 50 times." I feel disturbed because I have been raped. It does not matter whether he was my boyfriend or not, he raped me. What hurt me the most was to think that the people that I trusted treated me so badly. To them it was a joke that my ex-boyfriend raped me. I never knew that they were so rude and mean. The police sent my ex-boyfriend to talk to me about withdrawing the case. He hasn't been arrested. I feel he should have been picked up already because the police saw him but did not take him into custody.⁸⁴

This account is an example of how police attitudes are often in need of improvement. However, despite some negative accounts, researchers also found constructive actions being taken by some police. Ultimately, Francis and Baird make several specific recommendations for strengthening victim support and increasing the chances of a successful prosecution. Most of these recommendations involved encouraging prompt action on the part of the investigating officer, such as ensuring that the officer immediately refers the rape victim to a support program, arranges for the victim to take an HIV test, finds out details about the perpetrator and takes the victim for a medical exam (within an hour of reporting). The study also recommended that police should offer the rape victim further support by providing her with transportation home and following up with her regularly to communicate case progress. 85

⁸⁰ *Id* at page 4.

⁸¹ *Ibid*.

⁸² *Id* at page 6.

⁸³ *Ibid*.

⁸⁴ *Id* at page 11.

⁸⁵ *Id* at page 14.

Vetten et al, 2008⁸⁶

Most recently, a 2008 study in Gauteng examined the attrition of rape cases through the criminal justice system in Gauteng.

The study noted at the outset that withdrawals of rape cases at the request of the victim account for a significant degree of rape case attrition; one previous South African analysis found that 43% of rape cases were withdrawn, with almost half of these being withdrawn at the request of the victim.⁸⁷ However, the study notes that women's reasons for withdrawing complaints "have not been well-explored":

In the only study to undertake some limited exploration of this question, court records indicated that withdrawals were prompted by the victim and accused reconciling in some instances and, in others, by the victim stating that the ongoing trauma of her experience made it too difficult to continue with trial processes.⁸⁸

In the 2008 study, researchers drew their data from the Gauteng Province where a total of 11 926 rapes were reported in 2003. Because open cases could not be a part of this study, researchers chose to draw their data sample from 2003 case files (on the theory that the cases were still recent enough to provide a representative snapshot of the current state of the criminal justice system, while very few cases reported in 2003 would still be open at the time of the study). A total of 2 068 cases were examined. Researchers tracked each case through the criminal justice system in efforts to better understand "how and why justice may be eroded" and how the criminal justice system may be reformed in order to better deter sexual violence. ⁸⁹

In the researchers' analysis of their own data set, they found that 460 (22.3%) rape cases were disposed of by the courts before coming to trial. When examining reasons behind these case withdrawals, they also found that about one in three cases (33.5%) was withdrawn because the victim could no longer be located or, in a very small number of cases, had died. The next most prevalent reason for case withdrawals was withdrawal requested by the victim, which accounted for just under one in three withdrawals (29.2%) by the state.⁹⁰

The reasons for these case withdrawals by complainants were drawn from information in the case dockets, and (as in Namibia) probably do not accurately reflect the complexities of the situation – especially the cases where the complainant simply "disappeared" after reporting the crime. The researchers made the following conclusions and comments:

L Vetten, R Jewkes, R Sigsworth, N Christofides, L Loots & O Dunseith, *Tracking justice: The criminal justice system in Gauteng*, 2008, available at <www.csvr.org.za/docs/tracking_justice.pdf>.

⁸⁷ Id at pages 17-18, citing Interdepartmental Management Team, Towards Developing an Anti-Rape Strategy: Report of the Interdepartmental Management Team, National Directorate of Public Prosecutions, South African Police Service, Department of Health, Department of Social Development and Monitor Group, 2002.

⁸⁸ *Id* at page 18, citing L Vetten and D Motelow, "Creating State Accountability to Rape Survivors: A Case Study of the Boksburg Regional Court", 62 *Agenda* 45-52 (2004).

⁸⁹ *Id* at page 6.

⁹⁰ *Id* at page 50.

Contrary to police and prosecutors' perceptions, only 1 in 20 victims withdrew their complaints following reconciliation between the accused or his family. The same proportion of victims withdrew because they found proceedings too upsetting or disruptive of their lives. What requires further investigation however, are the circumstances leading to the disappearance of almost one in four victims... When victims became untraceable, they were most likely to do so after reporting the rape and during the course of the police investigation... It is possible that at least some of these survivors may have wanted to remain in contact with the police but were unsure of their rights and the extent to which the police would welcome their inquiries. They may well have lacked the confidence to demand information from the police and waited instead to be contacted by them. Such followup contact will never have happened in those cases where the police took down inadequate contact details from victims.⁹¹

The study concluded that further research is needed "to understand why some survivors disengage from the criminal justice system and what steps could be taken to make the system more responsive to their needs". In the meantime, it suggested information brochures explaining the criminal justice system processes to victims and reminding them to inform the police of any change in their details.⁹²

(3) Conclusion

Several patterns emerge from this review of studies on criminal case withdrawals in other countries. First, qualitative research lends more insight into the issue of criminal case withdrawals than similar studies conducted on a quantitative and statistical basis. Studies that are based solely on quantitative data may indicate case characteristics that are correlated with a higher likelihood of withdrawal, but they fail to identify the specific factors that cause a complainant to withdraw. Including qualitative data helps identify the reasons behind case withdrawals, which enables researchers to then formulate recommendations that may ameliorate the problem.

Secondly, studies conducted in various countries cite strikingly similar factors behind criminal complaint withdrawals. Thus, the efficacy of response strategies employed in other countries should inform the recommendations that are implemented in Namibia.

Finally, in all of the studies reviewed, institutional responses to rape are identified as a factor that could be improved to reduce rape case withdrawals. Family and community attitudes may also contribute to a complainant's decision, but since those attitudes may prove more intractable, directing attention towards improved institutional responses would seem a more effective strategy to employ initially.

⁹¹ *Id* at page 51.

⁹² *Id* at page 56.

5.2 Literature review: International approaches to victim support

Improved victim support through the investigation and justice process might aid in reducing the number of rape withdrawals. In many countries, technology-based interventions using the internet have been developed. However, in a country such as Namibia, where access to the internet is not easily available for many sectors of the population, such ideas are not viable. Instead improved victim support will need to come through personal interaction. As many countries report successful programmes of personal victim support services, this is a viable option. The necessary support must be in addition to that provided by the police and the prosecutor. This is because it can be difficult for the police or prosecutor to provide emotional support to victims, as it can at times be in conflict with their role in collecting evidence or prosecution. A person mandated to be an advocate for the victim does not have to fulfil a dual role and can develop a relationship of trust with the victim whilst taking some of the burden away from police and prosecutors.⁹³

In an ideal situation, the support provided for rape survivors would involve a range of strategies that are inter-linked and easily available. In a study designed to assess the role of these different types of Sexual Assault Response Centres in the United Kingdom, the results showed that centres with integrated services were able to provide the most prompt and consistent responses, compared to models where services were outsourced and co-ordinated. Examples of services that could be implemented or refined in Namibia are given below. These strategies may be divided into short, medium and long-term mechanisms.

Table 5.1: Short-, medium- and long-term strategies for support

Short-term	Hotlines
	Support at the time of reporting: accompanying complainant to hospital providing clothes emotional support counselling/referral to counselling information about laying a criminal charge
	Shelters
Medium-term	Support groups
Long-term	Self-defence classes
	Court orientation
	Victims Advisory Panel

For more information, see F Schmitt & P Martin, "Unobtrusive Mobilization by an Institutionalized Rape Crisis Center: 'All we do comes from victims' ", 13 *Gender & Society* 364 (1999); A Konradi, "Too Little, Too Late: Prosecutors' Pre-court Preparation of Rape Survivors", 22 *Law & Social Inquiry* 1 (1997); L Ruckman, "Rape: How to Begin Healing", 92 *American Journal of Nursing* 48 (1992); M Maguire, "The Needs and Rights of Victims of Crime", 14 *Crime & Justice* 363 (1991) (discussing other models of victim support programs).

⁹⁴ J Lovett, L Regan & L Kelly, *Sexual Assault Referral Centres: Developing Good Practice and Maximising Potentials*, 2004, available at <www.homeoffice.gov.uk/rds/pdfs04/hors285.pdf>.

(1) Short-term support

Hotlines

Although Namibia already has an emergency hotline that rape survivors can use (Childline/Lifeline), many other countries have a range of hotlines available, such as a Child Abuse Hotline, Domestic Violence Hotline, Sexual Assault Hotline and a Teen Dating Abuse Hotline to name but a few. While Childline/Lifeline provide invaluable support in Namibia, the further diversification of telephone services may be beneficial to survivors of crime to overcome a reluctance to phone for help.

This approach would make sense in Namibia given the exponential increase of cellphone access and use in recent years, particularly if calls to hotlines could be made free of charge for both landline and cellphone users.

Support at the time of reporting

When a rape survivor reports the crime to the police or goes to a hospital or clinic for forensic medical examination, experts generally recommend that the survivor bring a friend or family member to provide support. However in many cases, the survivor may not have a suitable person to ask, or may be unwilling to inform family and friends of the rape. This may be particularly relevant if the abuse occurred within a family situation. To overcome this issue, a number of countries provide support workers of some sort, whether volunteers or persons employed by the state. Resources to train such people have been developed in Namibia (for example, the 2007 *Manual for Training Community Survivor Supporters*⁹⁵), but the concept could be expanded.

The United Kingdom has trialled and evaluated a range of methods to provide support for victims of sexual assault. ⁹⁶ These have included the use of Crisis Workers, Initial Support Workers and Case Trackers. The Crisis Worker provides immediate support during the forensic examination, while the Initial Support Worker provides assistance at a slightly later stage to help deal with issues that arise after reporting. The role of the Case Tracker is to monitor cases and inform clients about case progress and decisions made.

The forensic examination can be an ordeal for the rape victim and dedicated assistance from support workers can help ensure that the victim is able to go through with this traumatic process. Emotional support throughout the initial stages is invaluable. Providing the rape victim with information about laying a criminal charge and other information about the criminal procedure is also incredibly important. Even when friends or family members are available to provide emotional support, they may have little knowledge about the criminal justice system and may be as intimidated about the process as the rape victim. This is a particular problem in Namibia, where the transfer of information can be lacking, particularly in rural areas.

The manual was developed by the Ministry of Health and Social Services in conjunction with the Legal Assistance Centre, Women's Solidarity Namibia and PEACE Centre.

⁹⁶ J Lovett, L Regan & L Kelly, *Sexual Assault Referral Centres: Developing Good Practice and Maximising Potentials*, 2004, at page 1; available at <www.homeoffice.gov.uk/rds/pdfs04/hors285.pdf>.

The use of a series of support workers (such as Crisis Workers, Initial Support Workers and Case Trackers) has a number of benefits. Rape survivors often have a desire to forget the incident or to move forward in life. By passing through a progression of support workers, survivors can see visible progression in their cases. It should be noted that this statement does not ignore the fact that rape survivors also need to feel stability during the recovery period. The Crisis Worker provides immediate support and, in the longer term, the Initial Support Worker provides continuity and stability. The role of a Case Tracker could have particular benefit in Namibia. In the UK evaluation study cited above, the researchers found that rape victims received more information about the progress of their case and decisions made where a Case Tracker was assigned to them, as compared to cases where no Case Tracker was available. Such a service increases the control a rape victim can feel over his or her situation. It is apparent from the research conducted in Namibia that the extended time taken for cases to be resolved can be off-putting to rape survivors. The role of a Case Tracker could help the complainant know when progress is being made and to understand the reasons for postponements and delays, which could help reduce the number of case withdrawals.

Similar practices have been developed in countries such as Canada and America. In Canada, the state co-ordinates volunteer survivor supporters called Victim Advocates. Paid staff members (Service Co-ordinators) manage the process and assist with the training and supervision of the volunteers. Funds are sourced through grants and supplemented with fundraising events. Independent volunteer organisations also provide services for rape survivors. The services provided are incredibly detailed and include concrete, practical assistance such as the provision of clothes to be worn after the forensic examination.⁹⁷

The Canadian programme is run through police or community units. In contrast, a similar programme in the United States is run through the prosecutor's office. While both options have benefits, the latter arrangement allows the prosecutor and victim advocate to work closely together. The volunteers are trained to guide the victim through the criminal justice process. For example, as soon as the charge is filed, the Victim Advocate contacts the victim and acts as an important "go-between" for prosecutor and victim. Based on the contact with the victim, the advocate can inform the prosecutor of any issues or problems with the case. In Namibia, this could be an important channel for ensuring that threats made by accused persons who are out on bail are communicated to the prosecutor, who can then apply for the cancellation of bail and the re-arrest of the alleged perpetrator. Jurisdictions in the United States have found that the involvement of a Victim Advocate can increase the efficiency of the prosecutor's work and increase the chances of getting a conviction. Funding for the support programme in the United States is allocated from a portion of court costs and fines, although the budget for the program is fairly low since most of the Victim Advocates are volunteers. In the US state of Oregon, as in Canada, paid co-ordinators are used to manage the victim advocates.⁹⁸

We believe that the implementation of a support system involving some form of victim advocates and case trackers would be one way to help reduce case withdrawals in Namibia.

Further information is available from the Sexual Assault Resource Centre, < www.sarcoregon.org/rape_services.asp>.

⁹⁸ D Hubbard & D Wise, *Domestic Violence: Proposals for Law Reform*, Legal Assistance Centre, 1998.

Shelters

A number of countries have effective networks of shelters to support rape survivors and other victims of violence. In contrast, Namibia currently only has two shelters serving the entire country. Shelters should be more widely available as a short-term option, but also as a long-term option if needed. This could be particularly important in cases where the perpetrator of the rape is a family member. It would not be necessary to have a shelter in each town, as this would be prohibitively expensive and many of the towns in Namibia are furthermore too small to allow for privacy. However, expanding the availability of shelters located near the 15 Woman and Child Protection Units could provide considerable benefit.

(2) Medium-term support

Support groups

The provision of support groups is a key strategy in a number of countries. An important characteristic of these groups is that they are often time-limited, lasting for example, 6-9 weeks. This is because many rape survivors often express a desire to forget the event or to put it into the past. At the same time, survivors do need support. The organisation of support groups with a finite time limit provides an answer to this dilemma. In this way survivors are able to receive assistance, while at the same time knowing that they will be able to move on to the next stage of their lives.

While closed support groups meet a clear need, there is also a need for more flexible arrangements, as some survivors may be unwilling to commit to joining a group. Many countries provide dual systems, providing closed finite groups that run through a fixed course of sessions, as well as drop-in support groups where survivors can attend sessions on an *ad hoc* basis.⁹⁹

Such support groups would be beneficial in Namibia, but there may be insufficient numbers of rape victims to hold continuous groups due to the spread of the population throughout the country. Therefore, instead of holding sessions over a period of weeks, it may be more practical to hold intensive annual or biannual meetings for rape victims over a single week to minimise logistical problems. If the support groups were associated with shelters, participants could perhaps utilise the shelters for accommodation during this period.

(3) Long-term support

Self-defence classes

The empowerment of a rape survivor is an important factor in that person's successful reintegration into daily life. A number of countries offer programmes that help the rape victim feel empowered. For example, the acquisition of skills such as self-defence can help a

⁹⁹ For more information, see Sexual Assault Support Services, Support Group Program, < <u>www.sass-lane.org/</u> support.html>.



rape survivor feel more equipped to face the world. Self-defence classes have been taught in Namibia, through organisations such as Sister Namibia. Sister Namibia viewed the weekend self-defence course they ran as a successful endeavour, but as this was not an area of expertise at the organisation, it did not carry on the project or pursue further funding for it. This is clearly an area where there is scope for further action.

Court orientation

A considerable period of time usually lapses between the reporting of a rape case and the time when the case goes to court. During this time the rape victim may have forgotten information she was originally given about the legal process. In addition, court procedures can be intimidating and fears about the process are likely to increase as the court date draws near. Although rape victims are the complainants, they may end up feeling that they are the ones on trial. These issues can be alleviated to some extent by ensuring that the rape victim is given an orientation of the court shortly before the case commences, including a tour of the court room, an explanation of the proceedings and the arrangements which can be made for reducing the trauma of the experience. 102

For more information, see Sexual Assault Support Services, Self-Defence (for Women & Girls), < www.sasslane.org/selfDefense.html>.

¹⁰¹ Sister Namibia is a non-governmental organisation that works toward a society that recognises, protects and celebrates the full personhood of all women and girls including respect for their dignity, diversity, sexual choices and bodily integrity.

¹⁰² The arrangements which can be made for vulnerable witnesses are described in detail in *Rape in Namibia: An Assessment of the Operation of the Combating of Rape Act 8 of 2000*, Legal Assistance Centre, 2006, in Chapter Four.

Victims Advisory Panel

In the United Kingdom, a Victims Advisory Panel has been set up with the intention of allowing victims of crime to provide information directly to the Home Secretary, Lord Chancellor and the Attorney General (or their representatives).¹⁰³ A similar objective has been achieved in Australia through the establishment of a Domestic Violence Prevention Council.¹⁰⁴ Such panels have the potential of influencing law reform to ensure that directives for support services are included in statutes.

For example, in Guyana the law places responsibility on a particular government official –

- to develop educational programmes aimed at preventing domestic violence
- to carry out appropriate research on the problem
- to train vulnerable groups in the skills necessary to combat domestic violence
- to raise community awareness of the needs of domestic violence victims
- to make government agencies more sensitive to the needs of domestic violence victims
- to help set up relevant support services for victims and for children from violent homes
- to provide special training for police and persons who counsel and treat victims
- to develop programmes to rehabilitate abusers. 105

Puerto Rico assigns similar statutory duties to its Women Affairs Commission, along with the duty to prepare annual reports evaluating the implementation of the domestic violence legislation. ¹⁰⁶ British Columbia, in Canada, has also developed legislation to support victims, through the passing of the Victims of Crime Act which gives victims a number of rights, such as the right to receive information on the justice system, victim services and related legislation. ¹⁰⁷

The role of a victims advisory panel, or some form of victim advocacy has potential in Namibia. In November 2008, the Ministry of Gender and Child Welfare launched a "High-Level Strategic Inter-Ministerial Committee on Domestic Violence and Violence in General" with a Cabinet mandate to advise on issues related to gender-based violence. While the founding members are not rape survivors, there is potential for rape survivors to provide recommendations for service provision and law reform through this committee.

(4) Victim support publications

One way to provide better support for rape victims is to publish guides on what victims can expect throughout the criminal justice process. Such publications would be one way to provide rape complainants with information without hiring additional personnel or implementing new protocols that place the burden on police or prosecutors to explain the process that follows

For more information, see UK Home Office, Victims Advisory Panel, < www.homeoffice.gov.uk/about-us/news/victims-panel>.

Domestic Violence (Amendment) Act (No 2), Act 37 of 1997, section 4.

¹⁰⁵ Guyana Domestic Violence Act 1996, section 44.

¹⁰⁶ Domestic Abuse Prevention and Intervention Act, 1989 (Puerto Rico), section 4.1.

¹⁰⁷ Victims of Crime Act RSBC [1996] (Canada), available at <www.qp.gov.bc.ca/statreg/stat/V/96478_01.htm>.

when a rape charge is laid. Providing appropriate written information to rape victims could also help alleviate the overwhelming amount of information they have to absorb over a short period of time in the wake of a traumatic experience, as well as providing a resource that can help rape victims take ownership of their cases.

The government of the United Kingdom publishes a booklet entitled *The Code of Practice for Victims of Crime: A guide for victims.* This publication enumerates the rights of crime victims and the services that can be expected from a variety of criminal justice agencies that a victim would encounter. The presumption is that should the police, the prosecutor or other service providers fail to provide the services it should, the victim is now armed with a guide that will help him or her to assert those rights.

Another model come from the provincial government of Alberta, Canada, which publishes a guide entitled *Victims of Crime Protocol: What victims of crime can expect from the criminal justice system.*¹⁰⁹ This booklet provides a "self-help" model of victim support that could easily be adapted for Namibia. This handbook is given to crime victims as soon as they report the crime to the police. It details what victims of crime should expect at various stages of an investigation, with the aim of explaining "what happens after a crime is reported to the police, and what standard of service you can expect in your contact with the criminal justice system".¹¹⁰

The creation of this guide was a collaborative effort between past crime victims, police, victim services units, prosecutors, court services, judges, sheriffs, and medical examiners. In addition to the objective of creating a guide for future victims, a second objective of the handbook was to give past victims of crime a voice in their communities: "Victims deserve to be heard. The Victims of Crime Protocol is one of the ways to help make that happen." The creation of the manual was thus conceptualised as part of the healing process for past victims, as well as a way to provide support for future victims.

The handbook includes background information on the aims of the criminal justice system and provides a basic definition of a "victim of crime." The definition includes an explanation of how bystanders or people with a relationship to a victim of crime are also indirect victims of crime. In a possible adaptation of this handbook in the context of rape victim support, it may be helpful to begin a victim support publication by defining who is a victim of rape and who is affected when an act of rape occurs. Even though the very act of going to the police suggests that the rape victim understands that rape has occurred, social myths about what is consensual sex (as revealed in the focus group discussions) may lead rape victims to

Criminal Justice System, The Code of Practice for Victims of Crime: A guide for victims, 2006, available at <www.cjsonline.gov.uk/victim/coming_forward/your_rights>. The guide is downloadable in a variety of languages. The UK Criminal Justice System has also published a corollary guide called *The Code of Practice for Victims of Crime* for each of the units under the umbrella of the Criminal Justice System. The guide details the responsibilities of each service/unit to crime victims.

Government of Alberta, Canada, *Victims of Crime Protocol: What victims of crime can expect form the criminal justice system*, 2007, available at www.solgps.alberta.ca/programs_and_services/victim_services/ Publications/2007/Victims%20of%20Crime%20Protocol.pdf>.

¹¹⁰ *Id* at page 2.

¹¹¹ *Ibid*.

later doubt what has transpired if they are later pressured or accused by community members of fabricating rape claims. People with close relationships to the rape victim should also be acknowledged as people who are indirectly affected by a rape. They need to understand that they, too, have a role to play in the rape case by providing support and encouragement to the rape victim throughout the difficult process ahead. Especially in communities where a rape victim might be shamed or taunted, the role of supporting family or friends becomes increasingly important.

The Victims of Crime Protocol next outlines what the crime victim should expect at various stages of the criminal justice process, from the initial report and investigation, through the trial and even after a convicted perpetrator is placed in custody. Based on findings from our focus groups and interviews, misconceptions about the court process remain prevalent in Namibia. For example, many people cited the intimidating thought of public court testimony as a deterrent from proceeding with a case, without knowing that court proceedings in rape cases should be closed to the public. Having to face one's rapist is another concern that has been cited, by people unaware that current legal provisions allow for a screen or one-way glass to be placed between the rape victim and the accused, so that the victim does not have to see the face of the perpetrator in court. Including this kind of information to clarify the court process in a guide for rape victims would help dispel common misconceptions about rape trials and familiarise rape victims with what to expect in an investigation or in court.

In Namibia, information for rape victims should crucially include medical information for rape survivors, such as information on post-exposure prophylaxis (PEP) which can reduce the chance of HIV transmission from a rape, on HIV testing after a rape, on medication which prevent other sexually-transmitted infections and pregnancy and on the possibility of obtaining a legal abortion where a pregnancy results from rape.

It appears likely that lack of information on how to navigate the legal system, on what to expect after laying a charge, on what to expect from various service provides and what to do if correct procedures are not followed can influence a victim's decision on whether or not to proceed with the case. Providing accessible information translated into a range of local languages is one way of providing victim support across all the different regions of Namibia.

Other international models consulted include some aimed specifically at children. One example is *What's My Job in Court?* – an activity book published by the provincial government of Ontario, Canada. This bright and inviting booklet uses interactive methods of communicating information about the court process in a child-friendly way – including mazes, dot-to-dots, pictures to colour in, question-and-answer exercises and stickers illustrating the key personnel which the child can stick onto a drawing of the courtroom.

A second example is *Busi Goes to Court*, published by the South Africa government. This fictionalised story of a child who has a positive court experience after being sexually abused, is accompanied by illustrations which children can colour-in. Busi's story illustrates the arrangements which can make the court appearance less traumatic, such as giving evidence via closed-circuit television and having questions put through a neutral intermediary.

Given the fact that child rapes account for about one-third of all rapes reported to the police in Namibia, we would suggest the development of a publication drawing on these models which targets child rape victims in Namibia.

(5) Specialist courts

Some countries have endeavoured to support rape victims by introducing specialist courts. A specialist court describes a court with an integrated system which allows complainants in specific types of cases to access a range of associated services in the same place. For instance, some specialist courts have a designated social worker working at the courthouse every day, a waiting area with support for childcare (especially important for domestic violence or family law cases where several family members may be involved in court proceedings) or a separate entrance for the victim. Another feature of specialist courts includes having the same judge presiding over domestic violence or family law cases involving the same parties so that he or she can follow the development and progression of the family situation. This provides a sense of consistency and continuity, prevents parties from having to rearticulate their stories every time they appear before a new judge, prevents the possibility of conflicting court orders and, in later proceedings, helps in holding offenders accountable to their sentences or release conditions.

In a 2002 study entitled *Review of the Effectiveness of Specialist Courts in Other Jurisdictions*, Plotnikoff and Woolfson surveyed ten different specialist courts (which included drug courts, domestic violence courts, community courts, and mental health courts) in three different countries (Australia, United States and Canada). The purpose of the study was to obtain information about the operation and effectiveness of specialist courts in other jurisdictions with a view to informing initiatives in the United Kingdom. Plotnikoff and Woolfson offer nuanced analysis on individual case studies in their report and generally found that successful specialist courts will have the following characteristics:

- a flexible judicial attitude: the judges involved in successful specialist courts are usually open and willing to experiment with novel, cooperative approaches to deter offenders and to participate in on-going processes of monitoring offender behaviour
- an adequate number of trained professionals who are committed to the holistic aims of specialist courts: this would include lawyers, administrators, probation officers, etc.
- a willingness to invest resources: the budget holder must have a vision and be willing to invest resources in specialist courts with an understanding that benefits will not be immediately tangible.¹¹³

Issues that victims of domestic violence face in the courtroom are similar in many ways to those faced by rape victims. This is true particularly in Namibia where rape cases, like domestic violence cases, often involve family members or persons otherwise well-known to the complainant – meaning means that rape victims may remain under the influence of their abuser even after their arrest. Even when rape occurs between strangers, the very violation is one of the most intimate acts of violence. Given these parallels between the circumstances surrounding domestic violence

¹¹² J Plotnikoff & R Woolfson, *Review of the Effectiveness of Specialist Courts in Other Jurisdictions*, 2005, available at <www.dca.gov.uk/research/2005/3_2005.pdf>.

¹¹³ *Id* at page 64.

and rape cases, aspects of domestic violence specialist courts that mitigate vulnerabilities or legal difficulties may serve as examples of elements that may be adopted in Namibia to better support rape victims.

In 2003, Mazur and Aldrich of the Centre for Court Innovation in the United States examined domestic violence courts in New York and identified various core principles that underlie the formation of specialist courts in such cases.¹¹⁴ The model for domestic violence specialist courts in New York is based on the goal of changing the community's view of domestic violence in order to mobilise a more coordinated response.

A key feature of the New York courts is a collaborative approach, implemented in practice by means of a regular "court partners" meeting which includes judges, court personnel, victim advocates, prosecutors, defence attorneys, probation and parole officers, representatives from batterers' programmes and a variety of social service agencies. This group convenes every six weeks to allow each agency to exchange ideas and suggestions on how to provide better support to domestic violence victims.

Another key feature is the provision of an extensive range of victim services in one place. For example, victim advocates (from both the district attorney's office and from independent victim advocacy organisations) and social workers are available in some courthouses in New York to help with safety planning, explain court procedures and identify someone to remain in contact with the victim throughout the duration of the case. According to Mazur and Aldrich: "Studies have shown that when victims receive assistance early in the court process, they are much more likely to remain engaged in their cases."

A comprehensive 2002 study by Sack establishing guidelines and best practices for domestic violence courts identifies similar core principles:

- victim and child safety
- keeping the victim informed
- offender accountability
- information sharing and informed decision-making
- institutionalised coordination of procedures and services
- training and education (sensitivity training for all parties who will be working with victims)
- judicial leadership (using the authority of the judge to confer legitimacy to the seriousness of domestic violence).¹¹⁶

In 1993, a specialised sexual offence court was established in Wynberg, South Africa. This court only adjudicates cases involving sexual offences and shares very similar objectives and structure as the specialist courts detailed above. The court was established with three objectives: (1) to create an integrated and efficient system to process and manage sexual offence cases; (2) to improve reporting and conviction of sexual offences; and (3) to reduce secondary victimisation

R Mazur & L Aldrich, "What Makes a Domestic Violence Court Work?: Lessons from New York", 42 *Judges' Journal* 5 (2003), available at <www.courtinnovation.org/_uploads/documents/whatmakesdvcourtwork.pdf>.

¹¹⁵ *Id* at page 8.

E Sack, *Creating a Domestic Violence Court: Guidelines and Best Practices*, 2002, available at < http://endabuse.org/programs/healthcare/files/FinalCourt_Guidelines.pdf>.

(victimising and traumatising the victim again in court).¹¹⁷ In addition to dedicating a courtroom to solely hear sexual offence cases, the Wynberg Sexual Offence Court also has separate waiting rooms for witnesses (to keep them from having to face the accused) and a room equipped with a closed circuit television (it is attached to the main court and can be used for video testimony). In efforts to centralise services and to provide better support for victims, the court is permanently staffed with a magistrate, a social worker and two or more prosecutors.¹¹⁸

In 2000, the South African government created 29 courts dedicated solely to sexual assault cases. These courts have successfully created more efficient systems and improved conviction rates. Even though they process only a small fraction of the thousands of sexual assault cases in South Africa per year, the conviction rate in 2002 rose from around 50% (in regular courts) to 75-90% in the new specialised courts. Further, the average time it takes to bring a case to trial decreased from 1½ years in traditional courts to 6-9 months.¹¹⁹

Despite the high success rate of such specialised courts, criticism of the Wynberg Sexual Offence Court in particular has focused on the lack of sufficient resources to fully carry out the goals of the court. Insufficient space in the waiting rooms and a high employee turnover rate (resulting in inadequately trained professionals) are some of the problems the court has encountered, underscoring the importance of ensuring that there are adequate continuing resources for specialised courts after they are created.¹²⁰

(6) Conclusion

The basic needs of a rape victim are support and information. This can be achieved through a number of methods which, when interlinked, are most likely to be successful. It is unlikely that any single option will effectively reduce the number of case withdrawals. However, the combined provision of services can assist in reducing the difficulties that a rape victim faces. As seen from the international examples, it is necessary to identify a focal point for the coordination of these services. The Woman and Child Protection Units are becoming increasingly well-established and should ideally be the base through which services are coordinated and delivered. Victim supporters could be based in these offices, and counselling courses and courses in self-defence could be offered through this channel. The Units could also be the point for distributing publications aimed at rape victims, for establishing contact with shelters and for organising court orientations. Providing publications and making appropriate referrals should not increase the work of the police staff at the Woman and Child Protection Units, but should rather instead take some of the burden of providing information and support off their shoulders. It would also help victims to know where to seek help, as a one-point access centre would be easier to advertise to communities than a diverse range of centres.

Stanton, Lockrenberg & Mukasa, *Improved justice for survivors of sexual violence? Adult survivors' experiences of the Wynberg Sexual Offences Court and associated services*, 1997 (on file with author).

¹¹⁸ M Sadan, L Dikweni & S Cassiem, *Pilot assessment: The sexual offence court in Wynberg & Cape Town and related services*, 2001, available at <www.idasa.org.za/gbOutputFiles.asp?WriteContent=Y&RID=741>.

N Itano, "S Africa Finds 'Rape Courts' Work", *Christian Science Monitor*, 29 January 2003, available at www.csmonitor.com/2003/0129/p01s04-woaf.html.

¹²⁰ L Vetten, "While Women Wait . . . Can Specialist Sexual Offences Courts and Centers Reduce Secondary Victimization?", 5 *Nedbank ISS Crime Index* 13-16 (2002), available at <www.iss.org.za/Pubs/CrimeIndex/01Vol5No3/Women2.html>.



Chapter Six

Recommendations

The decision to withdraw a rape complaint belongs primarily to the victim. But as the findings in this study suggest, external pressures often discourage victims from continuing with their cases. Some of these pressures are clearly observable, such as "threats of physical harm". Others may be very subtle, such as "pressure from the family". A single victim may have many reasons for withdrawing her complaint – some of which she may not even consciously realise. In order to help victims of rape, Namibian stakeholders should work together to meet four primary goals:

- creating new programmes that provide direct assistance to victims of rape
- strengthening and improving the many services already in place
- identifying and eliminating the insensitive or illegal conduct and institutional inefficiencies that have caused some women to withdraw their cases
- educating communities to overcome the prejudice and the stigma associated with rape.



Stakeholders can work toward achieving these goals by following the targeted recommendations suggested in this chapter. These recommendations address each of the ten causes for rape case withdrawals analysed in Chapter Three. Because stakeholders will play many different roles in resolving the problem of rape complaint withdrawal, separate recommendations are directed toward Parliament, the Office of the Prosecutor-General, Woman and Child Protection Units, traditional leaders and civil society. While all of the recommendations are national in scope, some regional recommendations have also been included to address concerns which were specific to particular locations.

The recommendations are organised in two parts. Section 6.1 presents recommendations aimed at the specific causes of case withdrawals identified in this study. Section 6.2 presents additional general recommendations. Many of the recommendations are followed by comments that explain the reasons for proposing such a recommendation – and in some cases the countervailing arguments which might mitigate against the proposed step.

6.1 Factor-specific recommendations

(1) Compensation

Compensation may be defined as any extra-judicial restitution for rape. In practice it can take many different forms – compensation to punish the perpetrator, compensation for actual loss suffered by the victim (such as ripped clothes and medical bills), compensation for less easily quantifiable damages to the complainant (pain and suffering), and compensation offered primarily as a bribe to induce the complainant to withdraw the criminal complainant.

Confronting the issue of compensation raises several challenges. Unlike the other causes of rape complaint withdrawal, compensation can be both helpful and harmful to victims of rape, their families and their communities. Compensation can be appealing to a victim who feels that she is unlikely to receive any other acknowledgment of the harm done. It is understandable why a destitute woman would accept compensation. Many rape victims are very poor, and these particularly vulnerable victims sometimes confront additional financial hardships as a result of their rape. For these victims, the financial support offered by compensation provides a more tangible redress of their harm than a lengthy legal process. Moreover, at present, the Criminal Procedure Act of 2004, which allows for the recovery of damages resulting from crimes as an adjunct to the criminal trial, is not yet in force. Thus, victims of rape still lack a formal legal option for seeking compensation for their injury. (A separate civil action is an option in theory, but financially and practically inaccessible to most rape victims in Namibia.)

Compensation also plays a critical role in the historic and cultural practice of many traditional courts. This practice is legally protected under the Community Courts Act 10 of 2003, and should be allowed to continue. However, the decision to seek compensation is often one that the victim is forced to make. Sometimes, she may have no role in the choice at all. At other times, she may feel that she has no realistic alternative because of external pressures and financial burdens. When a victim accepts compensation under these circumstances, her decision is not

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freely given. She lacks the capacity to make a viable choice. The exchange of compensation becomes coercive.

The following recommendations are designed to preserve compensation in certain appropriate contexts, but to eliminate compensation in cases where it is not only inappropriate, but illegal as well.

Recommendations for Law Reform and Development Commission and Parliament

1. Consider enacting a law specifically prohibiting "coercive compensation".

As discussed in more detail below, the existing common law offence of obstruction of justice (and the included offence of attempting to obstruct justice) could be used to punish those who attempt to induce a rape complainant to withdraw a charge or not go to the police in the first place. This offence can be applied in any situation where there is a possibility of prosecution. The intent of the person who offers compensation is what separates true obstruction from more innocent circumstances, as the accused must offer compensation with an intention of avoiding prosecution or conviction in order for the offence of obstruction of justice to apply. In other words, the act that should be punished is when a complainant is persuaded, through money or otherwise, to withdraw a legitimate charge or not go to the police in the first place. Using the existing offence of obstruction puts coercive compensation into the same category as using threats or intimidation to force someone to withdraw a case. It is possible that public awareness of the issue can be raised sufficiently by a prosecution for the existing crime of obstruction of justice, with accompanying media coverage.¹²¹

However, although the crime of obstruction of justice is already available for the harm in question, there are several arguments as to why coercive compensation may be better regulated with a more specifically-targeted criminal statute. First, compensation should not necessarily be deterred in all circumstances. While we would not want to condone compensation as an alternative to criminal prosecution in viable cases, it must also be conceded that compensation may at times be in the best interest of the victim and the law should respect her wishes and needs by preserving this channel for redress. Second, creating a narrow statute reduces the risk of deterring desirable conduct – such as compensation which is provided as an adjunct to criminal proceedings or in a case where the rape victim had no intention of laying a criminal charge because of, for example, lack of corroborating evidence or unrelated fears of the criminal justice process. Third, creating a new law could stimulate debate and raise public awareness more pointedly than use of the more general crime of obstruction of justice. Fourth, use of the common-law crime of obstruction of justice in this context could in theory result in the charging of rape complainants for *accepting* compensation and then seeking to withdraw their rape cases, thus constituting a second victimisation. While it would be good

¹²¹ See CR Snyman, Criminal Law, 3rd edition, Durban: Butterworths, 1995 at pages 318, 319, 322. See *S v Mouton & Others* 1993 NR 260 (HC) and *S v Ipinge* 1997 NR 181 (HC) on the application of this commonlaw crime in Namibia.

policy to reduce case withdrawals, this should be done through encouragement and support rather than through the threat of criminal sanction.¹²²

Moreover, a clear and understandable law that defines the parameters of the prohibited conduct could have several positive effects. Amongst these: (1) Future offenders may be more likely to be aware of the illegality of the conduct in question, deterring some potential perpetrators from engaging in the act. (2) Police may be more likely to effect arrests on this basis. (3) Civil society may have greater success educating the national community about the problem of compensation, a rape victim's right not to be coerced into compensation, and a perpetrator's criminal liability for depriving – or attempting to deprive – a rape victim of this right.

The main arguments against enacting such a law would be as follows: (1) The proposed offence does overlap with the existing crime of obstruction of justice. (2) It may not be feasible to devote already-stretched police and prosecutorial resources to the proposed new crime. (3) It is likely that the same factors which inhibit rape complainants from pursuing criminal charges might discourage them from asserting their genuine wishes in the matter of compensation (either before or after an offer of compensation is accepted), so that a law prohibiting "coercive compensation" might not be workable in practice.

Public debate on coercive compensation might be a useful way of stimulating discussion on the appropriate role of rape victims in decisions about compensation. Although the exact content of such a law would require extensive consultation and discussion, a basic model is given below as a starting point. Even if a law prohibiting "coercive compensation" is never adopted in Namibia, it is worthwhile to consider what this crime might look like, what types of behaviour it could prohibit and how it would potentially help address the problem of rape complaint withdrawal. Thus, the draft below is intended both as a possible consideration for lawmakers and as a guideline for prosecutors when deciding how to frame certain types of compensation as an obstruction of justice offence under the existing law.

Proposed Criminal Offence: Coercive Compensation

Definitions

In these regulations a word or expression to which a meaning has been given bears that meaning and, unless the context indicates otherwise:

"rape complainant" means any person who has filed a complaint of rape;

"accused" means any person accused of the crime of coercive compensation or attempted coercive compensation;

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Although it is technically possible that the victim could be charged with obstruction, this could be prevented by means of prosecutorial policy as there would be little public interest in prosecuting the victim. In any event, it would probably be hard to prove the requisite intent for the victim, who is more likely to be acting in response to an offer of compensation coupled with fear of the consequences of continuing with the prosecution, rather than from an intent to obstruct justice.

"coercion" means the use of intimidation to compel that individual to do some act against his or her will by means of psychological pressure, physical force, or threats and "coerce" shall have a corresponding meaning;

"intimidation" means intentionally inducing fear in the complainant (or a family member or dependant of the complainant) by committing physical abuse against a family member or dependant of the complainant; threatening to physically abuse the complainant or a family member or dependant of the complainant; exhibiting a weapon; or any other menacing behaviour, including sending, delivering or causing to be delivered an item which implies menacing behaviour;

"withdraw a rape complaint" means submitting a formal withdrawal statement to the Namibian Police requesting the Prosecutor General to withdraw a rape case;

"object of value" means any article or property with a market value offered as restitution for a rape;

"service of value" means any service with a market value offered as restitution for a rape;

"traditional court" means a person or body with jurisdiction to hear and determine any civil or criminal matter in the area of a traditional community or in any part of such area, whether or not such court has been formally recognised under the Community Courts Act, Act No 10 of 2003.

Coercive compensation

- (1) A person is guilty of coercive compensation if that person:
 - (a) purposely offers money, cattle, goats or any other object of value, or any service of value, to a rape complainant with the specific intent of causing that rape complainant to withdraw a rape complaint against his or her will; or
 - (b) purposely coerces a rape complainant to accept an offer of money, cattle, goats, or any other object of value, or any service of value, with the specific intent of causing that rape complainant to withdraw a rape complaint against his or her will.
- (2) A person is guilty of attempted coercive compensation if that person attempts the acts prohibited by subsection (1).¹²³
- (3) A member of a traditional court is guilty of facilitating coercive compensation if that court sanctions an agreement whereby money, cattle, goats or any other object of value, or any service of value, are offered to a rape complainant or her family with the specific intent of causing that rape complainant to withdraw a rape complaint against his or her will.
- (4) A complaint of coercive compensation or attempted coercive compensation may be filed by a rape complainant or any other person acting on a rape complainant's behalf and with his or her consent.

¹²³ The envisaged crime would be committed when the accused attempts to pay the victim for the purpose of getting the victim to withdraw the charge. If the accused has the intent of causing the victim to withdraw the charge, the crime is committed regardless of whether the accused's efforts actually result in having the charge withdrawn. An accused would still be guilty of coercive compensation (or attempted coercive compensation) if the requisite intent was present, even if the complainant rejected the offer of compensation or accepted the money and then continued with the prosecution.

Defences

It shall be a complete defence to the crimes of coercive compensation and attempted coercive compensation if there is evidence to show that the rape complainant filed a rape complaint with dishonest intent for the purpose of extorting a pecuniary gain from the accused.¹²⁴

Sentencing

- (1) Coercive compensation is punishable upon conviction by
 - (a) where the coercive act involves the use of physical force, a fine of up to XXX or imprisonment of up to 4 years, or both.
 - (b) in all other circumstances, a fine of up to XXX or imprisonment of up to 2 years, or both.
- (2) Attempted coercive compensation is punishable upon conviction by
 - (a) where the coercive act involves the use of physical force, a fine of up to XXX or imprisonment of up to 2 years, or both.
 - (b) in all other circumstances, a fine of up to XXX or imprisonment of up to 1 year, or both.
- (3) The following shall be considered aggravating circumstances for the purposes of sentencing:
 - (a) The coercive compensation or attempted coercive compensation, involved the use, or the threat of use, of physical force or physical harm.
 - (b) The coercive compensation or attempted coercive compensation, was for the purpose of causing a release from lawful custody.
 - (c) The accused has been convicted of a prior violent crime against the rape complainant.
 - (d) The accused is a member of the police force who acted or attempted to coerce the rape complainant to withdraw her rape complaint.
 - (e) The rape complainant has a protection order against the accused under the Combating of Domestic Violence Act No 4 of 2003.
 - (f) The rape complainant was particularly vulnerable to the coercive compensation because of poverty or some other factor.
 - (g) The accused is a member of the victim's family and stands to benefit materially from the victim's receipt of compensation.
- (4) The following shall be considered mitigating circumstances for the purposes of sentencing:
 - (a) The accused proffers evidence that the coercive compensation or attempted coercive compensation was sanctioned by a leader or officer of a traditional court with jurisdiction over the matter.
 - (b) The accused proffers evidence of his genuine belief that the conduct adjudged coercive compensation or attempted coercive compensation was considered by him or her to be sanctioned by the customary law of the community in question.
- (3) A member of a traditional court who facilitates coercive compensation may be punished upon conviction by:

Participants in the Keetmanshoop and Katutura focus groups warned that some women have consensual sex with men and then extort money from them by filing a rape case and refusing to withdraw it until a desired amount is paid. Under these circumstances, the rape complainant could be charged with extortion.

- (a) public admonition by the court; and
- (b) suspension of authorisation to be part of a traditional court for a period determined by the court or, in particularly egregious cases, permanent loss of authorisation to be part of a traditional court, in terms of sections 7 and 8 of the Community Courts Act 10 of 2003 or any other law.

The following examples demonstrate how such a statute might be applied in practice:

EXAMPLE 1: Coercive compensation by accused rape perpetrator

Facts: Pieter, a 25-year-old farm worker raped Martha, his 19-year-old neighbour. Pieter offered Martha N\$1000 to withdraw her rape case. Martha did not want to withdraw her case, but Pieter coerced her to do so.

Charge: Pieter will be charged with coercive compensation.

Consequences: If convicted, Pieter could be sentenced to up to 4 years in prison (if physical force was used) or 2 years (if the coercion took some other form).

EXAMPLE 2: Attempted coercive compensation by accused rape perpetrator

Facts: Pieter, a 25-year-old farm worker raped Martha, his 19-year-old neighbour. Pieter offered Martha N\$1000 to withdraw her rape case. Martha did not want to withdraw her case, but Pieter attempted to cause her to do so. Martha did not withdraw the case.

Charge: Pieter will be charged with attempted coercive compensation.

Consequences: If convicted, Pieter could be sentenced to up to 2 years in prison (if physical force was used) or 1 year (if the coercion took some other form).

EXAMPLE 3: Coercive compensation by third party

Facts: Pieter, a 25-year-old farm worker raped Martha, his 19-year-old neighbour. Pieter offered Martha N\$1000 to withdraw her rape case. Martha did not want to withdraw her case, but Martha's uncle coerced her to accept Pieter's offer and withdraw her case. Martha withdrew the case.

Charge: Martha's uncle will be charged with coercive compensation. Pieter may also be charged with coercive compensation if it is proven that he offered the compensation with the specific intent of causing Martha to withdraw her rape case.

Consequences: If convicted, Martha's uncle could be sentenced to up to 2-4 years in prison (depending on the type of coercion used).

EXAMPLE 4: Attempted coercive compensation by third party

Facts: Pieter, a 25-year-old farm worker raped Martha, his 19-year-old neighbour. Pieter offered Martha N\$1000 to withdraw her rape case. Martha did not want to withdraw her case, but Martha's uncle attempted to force her to accept Pieter's offer and withdraw her case. Martha did not withdraw the case.

Charges: Martha's uncle will be charged with attempted coercive compensation. Pieter may also be charged with attempted coercive compensation if it is proven that he offered the compensation with the specific intent of causing Martha to withdraw her rape case.

Consequences: If convicted, Martha's uncle could be sentenced to up to 1-2 years in prison (depending on the type of coercion used).



2. Enact a provision similar to that in the dormant Criminal Procedure Act 25 of 2004 allowing for compensation and restitution to be sought as an adjunct to criminal trials for rape (and other crimes).

Another approach to limiting the number of withdrawals that result from the exchange of traditional compensation is to bring into force the provision in the Criminal Procedure Act 25 of 2004 which would give victims of rape (and other crimes) the opportunity to seek monetary damages as part of the criminal justice process. However, it is difficult to gauge how effective this would be as a substitute for the informal systems of compensation already in place. Unlike traditional compensation, which contributors to this study estimated might take only a matter of weeks to resolve, receiving civil damages for rape could take several years.

Furthermore, even where compensation for damages is addressed as an adjunct to the criminal case, difficult issues of proof will still arise in most cases. The provision in the 2004 Act directs the court to award the victim compensation for injury, damage or loss resulting from the crime, or to make an order of restitution in respect of the property involved in the offence, acting "on the application of the victim or of the victim's legal practitioner or the prosecutor acting on the instructions of the victim". This provision notes that "no court may make such an award or order unless the injury, damage or loss, including, where applicable, the quantum thereof, and the liability of the convicted person therefore, have been proved on a balance of probabilities".

The damages resulting from rape – such as pain, suffering and psychological trauma – are often particularly difficult to prove and to quantify. This raises the question as to whether prosecutors, who are already over-stretched, would be willing and able to take on board the

task of proving civil damages for a victim who could not afford a private legal practitioner. Another issue to consider is that proving the amount of damages might entail additional testimony, which could add to the trauma of the court process. Thus, it may be that this option even if enacted will not prove an effective substitute for compensation negotiated by families or traditional leaders.

The countervailing advantage would be that the criminal justice procedure would allow for incarceration of persons who have failed to pay damages (for contempt of court), whereas traditional leaders lack this enforcement mechanism. Before such a provision is brought into force, it should be determined as a matter of public policy whether the receipt of damages under such a provision should preclude a victim from also seeking traditional compensation (which may be viewed as being either compensatory or punitive in nature).¹²⁵

Criminal Procedure Act 25 of 2004 COMPENSATION AND RESTITUTION

Section 326-Court may award compensation or order restitution where offence caused injury, damage or loss

- (1) (a) Where a person is convicted by the High Court or a magistrate's court of an offence against the person or against property and it has been proved during the trial of that person that the act or omission constituting the offence caused injury, damage or loss, whether patrimonial or otherwise, to the victim of that offence, the court must, subject to section 24(2) of the Community Courts Act, 2003 (Act 10 of 2003), on the application of the victim or of the victim's legal practitioner or the prosecutor acting on the instructions of the victim, award the victim compensation for that injury, damage or loss, or make an order of restitution in respect of the property involved in the offence, but-
 - (i) no court may make such an award or order unless the injury, damage or loss, including, where applicable, the quantum thereof, and the liability of the convicted person therefore, have been proved on a balance of probabilities;
 - (ii) a district court or divisional court may not make such an award if the amount of compensation applied for exceeds its civil jurisdiction, unless the convicted person against whom the award is to be made and the victim consent in writing thereto;
 - (iii) where a person is convicted under section 25(1) of the Children's Act, 1960 (Act 33 of 1960), of having conduced to the commission of an offence, the court may make such an award or order against that person notwithstanding that the victim has not applied for compensation.
- (b) Subparagraph (ii) of paragraph (a) does not apply where the court makes an order for the restitution of property.
- (2) The presiding judge or magistrate must inform the victim of an offence referred to in subsection (1)(a) of his or her right to apply under this section for compensation.

¹²⁵ See "Victim Restitution in the Criminal Process: A Procedural Analysis", 97 Harvard Law Review 931 (February 1984).

- (3) For the purposes of determining the amount of the compensation or the liability of the convicted person therefore, the court may refer to the evidence and the proceedings at the trial or hear further evidence either on affidavit or orally.
- (4) Where the High Court or a magistrate's court has made an award or an order under subsection (1)(a) or (7), respectively, that award or order has the effect of a civil judgment of the court that made the award or order.
- (5) Where money belonging to the convicted person is taken from that person on his or her arrest, the court may order that payment be made immediately from such money in satisfaction or on account of the award.
- (6) (a) A person in whose favour an award has been made under this section may, within 14 days of the date on which the award was made, in writing renounce the award by lodging with the registrar or the clerk of the court in question a document of renunciation and, where applicable, by making a repayment of any money paid under subsection (5).
- (b) Where the person referred to in paragraph (a) does not renounce an award under that paragraph within the period of 14 days, no person against whom the award was made is liable at the suit of the first-mentioned person to any other civil proceedings in respect of the injury, damage or loss for which the award was made.
- (7) Where the victim or convicted person is represented by a legal practitioner at the hearing of the application under subsection (1)(a) for compensation, the court may, if costs additional to that involved in the criminal trial were occasioned by that application, make an appropriate order as to costs.

3. Consider the creation of a victim compensation scheme applicable to all crime victims.

An attractive alternative to utilising the dormant *Criminal Procedure Act 25 of 2004* is to establish a comprehensive, state-funded, state-administered victim compensation scheme. Victim compensation schemes currently exist in many countries, including Australia, Canada, Japan, Korea, New Zealand, the Philippines, Taiwan, the United Kingdom and the United States. The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) states that offenders should, where appropriate, make fair restitution to victims, their families or dependants – including the return of property or payment for the harm or loss suffered and reimbursement of expenses incurred as a result of the crime. However, it goes on to say that when compensation is not fully available from the offender or other sources, governments should endeavour to establish national compensation funds to provide financial compensation to:

- (a) victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;
- (b) the family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimisation.¹²⁶

United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Adopted by General Assembly resolution 40/34 of 29 November 1985, Articles 8 and 12-13.

The theories animating victim compensation programmes gained traction in the late 1950s and early 1960s through the work of Margaret Fry, a British advocate for penal reform. Recognising the inadequacy of the available restitution remedies, Fry proposed a scheme for allocating compensation to victims. A version of Fry's scheme took effect in England in 1964.

Even in the mid-twentieth century, the idea of a victim compensation scheme was not a novel one. Historians and anthropologists have identified evidence of such systems in ancient law, including the Hammurabi Code, which required robbers to reimburse their victims for losses and provided for a state payment to the kinsfolk of murder victims. Throughout the nineteenth century, political theorists as diverse as British utilitarians and Italian positivists advocated for at least a minimal, state-managed programme to compensate the victims of crime.¹²⁸

Contemporary justifications for victim's compensations schemes turn on three theories. The first – and least tenable – of the three is that the state has a duty to compensate victims because it failed to prevent the harm inflicted by criminals. This broad theory of state liability is met with a reluctance to hold the state accountable for the wrongful actions of others. Most critics of this justification emphasise that the state undertakes to do little else than ensure a general condition of public order. Thus, it is unreasonable to hold the state financially responsible for the damages resulting from every crime that occurred despite the reasonable efforts by its police force to prevent such harm.

A second justification for victim compensation is that the state, through exercising its power to incarcerate, impedes the victim's right of private remedy. This understanding acknowledges the difficulty of extracting compensation from a criminal who, whilst detained, is prevented from working. However, this rationale for compensation is not very persuasive because the arguments in favour of incarcerating criminals are so strong. (In any event, even a criminal who was not incarcerated might not have the means to pay compensation for the harm caused by the crime.)

A third justification for a victim's compensation scheme is grounded in familiar theories of social welfare. This approach recognises a duty to victims that is rooted in the concepts of loss spreading and charity. On this understanding, society at large is held accountable for producing the conditions that result in crime. While the state cannot be held liable for discrete crimes, the social welfare justification recognises that it is unfair for victims to bear the full cost of harms that are beyond their control. Thus, by imposing a compensatory scheme, the risk of incurring the damages that accompany a crime is spread throughout all members of the community. In this manner, all members of the community pay a small tax as an insurance against incurring the full expense of the unexpected misfortune that could befall them in the event of a crime.

While this third justification is the most appealing, there are still many shortcomings to the approach. One counterargument is that not every citizen in society runs an equal risk

¹²⁷ B Galaway & L Rutman, "Victim Compensation: An Analysis of Substantive Issues", 48 *Social Service Review* 60, 61 (1974).

¹²⁸ *Ibid*.

of becoming a victim of a crime. Yet those who take private steps to ensure compensation for losses from crime are nonetheless required to opt into a state insurance programme. Thus, despite its narrowly-targeted goal, such a scheme involves an element of redistribution of wealth as an inevitable consequence. To preserve the fairness of this approach, a balance must be achieved between alleviating the unfairness of becoming a victim of a crime and imposing the losses experienced by the victim on equally blameless others.¹²⁹

The cost-spreading principle of a victim compensation scheme is similar to the approach taken in respect of the benefit schemes administered under Namibia's Social Security Act 34 of 1994 which are funded by contributions paid by all employees and employers, and the Motor Vehicle Accident Fund 10 of 2007 which is funded in part by a general levy on petrol and diesel.

By requiring victims to make a reasonable showing of damages, it is possible to evaluate the extent of their losses, and thus to eliminate any redistribution of losses beyond what was caused by

the crime itself; moreover, it also becomes possible to eliminate the effect of any "double compensation" through an alternative social insurance programme. Fair compensatory awards can be allocated by establishing clear guidelines on eligibility for compensation and defined limits on the extent to which such payments will cover the full losses of the crime.¹³⁰

In creating a victim compensation scheme, the first concern is establishing a source of funding. Because taxing convicted criminals would not generate enough revenue to provide for the payment of victim compensation, some funding would have to come through general taxation – as justified by the loss-spreading, "insurance" rationale articulated above. This would be the biggest hurdle to the establishment of such a scheme in Namibia in the present economic climate.

¹²⁹ "Compensation for Victims of Crime", 33 University of Chicago Law Review 531 (1966).

GE Rejda & EM Meurer, Jr, "An Analysis of State Crime Compensation Plans", 42 *Journal of Risk & Insurance* 599 (1975).

Once a source of funding is identified, there are several possible alternatives for administering the regime. Three common approaches include: (1) utilising the existing court system; (2) utilising an existing administrative agency; and (3) creating a new, quasi-judicial administrative body to implement and oversee the programme. A survey of administrators of such programmes in the United States showed a clear preference for the third option. The advantages to establishing a separate, quasi-judicial body include flexibility in administration, uniformity in implementation and informality in procedure.¹³¹

To operate a programme under the third option, the first step is the establishment of a Crime Compensation Board to hear claims from victims. This Board would be vested with the power to promulgate rules on the operation of its hearings, to provide for a paid staff, to subpoena witnesses and documents, and – most importantly – to reach decisions on the basis of evidence that might be either inadmissible or insufficient in a court of law.¹³²

Once the Board is constituted, it would need to establish certain minimal procedural guidelines. The first of these are requirements for claimants. At a minimum, all victims would be required to show that they reported the crime to police and assisted the police in bringing the criminal to justice – but they would not necessarily be required to show that a guilty verdict was reached in a criminal trial. (A requirement of cooperation with police provides further incentives for victims not to withdraw claims, as it would be within the discretion of the Board to determine whether a victim who withdrew her complaint could be considered to have met this requirement.) An additional requirement for claimants would be that victims seek compensation only for veritable criminal offences. Again, this does not necessarily impose a requirement that the assailant be convicted. It has been asserted that victims in cases where the accused is acquitted – and especially victims in cases where the accused was never apprehended – should be eligible to receive compensation provided that they make a showing of causation and damages.¹³³

The Board would operate by reviewing all claims in an impartial hearing and awarding compensatory payments on a similar basis as common law damages. Decisions by the Board should be non-reviewable, except in situations of gross misconduct – in which case, an appeal could be made to the Ombudsman to assess the conduct of the Board and to award the victim a new hearing. When reviewing claims for damages, the Board should base their judgement on three factors: (1) whether the victim satisfies the eligibility requirements outlined in the preceding paragraph – that is, the reporting and assisting requirements; (2) whether the evidence shows that a crime occurred; and (3) whether the victim experienced a compensable loss resulting from a criminal offence. All factors should be proved based on a standard of

¹³¹ J Brooks, "Compensating Victims of Crime: The Recommendations of Program Administrators". 7 Law & Society Review 445 (1973).

¹³² Id at pages 449-450. An existing authority should appoint the members of the Board. In Great Britain, the Home Secretary makes such appointments. In Scotland, the Secretary of State makes appointments after conferring with the Lord Chancellor. In New Zealand, the Government confirms appointments made on the recommendation of the Ministry of Justice. In the United States, where each victim's compensation scheme is run on a state-wide basis, the governor of each state with such a regime in place is responsible for appointments to the Board. In Namibia, the agency best positioned to make such appointments would be the Ministry of Justice.

¹³³ *Id* at pages 456, 460.

"equal likelihood" – that is, if the facts show a 50% chance that the crime occurred and that the victim experienced damages as a result of that crime, then the victim has met her burden and the compensation should be awarded. Once the determination is made that the victim has met the 50% burden, the award of damages should be allocated based on the amount of the demonstrated losses. Such proceedings could have a bifurcated nature, whereby determinations of damages are made separately from determinations of the validity of a claim.

Existing victim's compensation regimes have grappled with how to determine the appropriate amount of damages for victims of rape. Unlike other categories of crime, such as physical assault, the damages associated with rape are often less apparent. To account for this disparity, the Board should establish a uniform compensatory amount as a rebuttable presumption to apply in cases of rape. Thus, the victim should be allocated damages at least equivalent to that minimum, with greater awards available for victims showing extreme physical injury or psychological harm. The justifications for awarding rape victims this unique treatment are manifold. Amongst these, it reduces the costs associated with requiring comprehensive psychological evaluations for each victim in order to establish that her rape resulted in damages. Moreover, it reduces the extent to which the rape claimants will have to bear a burden that is unequal to that of other claimants when undertaking to prove damages.

Payment of compensation could be made through either a lump sum allocation or periodic instalments (in situations where the victim incurred a permanent or long-term disability as a result of the crime). While most jurisdictions recognise the need for a damage cap, few impose a minimum loss requirement. Minimum loss requirements, which demand that the victim make a showing of a sufficiently compensable loss, run the risk of excluding particularly vulnerable victims whose losses, although monetarily small, carry a substantial burden owing to these victims' profound financial need. In Namibia, where poverty levels are amongst the worst in the world, a victim's compensation regime must be careful not to exclude small damages payments to those victims for whom "no loss is trivial". Conversely, because a compensatory regime should not provide victims with a windfall gain, any award of civil damages or traditional compensation should offset the amount of the award determined by the Board.¹³⁴

A victim compensation scheme in Namibia would give rape complainants (and other crime victims) access to damages through a channel other than traditional compensation – which, in practice, almost always results in the withdrawal of the rape complaint. A victim compensation scheme would be particularly attractive in Namibia, where both crime and poverty are widespread. Vesting the state with the ability to compensate victims allows those who could not afford the representation of private counsel to receive the assistance necessary to offset the effects of the harm that they experienced as crime victims. Moreover, requiring that victims report crimes to, and cooperate with, police as a condition of their eligibility for compensation will have the dual effect of reducing the number of fraudulent claims and increasing the number of successful police investigations.

Because compensation will be available to all victims of crime, not merely rape victims, this would lessen the bite of allegations that rape victims are motivated by a desire to profit from their

¹³⁴ *Id* at pages 461-62.

misfortune. A state-sanctioned, state-funded, state-operated victim compensation scheme would have the effect of legitimising the claims of victims of crime while causing the state to internalise the costs associated with its failure to prevent such crimes in the first instance. Amongst the challenges to operating such a scheme would be sourcing adequate funding, guarding against fraudulent claims and the burden and expense of administering the scheme. We would assert that this is an idea which warrants more detailed study and consideration.

Recommendations for the Office of the Prosecutor-General

1. Bring charges against persons who obstruct the prosecution of rape cases.

If coercive compensation is not established as a separate criminal offence, prosecutors should use the principles in the proposed law as a guideline for identifying cases in which to bring charges of obstruction of justice, including:

- charges against those who offer compensation to a rape victim with the intent of causing the complainant to withdraw the case against his or her will; and
- charges against those who coerce a rape victim to accept compensation with the intent of causing the complainant to withdraw the rape case against his or her will.

In addition, prosecutors might be able to lead evidence of an offer of compensation as evidence of an admission of guilt on the part of the accused – although there could admittedly also be other motivations for offering compensation, such as the desire to avoid the inconvenience and embarrassment of arrest and trial, or the fear that bail might be denied even though the accused was innocent. (As noted below, where compensation is provided in accordance with customary law norms and without any intent to coerce the complainant to drop the criminal case, this fact should not be admissible during the criminal trial before the court reaches a verdict.)

An offer of compensation might also be relevant on the issue of sentencing. An offer of compensation made to avoid prosecution could be cited as evidence of lack of remorse and accountability on the part of the accused. On the other hand, offers of compensation in some contexts, where there was no intent to evade criminal prosecution, could in theory be evidence that the accused did show remorse and make a good faith effort to atone for his crime. (However, good faith compensation should not ever be treated as a basis to impose sentences lower than the prescribed minimum sentences for rape.)

Under the American system, a conviction for obstruction of justice or coercive compensation in respect of a rape would probably be admissible in the underlying rape trial under the rule of "forfeiture for wrongdoing," Federal Rules of Evidence 804(b). This principle could also be helpful if applied in Namibia because it would allow prosecutors to be able to introduce evidence of a prior conviction under these very narrow circumstances. Section 211A of the Criminal Procedure Act 51 of 1977 has already been amended by the Combating of Rape Act 8 of 2000 to allow previous convictions for similar offences by the accused to be admitted in a rape trial where such evidence "has significant probative value that is not substantially outweighed by its potential for unfair prejudice to the accused". The provisions could be extended to allow for admission of a conviction of coercive compensation or obstruction of justice in connection with the alleged rape, bearing in mind however that even an innocent accused might in theory offer compensation to avoid the inconvenience and embarrassment of a criminal trial.

2. Work together with civil society organisations to develop and distribute a pamphlet explaining the criminality of obstructing the prosecution of a rape case.

The responsibility for raising awareness of the illegality of coercive compensation (regardless of whether coercive compensation is established as an offence on its own or remains a manifestation of the offence of obstruction of justice) lies in part with the Office of the Prosecutor-General. This Office's legal interpretation should guide the NGO community in the preparation and dissemination of information about this crime. The Office of the Prosecution General should work closely with NGOs, such as the Legal Assistance Centre, to produce a pamphlet on coercive compensation. Such a pamphlet could include the following information:

- a definition of coercive compensation: Coercive compensation may be summarised as any act, or attempt, to deprive a rape victim of the right to continue with the rape case that takes the form of offering her money, cattle, goats or any other valuables. It should be emphasised that offering a rape victim compensation for the crime is not illegal unless it is done with the intent of inducing her to withdraw the complaint.
- several examples of coercive compensation (or compensation that constitutes an obstruction of justice) and possible legal consequences for the offenders in each example.¹³⁶
- information for rape victims on who to contact if they have been victimised by coercive compensation: This should include contact information for all of the Woman and Child Protection Units in Namibia, the Office of the Prosecutor-General, NGOs which work in the legal field, supportive counsellors and all regional offices of the Ombudsman. The pamphlet should advise the rape complainant to speak to the investigating officer in the rape case in such a situation, in case the offer of compensation is relevant to the rape trial.

3. Work together with civil society organisations to develop and distribute a pamphlet explaining that compensation and criminal prosecution are not mutually exclusive.

Even if compensation under coercive circumstances is eliminated, some non-coercive compensation will still occur. In these cases, it is important that the rape victim is aware of her right to both receive compensation and continue with the criminal prosecution of her rape case. The legal justification for this right is derived from an interpretation of the Community Courts Act 10 of 2003. Under section 12, traditional courts are granted the jurisdiction to "hear and determine any matter relating to a claim for compensation, restitution or any other claim recognised by the customary law".

Because traditional courts lack criminal jurisdiction, determining compensation for rape does not strip criminal courts of their jurisdiction to prosecute that offence. In contrast to the civil law concept of concurrent jurisdiction (where two courts share jurisdiction and the parties must select only one forum) or the criminal and constitutional law concept of double jeopardy (which prevents a defendant from being tried twice for the same crime), a rape in Namibia may be legitimately addressed by both compensation in a traditional court and through a

Some examples which could be utilised to explain a new crime of coercive compensation appear above on page 104. These could easily be adapted to fit the existing crime of obstruction of justice.

criminal case. Since these courts apply different bodies of law – the traditional court applying "customary law" and the criminal courts applying general criminal law – trial by both systems raises neither jurisdictional nor constitutional concerns. This dichotomy is best analogised by the difference between a criminal charge of rape and a civil claim for damages resulting from a rape, which could take place concurrently.

However, because an offer of compensation or an agreement to pay compensation might be interpreted as evidence of an admission of guilt, it might not be practical for compensation to be addressed in a traditional court or a private setting prior to the conclusion of the criminal trial if the desire was to proceed with both simultaneously. The arguments against encouraging the acceptance of compensation prior to the conclusion of a criminal trial for rape are the same as those that arise in respect of settlement for civil damages prior to a criminal trial outside the customary law context:

Although settlement often benefits the parties involved, when a defendant and a complainant in a rape prosecution settle before the resolution of the criminal case their behaviour should be suspect. First, pretrial settlement allows a defendant to influence the complainant's participation in the criminal prosecution. In rape cases, the alleged victim and the star witness are the same person; thus, by settling with the victim, a defendant can in effect make payments to a witness in a rape trial. Because the victim and the witness are the same person, the suspect nature of the payments is masked. Second, pretrial settlement can occur in a coercive context. For example, the defendant may be able to exploit the complainant's fear of a harrowing trial to achieve a favourable settlement. Third, pretrial settlement is a way for a false accuser to use state resources to pressure the defendant, enabling her to extort money from an innocent defendant. Finally, settlement imposes costs on society as a whole. It undermines the expressive and deterrent effects of criminal sanctions and may commodify rape.¹³⁷

However, in a country like Namibia, it must not be forgotten that in many communities, the resolution of rape by means of compensation is viewed as being morally and socially acceptable. Customary law does not make a civil/criminal distinction in this context, but rather views payment by the accused as bringing about an appropriate resolution of the matter. While this approach may not be a satisfactory way to protect the community or to deter future rapes, the acceptance of this approach by a large part of the population cannot simply be ignored.

The challenge of reconciling customary and common law has troubled African legal scholars for many decades. A few general principles have emerged for the treatment of customary law, but none have offered a fully satisfactory approach for resolving the tensions between these two bodies of law. For example, Read notes that acknowledging customary law places an enormous evidentiary burden on courts to determine that content of the law that they seek to apply.¹³⁸ Hoctor asserts that challenges in understanding and applying customary laws

WHJ Hubbard, "Civil Settlement during Rape Prosecutions", 66 University of Chicago Law Review 1231 (1999), at page 1234. See also C Mahabir, "Rape Prosecution, Culture, and Inequality in Postcolonial Grenada", 22 Feminist Studies 89 (1996); A Ashworth, "Punishment and Compensation: Victims, Offenders and the State", 6 Oxford Journal of Legal Studies 86 (1986).

¹³⁸ JS Read, "When is Customary Law Relevant", 7 Journal of African Law 57 (1963), at page 58.



arise from the diversity of customary law concepts amongst different communities, the lack of sharp distinctions between customary "criminal" and customary "civil" law, the absence of pre-colonial written records of customary laws and ambiguity in the definitions of key terms.¹³⁹

Establishing a bright-line distinction between acceptable traditional compensation and impermissible bargains or extortion could be impossible. Moreover it might be impractical to require the sanction of a traditional leader to legitimate traditional compensation, since (as research from this study suggests) many communities recognise voluntary arrangements between families to be a acceptable manner of reconciling a rape. Questionable agreements for compensation would have to be evaluated on a case-by-case basis through an analysis of the customary law framework in which the parties to the agreement are operating. Where the agreement deviates from the accepted norms of the customary law, this agreement could be found coercive and treated as an impermissible obstruction of justice.

To promote understanding and clarify anticipated confusion, information on coercive compensation and information on the possibility of addressing rape cases in both traditional and criminal courts could be included in the same informational pamphlet. Thus, victims could learn about their right not to be coerced into withdrawing a rape case as well as their right to accept compensation while continuing with the criminal prosecution of their rape.

¹³⁹ SV Hoctor, "Comparing Criminal Law Rules: A Role for Customary Law Concepts", 12 *Fundamania* 168 (2006), at pages 169-171.

Where compensation is determined in a non-coercive manner prior to the criminal trial of the accused, evidence of the compensatory arrangement should be excluded from the criminal trial. Because there are no clear principles to equate the agreement to pay compensation with criminal guilt, and because of the likelihood that such an agreement might bias a court in favour of a finding of guilt, fair trial of the accused requires that the two worlds of customary and criminal law remain separate for the purpose of criminal prosecution (except, as noted above, perhaps on the question of sentencing).

Recommendations for Woman and Child Protection Units

 Inform complainants of the societal benefits of continuing with rape cases rather than accepting compensation to withdraw their cases.

One suspected cause of rape complaint withdrawal is that victims tend to regard the restitution of their rape as a private matter rather than an issue of private interest. Yet although rape is a deeply personal crime, the state has a strong interest in its regulation. Thus, even in cases where compensation is in the best interest of the rape victim, accepting compensation in exchange for the withdrawal of a rape case may lead to harmful effects both for future victims and for society as a whole.

Anecdotal evidence suggests that Namibia suffers from an underdeveloped "culture of justice"; that is, individuals maintain suspicion toward the rule of law and continue to seek extra-legal restitution for criminal harms. Focus group participants exhibited confusion about the difference between criminal and civil claims, and every single focus group recognised the possibility that a rape victim could be compensated to withdraw a case. These attitudes indicate that Namibia could benefit from an educational initiative that is targeted toward raising awareness of the role of every individual in the enforcement of law, for the good of the community.

The impunity enjoyed by rape perpetrators results in part from the conduct of victims in choosing to withdraw their cases. However, this choice is very rational given existing circumstances. As this report has highlighted, there are many reasons why the withdrawal of a rape case could seem like an attractive alternative in comparison to continuing with a criminal prosecution. Victims who withdraw their cases, whether by choice or coercion, receive tangible benefits: the perpetrator may compensate them or discontinue threatening conduct. In contrast, victims who continue with their cases and proceed to trial face a long and potentially painful process that culminates in no certain reward. Since so few rapists in Namibia are ever convicted for their crimes, when considered in light of the tremendous personal sacrifice that a single conviction could require of an individual victim, it is understandable that a victim might opt for withdrawal.

The role of police at Woman and Child Protection Units should be to advise victims of the importance of allowing the criminal justice system to have the opportunity to prosecute a rape. Victims should be informed of the likelihood of repeat criminal conduct amongst sexual offenders, and thus, of the benefits to society when perpetrators are incarcerated. Victims should be made to feel that in reporting their rapes and choosing to continue with their prosecution, they are exercising a civic duty – one that could protect other women from

facing a similar harm. Victims should also be informed of the deterrent effect that consistent prosecution could have on potential perpetrators. Although it is unreasonable to expect a rape victim to act with a purely altruistic regard for other potential victims, it is not unreasonable to make victims aware of the broad impact of their decision to withdraw a rape case.

One difficulty with vesting such responsibilities in Women in Child Protection Units is that police lack the time and the resources to structure an educational programme that could make a meaningful contribution toward creating a "culture of justice". This task is more appropriate for NGOs. The two stakeholders should work together toward this goal. Thus, NGOs could devise workshops or other initiatives to familiarise communities with the idea that, as part of one's responsibilities as a citizen, every person should try to provide reasonable assistance to criminal investigations and prosecutions. Part of providing this assistance means that if a person is a victim of a crime that person has a responsibility to work with the government in the prosecution of the crime.¹⁴⁰ The effect of such educational initiatives will hopefully be to make the arguments for proceeding with a prosecution seem more persuasive to a rape victim when weighing the costs and benefits of continuing with a case.

Woman and Child Protection Units could adopt a policy of encouraging victims to talk through their decision to withdraw a case – reminding them of some of the negative consequences of this decision. Alternatively, police could be required to provide every victim who is contemplating withdrawal with information on the arguments against withdrawal before the complainant is permitted to submit the formal request for withdrawal. This information could include statistics on the rate of rape case attrition in Namibia and on the number of women who are affected by rape during the course of their lives. To avoid allegations that a police officer was complicit in the withdrawal of a legitimate complaint, police officers should be advised to retrain from discussing the victim's particular case, and instead limit their discussion to a general treatment of rape complaint withdrawal in Namibia. The information for this discussion could be provided to the police in an easy-to-use information sheet or booklet. Although this does impose an additional burden on the rape victim, the justification for providing such information would be to cause the rape victim to reflect on her decision with respect to its unseen impact for Namibia in addition to its very real impact on her life.

The Legal Assistance Centre has developed a short pamphlet on the pros and cons of withdrawal which could be translated into a range of languages and distributed through the various Woman and Child Protection Units. The information in this pamphlet could be the basis of a discussion between police or a social worker and the complainant seeking withdrawal, or complainants seeking withdrawal could be given the pamphlet and asked to spend a day or two reading it and thinking about their decision before their formal withdrawal request is accepted.

¹⁴⁰ To someone who is unfamiliar with this approach to criminal justice, the idea might seem quite paradoxical – "How does becoming a *victim* of a crime cause *me* to have a debt to society?" Yet from an American or British perspective, where this idea has been deeply ingrained, the response is almost reflexive – "Of course, if I have been the victim of a violent crime I will report this to the police!" While this is somewhat of an exaggerated presentation of the two perspectives, it is important that lawmakers and law enforcers alike are aware of this difference in approach. If the goal is to increase the number of cases that are prosecuted, some effort must be expended to educate people of the important role that every single citizen plays in meeting this goal.

2. Advise complainants (at the time of reporting) that those who coerce or attempt to coerce them to accept compensation in exchange for the withdrawal of their rape case can be prosecuted for obstructing the prosecution of a rape case.

Victims of rape may feel powerless and vulnerable. Thus, it is critical from the time they choose to report a case to the police that they are made aware of all recourses to defend themselves against those who continue to threaten, coerce, pressure or abuse them. If a pamphlet is available on this issue, the member of the police force who opens the docket (or the investigating officer) should provide the victim with her own copy, as well as read through and clarify its contents with her.

3. Advise complainants (at the time of reporting) that it is possible to both accept compensation and continue with the prosecution of a rape case.

If a pamphlet is available on this issue as well, the member of the police force who opens the docket (or the investigating officer) should provide the victim with her own copy and review it with her.

4. Make more proactive efforts to determine the role of compensation in withdrawal requests, and arrest those who offer compensation to a rape complaint with the intent of causing that rape complainant to withdraw a rape case, or coerce a complainant to accept an offer of compensation with the intent of causing that rape complainant to withdraw a rape case.

Police should regard accusations of coercive conduct with utmost seriousness. When making an arrest, police should be sure to interview the complainant with respect to all of the elements of the crime and all the surrounding circumstances. While it is not illegal simply to offer compensation, as explained above, offering compensation in an effort to induce withdrawal of the criminal case is a criminal offence.

Sometimes, those who coerce a victim to accept compensation may be guilty of no other crime. Police should be aware that persons other than the rapist (such as members of the perpetrator's family or even the victim's family) are capable of obstructing justice by coercing (or attempting to coerce) a rape victim to withdraw her case against her will. Police should regard these cases just as seriously as coercive conduct by the accused in respect of compensation.

Police should make sure that a complainant's withdrawal statement includes the question "Was compensation offered?", and if so: (1) What was offered as compensation? (2) Who offered the compensation? (3) Was the compensation offered as restitution for the rape, or for the specific purpose of causing the rape victim to withdraw the case? (4) Did anyone coerce the rape victim to accept compensation and withdraw her case against her will? (5) If so, what form of coercion was used? The *pro forma* for withdrawal statements should be amended to include these questions.

Recommendations for traditional leaders

1. Refuse to sanction exchanges of compensation that are arranged with the intent to pressure a rape victim to withdraw a rape case.

Traditional leaders should be particularly wary of cases in which the decision to seek compensation is initiated by the rapist, when the rapist is already in lawful custody at the time that the compensation is brokered or when the rape victim is not present at the time of the decision on compensation.

2. Educate the community that victims can both receive traditional compensation and continue with the criminal prosecution of their rape cases.

Traditional leaders should explain to those seeking compensation that the authority of their court is distinct from the criminal jurisdiction of the government. Thus, rape victims should not feel that they have to choose between traditional restitution and criminal prosecution. Both options are made available under the Constitution and laws of Namibia.

Recommendations for civil society

1. Educate complainants on the societal benefits of continuing with rape cases rather than accepting compensation to withdraw their cases.

NGOs should develop a blueprint for a one-day educational seminar (to be given in every region) on creating a culture of justice and fulfilling civic responsibility by continuing with, and assisting in, criminal prosecutions. The seminar should not focus on rape specifically, but rather on criminal law and crimes against the person in particular. It could also function, in part, as a focus group to determine whether people choose not to report or to continue with cases because of a fundamental mistrust of the state apparatus or because of the attractiveness of competing options – such as traditional compensation.¹⁴¹

2. Support women during the process of criminal prosecution by creating a network of rape survivors who have chosen to continue with rape cases.

Victims may feel more empowered to continue with their cases if they have the opportunity to discuss their cases with other victims who have confronted similar challenges. The pressure to accept compensation could be addressed as one component of a broader programme on victim support. One challenge to creating such a network is preserving a victim's right to privacy.

¹⁴¹ The research in this report identified the latter as a primary cause. However, more targeted research on attitudes towards the state and the criminal justice system, with particular focus on the enduring effects of apartheid, could be helpful for unpacking the causes of low rates of reporting and high rates of withdrawals in respect of violent crimes.

Obviously, not all victims would choose to have their identities disclosed to other victims, even for the purpose of supportive counselling. The best way to bring about such a network would be for victims to indicate their interest in the programme at the time of reporting their rape. This information could then be referred to a social worker, who would contact the victim individually before inviting her to join a support group, or putting two or three rape survivors in contact with each other for mutual support.

(2) Family pressures

Creating recommendations to address "pressure from the family" as a cause of rape complaint withdrawal raises many complicated issues. Such "pressure" could be linked to several other causes of withdrawal. For example, family members might coerce a victim to accept compensation, threaten a victim with physical harm, or take advantage of a victim's inferior financial or social status. Pressure from the family is further complicated in cases where the rapist and the rape victim are members of the same family. Ostensibly, "pressure from the family" in cases of intra-family rape should be treated differently than "pressure from the family" in cases where the rapist is not a member of the victim's family. But how should this difference be reflected? The following recommendations offer a general approached to eliminating "pressure from the family" as a cause of rape complaint withdrawal. However, all service providers – and especially social workers – should be aware that when responding to this type of pressure, each case will present its own set of challenges.

Recommendations for Law Reform and Development Commission and Parliament

1. Include "family membership" as an aggravating factor for "coercive compensation".

If Parliament chooses to adopt a criminal statute such as the suggested law on "coercive compensation" discussed above, and if legislators decide that there are sufficient public policy reasons to deter coercion within the family, the following provision could be included as an aggravating factor in respect of sentencing:

The accused is a member of the victim's family and stands to benefit materially from the victim's receipt of compensation.¹⁴²

Recommendations for prosecutors and Woman and Child Protection Units

1. Arrest and prosecute those who coerce a victim to withdraw a rape case – regardless of their relation to the victim.

As officers and enforcers of the law, police and prosecutors should recognise that a family relation to a rape victim does not excuse the criminality of inducing that victim to withdraw

¹⁴² This provision has been included in the draft presented for discussion on pages 101-104 above.

a criminal case. Part of treating family pressure with the same regard as any other types of coercive behaviour is to recognise that the family unit is not beyond the reach of the law. Police in particular should heed this recommendation. Several focus group participants expressed concerns that complainants would be less likely to be believed if they reported crimes against members of their own family. In some locations, such as Corridor 13, police even refused to become involved in the investigation of a rape between members of the same language group – suggesting that the case should be resolved privately. Although every family may operate under a different set of rules, the laws of Namibia apply to all families. It is no more excusable for a person to interfere in the prosecution of a rape case if that person, the rapist, or both are members of the victim's family.

Recommendations for traditional leaders

1. Insist that the rape victim be directly involved in the compensation negotiation and agreement, rather than being represented by a member of her family.

The rape victim should be involved both in the initial decision to seek compensation, as well as in the substantive decisions involving the content of the compensatory arrangement, even if this is not the traditional practice under the customary law of the community in question.

Recommendations for civil society

1. Mediate between, and within, families through group counselling sessions.

Counselling services should offer programmes that address the needs of both victims and their families. In some cases, this may be an ineffective method of combating rape complaint withdrawal since the family of the victim may resist participation in counselling. In other cases, however, cooperative counselling may help to train families to be more supportive of rape victims, and to respect their psychological needs for continuing with a rape case.

Recommendations for the Ministry of Gender Equality and Child Welfare

1. Increase the capacity of shelters, or create a placement program for rape complainants who are unable to continue with their cases because of pressure at home.

Namibia has a small number of shelters that act as refuges for victims of domestic violence. These shelters are usually only available to women and children who have been referred directly from the police and who intend to stay for only a matter of weeks. If financially feasible, additional shelter space should be made available for rape victims who are being victimised by pressure at home. Preference should be given to victims who were raped by a member of their family and who may still be at risk of sexual abuse. This recommendation could be facilitated by means of partnerships between government and civil society.

The responsibility to provide for such shelters is first and foremost an obligation of the state. The Ministry best equipped to respond to this need is the Ministry of Gender Equality and Child Welfare. However, civil society could partner with the Ministry in a programme to expand state shelters – with the ultimate goal of establishing and managing a shelter associated with each Woman and Child Protection Unit throughout Namibia.

(3) The shame and stigma of rape

Addressing the feelings of shame that cause a complainant to withdraw a case requires tackling the deeper psychological pressures that influence a victim's decision-making in the aftermath of a rape. For this reason, social workers and psychologists are best poised to counteract this cause of rape complaint withdrawal, although it is also important for prosecutors and police to play a supportive role in the process.

Recommendations for Office of the Prosecutor-General

1. Make arrangements to assign a prosecutor to rape cases immediately after they are filed, and ensure that the prosecutor who will try the case meets with the rape complainant within one week after the rape complaint is filed.

At present, most prosecutors do not have the opportunity to meet with a rape complainant until the day of her trial. In some cases, the trial may not take place for several years. By assigning a prosecutor to every rape case at the time of filing, prosecutors will be able to reaffirm to the victim that: (1) the legal blame for the rape lies with the rapist; (2) the victim has a right to legal redress of her rape; (3) there are mechanisms to protect the complainant in the case of threats from the rapist or anyone acting on the rapist's behalf; and (4) other potential victims may be protected by her choice to continue with the case.

If some sort of victim support programme is put into place, the recommended prosecutorial contact could be supplemented by the involvement of other support personnel who can provide more detailed information to the complainant about what to expect and what sources of assistance are available. But direct and early prosecutorial involvement is crucial for both the comfort of the complainant and the success of the police investigation and the ensuing trial.

Recommendations for Woman and Child Protection Units

1. Ensure that all Unit staff are sensitive to, and respectful of, the rape complainant.

Police should be careful not to worsen the feelings of shame experienced by a rape complainant. Police should avoid potential humiliation and treat the victim with respect by: allowing her to give her statement in a private room; allowing her to give her statement to a female if possible; limiting the number of persons present at the time that she gives her statement; avoiding judgments of her conduct or her character; believing her story unless presented with

a compelling reason to discredit it; and responding quickly to information about the potential whereabouts of the perpetrator and possible witnesses.

We believe that there is a need for more intensive training of Unit staff on points such as these, as well as for the development of career paths with the Namibian Police which allow long-term placement at Woman and Child Protection Units as a career specialisation, to reduce transfers into and out of the Units and to make them more desirable places to work. New Unit staff should be chosen for their sensitivity and enlightened opinions.

It is also necessary to recognise the stressful nature of the work and to build in support (such as periodic counselling) and breaks (such as a week of administrative duties or outreach work every few months) to prevent burnout.

Furthermore, there is a need for some form of in-service monitoring to ensure that the goals of sensitive service provision by the Units are being realised consistently in practice. We would suggest regular evaluations by supervisory personnel who travel to various WCPUs periodically to shadow WCPU staff, with a view to providing immediate and specific suggestions how to improve their contact with victims. As part of a monitoring strategy, the Woman and Child Protection Units should also ensure that victims are informed of the proper route for complaints about insensitive officers, by means of a poster or pamphlets on this topic at all Units – and ensure that there is prompt and effective response and follow-up on complaints received.

2. Assign a social worker, counsellor or community survivor supporter to every rape complainant at the time the docket is opened.

As part of the theory behind the establishment of the Woman and Child Protection Units, every rape complainant is supposed to be referred immediately to a social worker for counselling and support. The ideal of having a social worker assigned to each Unit has been possible in practice at only a few locations because of the overall shortage of social workers in Namibia. Nevertheless, every rape complainant should have a social worker, counsellor or other support person assigned to her case, and should be presented with an opportunity to meet with that support person as she wishes. The ideal situation would be to make a social worker or counsellor available to each complainant at the time the complaint is made, so that this support person could be with the complainant during the medical exam which is probably one of the most traumatic portions of the investigation.

This essential service could be provided more consistently by means of greater coordination between the Units and civil society. If no social worker is available to provide counselling, a counsellor could be sourced for the rape complainant through NGOs which provide free counselling services such as PEACE Centre, Childline-Lifeline and Philippi Trust. The Legal Assistance Centre has already made available to each Unit a *Namibia Domestic Violence and Sexual Abuse Service Directory* (1999, updated reprint 2005), which details the counselling services available in every region.¹⁴³

¹⁴³ Available in electronic form from the Legal Assistance Centre website.

3. Require the signature of a social worker to finalise a rape complainant's withdrawal statement.

The process for withdrawing a rape case in Namibia imposes few checks or deterrents. Because of the high rates of withdrawal, it may be helpful to impose some additional restrictions on the withdrawal process. Although these restrictions would have the effect of making it more difficult for a complainant to withdraw a case, they should not accomplish this end by simply creating inconveniences for complainants. Rather, they should cause complainants to reflect upon their decision, and where possible, help them to respond to the pressures that may be influencing them to withdraw their cases against their will. Requiring the signature of a social worker on a withdrawal statement would be one way to accomplish both of these objectives.

The social worker's signature would not be required as a mark of approval for the complainant's reason for withdrawal. Instead, it would serve as an indicator that the complainant had discussed the reasons for requesting withdrawal with a social worker. Social workers could counsel victims to overcome some of the obstacles that prevent them from continuing with their cases. And because communications with social workers are confidential, complainants might feel comfortable discussing reasons for withdrawal that they would not communicate to police. As an added benefit to this approach, social workers could maintain an anonymous record of the reasons that victims choose to withdraw their cases. In this way, social workers could act to both deter specific withdrawals and to monitor the rate and causes of withdrawal.

As already noted, the Legal Assistance Centre is in the process of developing a simple pamphlet on the pros and cons of withdrawing rape cases. This pamphlet could be used as supporting material in a discussion of the withdrawal with the social worker, to ensure that the complainant is in possession of relevant information about the criminal justice process which might allay some of her fears and concerns.

Recommendations for civil society

1. Offer free group counselling sessions for rape complainants, or where this is not feasible, pair rape complainants who would like to provide mutual support.

Lifeline offers counselling services for rape complainants. They initially meet with the complainant alone but encourage friends and family to come to subsequent sessions. The

Although communications with social workers are "confidential," meaning that a social worker is bound not to share her communication, in South Africa (and by extension, Namibia) these communications are not yet "privileged" – that is, protected by the court as inadmissible testimony. (See B Pithey, "The Personal is Political: Disclosure of Rape Complainants' Personal Records", in L Artz and D Smythe, eds, *Should We Consent?*: Rape Law Reform in South Africa, Juta, 2008, at pages 99-ff.) Thus, a rape complainant would be able to communicate with a social worker in confidence, but with some risk that a subpoena would destroy this confidentiality. The lack of privilege for communications between licensed clinical social workers and their patients could have the effect of chilling such communications, but a discussion with a social worker would still probably be a more attractive forum for rape complainants to express their reasons for withdrawal than sharing these with a police officer, who is bound by neither privilege nor confidentiality.

purpose is to identify those in the complainant's life who will be able to support the complainant after the formal counselling in completed. Under this programme, a rape complainant can get up to four sessions of counselling.

Lifeline has considered initiating support groups where rape complainants can meet together, but this idea has not yet been implemented. Some victims have suggested that they do not want to talk to others about their experience, or do not want to be identified as a victim.

The advantages of a support group are that rape complainants could meet with others who have gone through a similar experience. Although it might be difficult in Namibia to gather together enough participants for such a group, it might be possible to pair together two rape complainants who can support each other.

(4) Threats of physical harm

Recommendations for Woman and Child Protection Units and the Office of the Prosecutor-General

 Institute a more robust and proactive approach to ensure that bail is cancelled for accused rapists who threaten complainants, and to facilitate and act on criminal charges against those who threaten rape complainants.

The Combating of Rape Act introduced a procedure designed to ensure that complainants are notified of bail applications in rape cases and provided with an opportunity to report any direct threats or reasons to believe that they are in danger. It also provides for an automatic bail condition prohibiting accused rapists from making contact with the rape complainant. ¹⁴⁵ Bail can be cancelled if explicit bail conditions are breached, or if an accused person out on bail interferes with state witnesses. ¹⁴⁶ Furthermore, section 68 of Namibia's Criminal Procedure Act was amended in 1991 to give a court or magistrate broad power to cancel bail whenever this is in the court's opinion "in the interest of the public or the administration of justice". ¹⁴⁷

¹⁴⁵ These provisions are discussed in detail in *Rape in Namibia: An Assessment of the Operation of the Combating of Rape Act 8 of 2000*, Legal Assistance Centre, 2006, at pages 347-ff.

Sections 60 and 61 of the Criminal Procedure Act 51 of 1977 have for many years been interpreted to give courts discretion to deny bail if there is a reasonable and substantiated fear that the accused will abscond, interfere with potential state witnesses or with the police investigation or endanger public safety. If an accused person fails to observe any bail conditions imposed under section 62 or 63 of the Criminal Procedure Act 51 of 1977, he or she runs the risk of having the bail cancelled. The Act sets out a prescribed procedure for such cancellation. Section 66(1) of the Act requires a prosecutor to apply to the court to lead evidence in which the State will bear the onus to prove on a balance of probabilities that the accused has breached the conditions of his or her bail due to his or her own fault. Once this is done, the burden shifts to the accused to prove on a balance of probabilities that there are facts present which are relevant to persuade the court not to cancel bail.

Section 68(3) reads: "The provisions of [this] section shall not be construed as preventing any court or magistrate, as the case may be, to cancel the bail and commit an accused to prison where the accused was released on bail in respect of any offence contemplated in section 61, if, notwithstanding that such accused

However, the study findings show that there is a serious disconnect between these theoretical safeguards and the practical reality; the laws in place are not operating in practice to protect rape complainants from threats of harm. What is needed is more effective communication to complainants about protective procedures, and prompt application of the legal tools available for addressing this issue.

Prosecutors and police should both make sure that they explain to complainants what protections are available, and who to contact in the event that implicit or explicit threats are made. Rape complainants are often poorly prepared to confront and overcome the difficulties that arise in the aftermath of a rape, including threats. Police should warn the victim at the time a case is filed that many other victims have received threats of physical harm to withdraw their cases, and offer reassurance that police action will be taken in such cases. Prosecutors who are assigned to the rape cases at an early stage (as recommended above) should reinforce this message.

There is also a need to ensure that the criminal justice system can react promptly to such threats, even in rural settings. For example, an accused rapist who makes a threat of physical harm to a complainant whilst out on bail could be arrested on a charge of assault (since a credible threat suffices as a basis for such a charge), or on a charge of obstruction of justice if the procedure for revoking bail cannot be immediately commenced. This would facilitate immediate arrest or re-arrest of anyone who threatens the complainant, and police should be committed to acting promptly in such cases.

The Office of the Prosecutor-General should make a policy decision to devote resources to prosecuting charges against persons who threaten rape victims to withdraw their cases; if the threat is made by the accused, these charges should be prosecuted in addition to the underlying rape charge.

Recommendations for the Office of the Prosecutor-General

Seek longer sentences for rapists who harass, threaten or intimidate rape complainants
in the aftermath of a rape.

A conviction for using, or threatening to use, physical force to cause a victim to withdraw a rape case could be considered by a judge during sentencing on the rape itself as evidence of a lack of remorse. In addition to the sentence which was imposed for the threat itself, depending on the nature and the seriousness of the threat, the attitude evidenced by such intimidation should be considered grounds for increasing the rape sentence.¹⁴⁸

is not about to evade justice or to abscond, it is in the opinion of such court or such magistrate, as the case may be, in the interest of the public or the administration of justice that the accused be placed in custody."

A conviction for using physical force to induce a withdrawal could not in itself be the basis for an increased sentence in respect of the underlying rape, as this would amount to punishing the accused twice for the same crime. However, the actions of the accused towards the complainant could legitimately be considered as indicators of the accused's remorse or lack thereof, for the rape itself – which would be a permissible factor to take into account in respect of sentencing for the rape.

Recommendations for traditional leaders

1. Increase the amount of compensation if the rapist pressures a complainant to withdraw her case with threats of physical harm.

A rapist's conduct following a rape – namely, any subsequent threats toward the victim should increase the amount of compensation that he is required to pay. Community courts have jurisdiction for compensation, restitution "or any other claim recognised by the customary law" in terms of the Community Courts Act 10 of 2003. This may include punitive compensation (depending on the customary laws of the community). It could be argued that threats made to the rape victim provide a basis for additional compensation based on the fact that credible threats of physical force would in most cases harm the rape complainant in a manner which is additional to the harm of the rape itself, by inducing fear.



Recommendations for Ministry of Gender Equality and Child Welfare

1. Increase the capacity of shelters, or create a placement program for rape complainants who are victimised by threats of physical harm.

Shelters are a critical component in the network of resources required to effectively assist victims of rape. At present, Namibia has only two shelters, each with a limited number of beds and an average length of stay of less than one month. In order to provide a safe haven for women who will face continued abuse during the criminal trial of their assailants, additional shelter space should be provided. The best option is to create a shelter to serve each of the 15 Woman and Child Protection Units.

(5) Protracted timetable for prosecution

Although a majority of focus groups attributed the withdrawal of rape complaints to the protracted timetable for rape prosecution, this cause is likely a red herring. Most withdrawals occur within the first few days or weeks after filing – suggesting that the two to three year timetable for prosecution is not a cause for this phenomenon (unless dread of possible future delays is a factor at an early stage). However, even if this is not a cause for withdrawal, there is still much room for improvement. Complainants should be made to feel involved in the prosecution of the rape from the time that their case is reported. Prosecutors should keep them up-to-date with case progress and with explanations of any postponements. Overall, if the timetable for prosecution cannot be shortened, the number of contacts with the victim during this time period should be increased.

Recommendations for courts

1. Give priority to rape cases on court rolls.

To counteract the backlog of rape cases, Regional Magistrate Courts and the High Court should both give priority to rape cases. There are many reasons why rape cases should be given primacy – including the seriousness of the crime, the prevalence of rape in Namibia, the high percentage of children amongst rape victims and the likelihood that the perpetrator will continue to be a threat to the victim in the period between the reporting of the rape and its prosecution. Moreover, rape inflicts a unique psychological harm on its victims. For some women, bringing a rape case to resolution may be a necessary first step to overcoming the trauma inflicted by the rape.

Recommendations for Office of the Prosecutor-General

1. Give priority attention to rape cases.

It has already been suggested that prosecutors should become involved in rape cases from their inception. By working on the case from the time it is filed, prosecutors can guide the investigation, ensure that all of the necessary evidence is collected in a timely manner, ensure that all witness are promptly identified and interviewed and see that the rape victim is prepared for the trial process. Under this approach, the prosecutor would also be well-placed to liaise with the National Forensic Science Institute if necessary to ensure that the results of analysis of forensic samples are collected promptly by police. Since incomplete police investigations are one of the most common grounds for postponement, early prosecutorial involvement and attention should reduce delays in rape cases considerably.

2. Oppose the use of postponements as stalling tactics.

Prosecutors should be wary of private lawyers seeking repeated postponements in rape cases as a technique for unnecessarily protracting the timetable for prosecution. Postponements should be opposed unless there is a compelling reason for the extension.

3. Recruit more young prosecutors and create incentives for experienced attorneys to remain or to become prosecutors.

The Office of the Prosecutor-General is overworked and understaffed. Namibia needs not only more prosecutors, but also more experienced prosecutors. The Office of the Prosecutor-General should implement a programme for recruiting new lawyers, as well as designing incentives to attract more experienced attorneys to become prosecutors or to continue practicing as prosecutors rather than entering private practice. If it is not possible to increase the salaries of prosecutors, the Office of the Prosecutor-General, the legal profession and NGOs active in the legal field should engage in a recruiting campaign that emphasises the prestige of the position, and consider introducing awards or other forms of public recognition for dedicated prosecutors.

Recommendations for Woman and Child Protection Units

1. Conduct timely and thorough investigations.

Police officials have estimated that rape investigations should take no longer than three days at a maximum, plus the processing time for forensic testing. Police should arrest perpetrators immediately following the reporting of the rape and ensure that medical samples are taken promptly from the accused for forensic testing – a step which is often neglected and which can lead to later delays. Three weeks is actually a generous recommendation; senior officials have estimated that most rape investigations by police could be completed within 72 hours (excluding lab testing), as most rapists in Namibia are known to their victims and there are seldom many witnesses.

Recommendations for civil society

1. Design programmes to connect complainants with one another during the months and years following the report of their rape cases.

Rape victims may feel isolated in the months and years following their attack. To combat this isolation, complainants should have the option of joining a support group that includes other

¹⁴⁹ See *Rape in Namibia: An Assessment of the Operation of the Combating of Rape Act 8 of 2000*, Legal Assistance Centre, 2006, at page 414.

victims who are awaiting the resolution of their cases. However, as previously discussed, this option must be approached in a way that respects the privacy of rape complainants.

2. Create a network of victim volunteers to offer information and support to rape complainants.

As part of the healing process, former rape complainants may wish to become involved in offering assistance to other victims. Members of the NGO community should create a training programme for victims who are interested in fulfilling this role. The training could be implemented on site at Woman and Child Protection Units, with national training made available where possible.

Victim volunteers could then supplement the role of the prosecutor by providing an explanation of what complainants can expect in the courtroom and during the long process of awaiting the trial. These volunteers could also help disseminate critical information about people whom a victim can contact if she is facing threats of harm, is being coerced or is experiencing personal doubts that may cause her to withdraw her case.

(6) Evidentiary concerns

Recommendations for Office of the Prosecutor-General

 Institute a system of early assignment of prosecutors to rape cases to guide criminal investigations.

Prosecutors can lend assistance to police by identifying the specific evidence that could be required to obtain a prosecution in a particular case. Supervision of the investigation by the prosecutor would also ensure that key evidence is collected in a manner which ensures its admissibility at trial.

Recommendations for Woman and Child Protection Units

1. Keep a careful record of all evidence.

Focus group participants believed that evidence is often lost by police, and that at times, police are bribed to lose evidence or even to lose an entire docket. To avoid such situations, Woman and Child Protection Units should maintain a detailed log of evidence. This log should be kept with, and overseen by, the prosecutors assigned to the cases it includes.

There should also be efforts to introduce a better system for securing dockets which are currently passed back and forth between the police investigator and the prosecutor, increasing the chance that they will innocently go astray as well as opportunities for interference. As a contrasting example, in Canada, all evidence is collected by the police and the originals are

kept in a secure communal police locker which is overseen by a small group of individual officers who sign them out. Prosecutors receive copies of everything and create their own files. Under this system, if a file is lost in the Prosecutor's Office, the prosecutor can ask the police to send new copies, and if a docket goes missing from police custody there is a record of who had access to it.

It is acknowledged that such a system would entail additional expense and might not be immediately viable for Namibia where some police stations lack photocopiers. However, improved security and tracking of dockets could be implemented in phases as resources permit. An improved system of record-keeping and docket tracking can at least point to where a missing docket might have gone. For example, if dockets must be signed in and out through a single control officer at each police station, then there are fewer chances for them to go missing. This would also make it easier to investigate and issues reprimands if a docket is misplaced and to take appropriate disciplinary action if this happens regularly.

Recommendations for National Forensic Science Institute

1. Continue the roll-out of the new, improved rape kits and issue public information on the new procedures and their advantages.

Complainants and members of the general public should be informed that new systems are in the process of being implemented to increase the security and utility of forensic evidence in rape cases, as much public scepticism about the security of such evidence is based on procedures which are already outmoded. Publicity about the new rape kits and how they work would also contribute to rape complainants' understanding of what to expect in the aftermath of a rape, as well as equipping social workers, counsellors and civil society groups with the necessary information to support them. One useful technique for publicising the improvements associated with the new rape kits would be to convene a workshop for interested groups, at which the new kits could be displayed and explained.

Recommendations for civil society

 Include information on evidentiary burdens as part of a "culture of justice" educational campaign.

Many focus group participants expressed confusion as to why a conviction in a rape case is so difficult to obtain. Part of this confusion may be attributed to an under-developed appreciation for the rights of perpetrators. As part of a broader educational initiative on establishing a culture of justice in Namibia, civil society should help raise awareness of the reasons for the procedural and substantive protections afforded to those accused of rape. Such an educational initiative should also shed light on what must be proved to secure a conviction. It should be emphasised that while the burden of proof is high, there are reasonable justifications for this burden and the evidentiary threshold is not insurmountable.

(7) Lack of information and support

Recommendations for Woman and Child Protection Units and the Office of the Prosecutor-General

1. Inform the complainant about what to expect after a rape complaint is made.

Although most victims are well informed of the steps to take in the immediate aftermath of a rape, few have access to information about how the investigation will proceed, or about their continued role during the lengthy time period before the trial is finalised. It should be mandatory for the WCPU staff member who processes the initial complaint to provide an explanation of the investigatory process, and it should similarly be mandatory for the prosecutor to provide an explanation of the court process to the complainant during their introductory interview – and to refer the complainant to victim support personnel where they exist.

The Legal Assistance Centre is already in the process of developing a series of pamphlets which could support this recommendation. These could be translated into all main Namibian languages and distributed to rape victims and their families by police and prosecutors. Such pamphlets would also be a useful resource for social workers and civil society groups which support rape complainants. Although pamphlets cannot take the place of personal contact, they can be a helpful reference to refresh memories later on, as it may be difficult for a traumatised rape survivor to take in a large amount of information in the immediate aftermath of the rape.

Recommendations for civil society

1. Provide more support programmes for rape complainants.

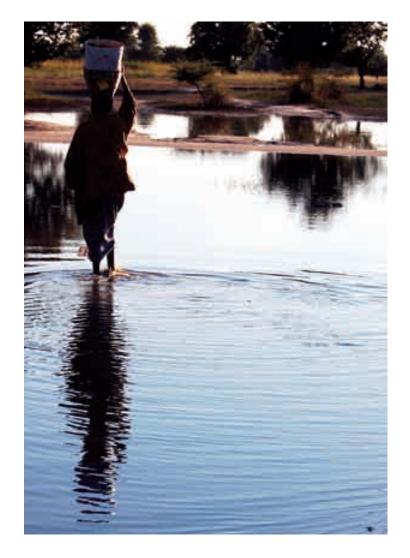
The cause of many complainants' confusion about "what to do" after a rape complaint has been filed stems in part from the fact that there are few "things to do". Civil society must fill in this void by offering therapy to rape victims, creating support groups and initiating "victim volunteer" programmes. A more expansive treatment of how civil society could respond to the needs of rape complainants is provided in section 6.2 of this Chapter.

(8) Status of the rapist

Recommendations for Office of the Prosecutor-General

1. Improve communication with rape complainants and the public about prosecution decisions, procedures and statistics.

Many focus group participants believed that perpetrators who occupied a position of status in their communities would be more likely to be acquitted. To dispel this perception, it would be helpful if the Office of the Prosecutor-General publicised the safeguards which are already in place for ensuring that status does not affect prosecutorial decision-making (such as the procedure whereby decisions on whether or not to proceed with a case are made in the Head Office and not by the local prosecutor assigned to the case). Members of the public generally also seem to lack understanding on the various factors that may lead to a valid decision not to prosecute, and that lack of resources may sometimes mean that priority must be given to cases where there is a reasonable chance of conviction. Prosecutors must approach all rape cases with equal vigour. However, the Office of the Prosecutor-General should also publicise its procedures and its successes more effectively, as well as reassuring the public that the status of an accused person will not allow them to evade a rape prosecution.



The Office of the Prosecutor-General should develop a clear written policy for cases in which there is a conflict of interest. The current policy (apparently recorded at least in part in the form of periodic circulars) is that if the person who allegedly committed the crime is known to the prosecutor (such as another prosecutor or a family member) then the case is given to a different prosecutor. If the person is known to everyone in that office, the docket will be sent to the head office in Windhoek. If the accused is a police officer of the rank of Deputy Commissioner or above, then the case is supposed to be forwarded to the Deputy Prosecutor-General in the region or to the Regional Court prosecutor for a decision. Where the accused is a political office-bearer, the case is supposed to be forwarded to the Prosecutor-General for a decision. ¹⁵⁰

The current situation is reportedly as follows:, "There are no policies regulating the exercise of the Prosecutor-General's powers. The very few guidelines that exist include instructions from the Prosecutor-General to prosecutors to whom the power to prosecute has been delegated, as contained in circulars issued by the Prosecutor-General. Such circulars, which are directives issued by the Prosecutor-General to all prosecutors, deal either with specific crimes or a specific class of suspects. For example, one such circular directs that prosecutors forward all cases involving police officers of the rank of Deputy Commissioner and above as suspects to either the Deputy Prosecutor-General in the region or the regional court prosecutor for a decision. Similarly, all dockets involving political office-bearers are to be forwarded to the Prosecutor-General for a decision." Lovisa Indongo, "The Uniqueness of the Namibian Prosecutor-General" in N Horn and A Bösl, eds, *The Independence of the Judiciary in Namibia*, Macmillan Education Namibia, 2008, at pages 106-7; also available at <www.kas.de/upload/auslandshomepages/namibia/Independence_Judiciary/indongo.pdf>.

These policies should be made public to increase public confidence in the justice system. Consideration should be given to revising the current policy to require that where an accused is a prosecutor (or anyone who works in the Office of the Prosecutor-General), then an external lawyer should be brought in to deal with the case. The current policy on dealing with cases involving members of the police force as accused should perhaps be extended to cover police of lower rank as well. Publicising the safeguards which exist to prevent favouritism will help to increase public confidence.

Periodical statistical reports on the prosecution of rape cases and the sentences imposed for convicted rapists could also help to raise public awareness of the benefits of proceeding with rape cases.

In individual cases, where a decision is made not to proceed with a prosecution for lack of evidence, the prosecutor assigned to the case should meet with the complainant to explain this decision fully and to explain that this decision should not be equated with a lack of belief in the complainant's account.

2. Charge those who use their status to intimidate rape complainants to withdraw their cases with obstruction of justice or coercion.

If such actions are not prosecuted under a separate charge, evidence of such coercion should be introduced in the rape trial and should be weighted as an aggravating factor in sentencing.

Recommendations for Woman and Child Protection Units

1. Improve communication with rape complainants and the public about investigation and processing of rape complaints.

Many focus group participants were troubled by the lack of transparency in police procedure in their investigation of rape complaints. To avoid charges of misconduct, NamPol and WCPUs should publicise guidelines on how rape complaints should be managed by police. Separate guidelines should be required for the treatment of rape complaints in cases where the accused rapist is either a family member or friend of the investigating officer or a fellow member of the police force. Where the accused is a relation or friend of the officer, the case should be referred to another officer of equal rank in the same office. Where the accused is an officer, the case should be investigated by an impartial officer from a different regional office.

2. Arrest all persons accused of rape – remember that no citizen is "above the law"

Focus group participants believed that police would be less likely to arrest persons of status. Police must approach all rape accusations equally, and ensure that the status plays no role in the investigation and incarceration of rape suspects. Early prosecutorial involvement in rape cases could provide a check and balance on this point.

3. Arrest those who use their status to coerce a complainant to withdraw her case.

Police should act promptly and robustly in cases where an accused rape perpetrator has violated bail conditions, or where there is a secondary criminal charge based on an allegation that an accused attempted to intimidate or coerce the victim to withdraw her case. As discussed above, either circumstance could be grounds for cancellation of bail.

(9) Bribery and corruption

Recommendations for prosecutors

1. Solicit an internal review of the Office of the Prosecutor-General by the Office of the Ombudsman or the Anti-Corruption Commission to investigate claims of corruption and bribery, and to reassure the public that prosecution of rape cases is rigorous and unbiased.

Participants in the Katutura focus group believed that prosecutors could be bribed not to go forward with cases. Likewise, participants in the Mariental focus group believed that prosecutors would be reluctant to prosecute members of their own language group or extended family. As noted above, the Office of the Prosecutor-General already has a policy in place to provide procedures for cases where the accused is known to the prosecutor. Nevertheless, it is possible that this policy is not always strictly followed in practice. It is also possible that members of the public may perceive conflicts of interest in other situations not covered by the policy. The general claims of bias should be investigated to insure the integrity of the prosecutorial process; it would be useful to try and uncover the basis for such public perceptions, and to reassure the public that systems to prevent bias are in place. Responsibility for this review could be vested with the Ombudsmen or with an approved external consultant. Prosecutors suspected to have engaged in illegal conduct should be suspended from office and tried for corruption. An independent review could increase public confidence in the prosecutorial services, and put baseless rumours to rest. It might also suggest new safeguards which could be implemented to protect against the unscrupulous exercise of prosecutorial discretion for any reason.

Recommendations for Woman and Child Protection Units

1. Solicit an internal review of the Woman and Child Protection Units by the Office of the Ombudsman or the Anti-Corruption Commission to investigate claims of corruption and bribery, and to reassure the public that prosecution of rape cases is rigorous and unbiased.

Several focus groups and interview subjects expressed perceptions of police corruption. Claims included that police could be bribed to refuse to open dockets, lose dockets or lose critical evidence. The Ombudsman should investigation claims of corruption in general police stations and Woman and Child Protection Units. The police station in Corridor 13 was

highlighted by several interview subjects as being particularly corrupt, especial in regard to its treatment of the San community. These allegations of bribery and corruption merit a thorough investigation. Police found to have engaged in illegal conduct should be temporarily suspended from duty and tried for corruption. An independent review could increase public confidence in the police services, and might suggest new safeguards that could be implemented to protect against corruption and bribery.

Recommendations for Woman and Child Protection Units and the Office of the Prosecutor-General

1. Design initiatives to build trust with, and earn the respect of, the community.

As part of a broader educational campaign to create a "culture of justice", police and prosecutors should engage in activities that build trust in both the apparatus of the state and in the democratic principles of justice to which it adheres. With respect to counteracting lack of trust as a cause of rape complaint withdrawal, police and prosecutors should be careful to:

- create transparency in the process of rape prosecution
- treat all rape complainants with respect and dignity
- execute their responsibilities in a timely and professional manner
- work with schools to develop educational programs about the role of justice in society and build connections with a rising generation of Namibians.

One aspect of such initiatives could be to solicit greater publicity for police and prosecutorial successes. For example, few members of the public are aware that the Namibian Police have one of the highest crime detection rates in the world, or that Namibian conviction rates for rape, although low, compare favourably with those in many more highly-developed countries. Individual police and prosecutors who display exemplary fairness and sensitivity should be publicly commended. It would also be useful to publicise channels through which members of the public can make complaints, such as the NamPol Complaints and Discipline Division, and to ensure that there is prompt follow-up and communication on individual complaints received.

There is also a role for the media to play in promoting a culture of justice. Woman and Child Protection Units and the Office of the Prosecutor-General should maintain closer contact with newspaper reporters, talk show presenters and radio show hosts to facilitate thorough and accurate criminal reporting which helps expand public understanding of the criminal justice process.

(10) Poverty

Recommendations for Law Reform and Development Commission and Parliament

 Make it an aggravating factor in respect of "coercive compensation" if the victim is particularly vulnerable to such coercion because of poverty. If Parliament chooses to adopt a criminal statute such as the suggested law on "coercive compensation" discussed above, the following provision could be included as an aggravating factor in respect of sentencing:

The rape complainant was particularly vulnerable to the coercive compensation because of poverty or some other factor.¹⁵¹

6.2 General recommendations

Recommendations for Woman and Child Protection Units

1. Introduce a pilot procedure whereby all complainant statements in rape cases are recorded in the complainant's home language and subsequently translated into English by a sworn translator for use by the prosecutor and court.



Police statements are always taken by the police in the language which the complainant prefers and written down in English by the person taking the statement. If there is no member of the police force who speaks the complainant's language, another person – even a member of the public – may be asked to translate. Several persons in this study mentioned the language issue, which also has cultural and privacy implications, as an alienating factor. This issue was also raised by many key informants in the Legal Assistance Centre's 2006 study, as well as being cited in a 2006 assessment of the Woman and Child Protection Units commissioned by UNICEF. Furthermore, an unreported High Court case decided in 1995 states that the "proper practice" is to record police statements in the witness's mother tongue and translate them into English at a later stage. 153

The main objection against recording the language in the complainant's mother tongue is the requirement of obtaining an official translation into English for use in court. There are fears

¹⁵¹ This provision has been included in the draft presented for discussion on pages 101-104 above.

Rape in Namibia: An Assessment of the Operation of the Combating of Rape Act 8 of 2000, Legal Assistance Centre, 2006, at pages 248-ff; Dr Hetty Rose-Junius & Ellen Kuenzer, An Investigation into the Functioning of WCPU's and Police Stations with regard to the Protection of Abused Women and Children in the Country, UNICEF, 2006 at section 7.2.12

¹⁵³ S v Gowaseb 1995 (HC) (unreported).

that this process could entail delay and expense. Also, there might be instances where there is no investigating officer who speaks the complainant's home language. However, the usefulness of this procedural change would justify the extra effort and expense.

While it would be ideal to record police statements in respect of all crimes in the complainant's home language, this procedure could be introduced at Woman and Child Protection Units as a pilot project. The possibility of utilising tape-recorded statements should also be explored as part of this pilot.

Recommendations for Office of the Prosecutor-General

 Implement the proposed provision in the Criminal Procedure Act 25 of 2004 allowing for legal representation to complainants as a pilot project in rape cases, or allow assistance to rape complainants by victim advocates during the rape trial.

Section 18 of the new Criminal Procedure Act 25 of 2004 (which was passed by Parliament but is not yet in force) provides that a victim of any offence against person or property may appoint a private legal practitioner (at the victim's own expense) to represent the victim's interests at the criminal trial of the offence which caused the injury, damage or loss to the victim. In particular, the victim's legal representative may –

- hold a "watching brief" on behalf of the victim (meaning that the victim's lawyer may attend all of the criminal proceedings without directly taking part in them)
- consult with and advise the prosecutor and victim as necessary
- apply for compensation for the victim for the injury, damage or loss caused as a result
- of the crime (once legal authority for such compensation is introduced).

The victim's legal representative does not have the right to lead evidence, to cross-examine witnesses or to address the court (except in respect of victim compensation).

In advance of the general implementation of this provision, a pilot project could be introduced whereby victim advocates or attorneys are permitted to play a similar role. (Indigent rape complainants could approach the Legal Assistance Centre for assistance of this form, although the Legal Assistance Centre would not have capacity to assist in every such case.)

Recommendations for Woman and Child Protection Units, Office of the Prosecutor-General. Ministry of Gender Equality and Child Welfare and civil society working in partnership

The successful implementation of the following suggestions would require cooperation from a range of stakeholders, working under the leadership of the Woman and Child Protection Units and the Office of the Prosecutor-General. Therefore, we suggest that these initiatives might best be spearheaded by the High-Level Strategic Inter-Ministerial Committee on Domestic Violence and Violence in General.

1. Establish victim support programmes to assist complainants before and after the resolution of their rape cases.

A comprehensive set of victim support programmes would be beneficial to both rape complainants and to the criminal justice system. Providing opportunities for counselling, education and networking to survivors of rape serves the dual aim of empowering these victims to continue with their lives in the aftermath of rape and increasing their cooperation during the process of prosecution. Such programmes should be vested primarily with stakeholders in civil society; however, it is critical that both prosecutors and police have an opportunity to contribute to their design.

In Namibia, the victim's support initiative should include the following components:

- access to counselling and therapy for all victims of rape
- support groups for survivors of rape
- information for complainants on what to expect throughout the process of their rape prosecution
- training for former rape complainants to allow them to become volunteers in support of current rape complainants
- follow-up information and support for complainants, including regular updates on case progress
- orientation of complainants to court procedures, including an explanation of the potential special arrangements for vulnerable witnesses, so that complainants can consider what arrangements might make them more comfortable
- support for the complainant during the criminal trial, including assistance with logistics related to court appearances
- explanation of the benefits to society of proceeding with a rape case, and the arguments against withdrawal.

Namibia suffers from an underdevelopment of long-term victim support programmes. Many of these, such as the creation of support groups, would be relatively inexpensive to implement and would make great strides toward reducing the problem of rape complaint withdrawal. Another problem with the current approach is that it is piecemeal.

Rape victims should have access to support at each stage in their recovery from rape. We recommend that a victim support programme should be established to accomplish this goal. Staffed by volunteers who could act as "survivor supporters", this programme would ideally be based in the Office of the Prosecutor-General, to ensure that a volunteer is assigned to each rape case. These survivor supporters should be able to provide emotional support, but they should also refer complainants to appropriate counselling services in their area. At the investigative stage, "survivor supporters" could accompany a complainant to the hospital and be with them during the forensic examination. Unlike the police, the survivor supporter's role would not to investigate but to provide practical and emotional support at a crucial time.

Survivor supporters could inform complainants of the status of their case as it progresses through the justice system. They should be knowledgeable enough to answer any questions the victim might have about the process, and they could conduct court orientation with

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the complainant and explain the possible procedures for vulnerable witnesses. They could also accompany the complainant to court when the trial begins. In this way, they would take some of the burden away from the prosecutor who needs to focus on the legal aspects of the case. The survivor supporter would ideally provide a liaison between the complainant and prosecutor, as well as a conduit between the complainant and sources of individual or group counselling.

The Ministry of Health and Social Services has already compiled a manual designed to guide the training of "survivor supporters", with assistance from Legal Assistance Centre, PEACE Centre and Women's Solidarity, so stakeholder cooperation has already put in place the first building block of a community-based victim support programme.¹⁵⁴

2. Apply some of the principles of the specialist court model in respect of rape cases.

While Namibia is not yet at a stage where attempting to implement a full-blown specialist court is advisable, it is possible to adapt some of the goals and principles that shape specialist courts to Namibia's existing system. In fact, the way rape cases are processed in Namibia is already specialised to a certain extent: they are only heard in Regional Magistrate's Courts which have the most experienced magistrates or in the High Court for the most serious cases (such as child rape), and the Office of the Prosecutor-General has established a specialised unit of prosecutors to focus on rape, domestic violence and maintenance.



Key elements of specialist courts may be integrated into Namibia's legal system in the form of a more developed "One Stop Centre" approach to the Woman and Child Protection Units, currently under discussion. This model envisages an integrated set of services for the rape victim upon the filing of a rape case, including the services of a medical examiner, the immediate assistance of social workers, the immediate assignment of a prosecutor to the case and the provision of accommodation in a shelter if needed. If a rape complainant has access to a full range of supportive services, she may be less likely to withdraw the rape complaints due to external stresses. At the very least, the psychological distress and trauma of rape may be minimised if the reporting and filing of a rape compliant can be streamlined in one place.

Another useful aspect of specialist courts that Namibia might implement is the creation of "safe places" within a courthouse. For instance, having a private space to speak with the prosecutor and separate waiting areas for rape complainants secure from contact with family members and friends of the accused can help to provide security and comfort. Staffing the waiting area with a

¹⁵⁴ Manual for Training Community Survivor Supporters, Ministry of Health and Social Services, 2007.



support person who accompanies complainants to and from the courtrooms when they need to testify may also help increase their comfort level toward proceeding with a case.

3. Designate a national day of awareness for rape.

A national day of awareness would provide another forum for legitimating the claims of victims of rape and combating the stereotypes, pressures and hostilities that prevent these victims from continuing with their cases. The day could include free education programmes at each of the Woman and Child Protection Units, an address by the President to be printed in newspapers with national circulation, a march in Windhoek of rape survivors, and special television and radio programmes on women's issues. Coordination for such an event would require extensive collaboration between the government and private media organisations, but such an awareness day could do much to educate the public about the reality of rape, inform women of their rights under Namibian law and dispel the negative myths that continue to render sexual violence taboo.

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Conclusion

There are many stories of rape complaint withdrawal in Namibia. Too often, these stories recur: like Ingrid, women are pressured by their families to withdraw; like Maria, women are threatened to keep quiet; like Aster, women are bribed and coerced into silence. While it is too late for these women, many more stand to benefit from a comprehensive and collaborative approach aimed at eradicating the causes of rape complaint withdrawal.

Through the seven focus groups, 30 causes emerged as possible reasons for rape complaint withdrawal. The overwhelming majority of these pertain to factors that are within the direct control of the government. Thus, with a few diligently executed modifications in the existing practices of service providers, there is tremendous possibility to bring about a radical reduction in the rate of rape complaint withdrawal.

This study also addressed the possibility for more drastic changes. A look at international perspectives illustrates the vast possibilities for creating practical support programmes to assist victims of rape and encouraging them to go forward with their cases. While some causes of rape complaint withdrawal may be more intractable than others, such as the enduring stigma of rape or the economic pressures that drive women to accept compensation, even these broader sociological causes are within the reach of committed and consistent educational initiatives.

Namibia is undergoing many rapid changes – as it has done throughout nearly two decades of Independence. Some of these changes advance access to basic human and political rights, such as the right to have one's body free from sexual violation and the right to seek redress when this occurs. Other changes counteract these developments. In order to solve the problem of rape complaint withdrawal, stakeholders must maintain vigilance toward both the seen and the unseen causes of this phenomenon. The extent to which poverty, gender inequality and even the memory of apartheid continue to reinforce the social roles that perpetuate the cycle of rape and withdrawal should not be overlooked.

While the problem of rape complaint withdrawal may take several years to address meaningfully, this end is achievable by maintaining long-term goals and continually adjusting short-term interventions.

We hope that this study may help to inspire changes that will not only help those women still awaiting the vindication of their cases, but that it may also prevent many more women from experiencing the agony of rape.

Appendix

Summary of Recommendations by Key Agency

Recommendations for Law Reform and Development Commission and Parliament

- Consider enacting a law specifically prohibiting "coercive compensation" which includes aggravating circumstances where family members pressure complainants to accept money for withdrawing charges or where the complainant includes "family membership" as an aggravating factor for "coercive compensation".
- Enact a provision similar to that in the dormant Criminal Procedure Act 25 of 2004 allowing for compensation and restitution to be sought as an adjunct to criminal trials for rape (and other crimes).
- Consider the creation of a victim compensation scheme applicable to all crime victims.

Recommendations for Woman and Child Protection Units

- Inform complainants of the societal benefits of continuing with rape cases rather than accepting compensation to withdraw their cases.
- Advise complainants (at the time of reporting) than those who coerce or attempt to coerce them to accept compensation in exchange for the withdrawal of their rape case can be prosecuted for obstructing the prosecution of a rape case.
- Advise complainants (at the time of reporting) that it is possible to both accept compensation and continue with the prosecution of a rape case.
- Make more proactive efforts to determine the role of compensation in withdrawal requests, and arrest those who offer compensation to a rape complaint with the intent of causing that rape complainant to withdraw a rape case, or coerce a complainant to accept an offer of compensation with the intent of causing that rape complainant to withdraw a rape case.
- Arrest and prosecute those who coerce a victim to withdraw a rape case regardless of their relation to the victim, and including those who use their status to coerce a complainant to withdraw her case.
- Ensure that all Unit staff are sensitive to, and respectful of, the rape complainant.
- Introduce a pilot procedure whereby all complainant statements in rape cases are recorded in the complainant's home language and subsequently translated into English by a sworn translator for use by the prosecutor and court.
- Assign a social worker, counsellor or community survivor supporter to every rape complainant at the time the docket is opened.

- Require the signature of a social worker to finalise a rape complainant's withdrawal statement.
- Conduct timely and through investigations.
- Keep a careful record of all evidence.
- Arrest all persons accused of rape remember that no citizen is "above the law".
- Institute a more robust and proactive approach to ensure that bail is cancelled for accused rapists who threaten complainants, and to facilitate and act on criminal charges against those who threaten rape complainants.
- Inform the complainant about what to expect after a rape complaint is made.
- Improve communication with rape complainants and the public about investigation and processing of rape complaints.
- Establish victim support programmes to assist complainants before and after the resolution of their rape cases.
- Apply some of the principles of the specialist court model in respect of rape cases.
- Designate a national day of awareness of rape.
- Design initiatives to build trust with, and earn the respect of, the community.
- Solicit an internal review of the Woman and Child Protection Units by the Office of the Ombudsman or the Anti-Corruption Commission to investigate claims of corruption and bribery, and to reassure the public that investigation of rape cases is rigorous and unbiased.

Recommendations for the Office of the Prosecutor-General

- Bring charges against persons who obstruct the prosecution of rape cases.
- Arrest and prosecute those who coerce a victim to withdraw a rape case regardless of their relation to the victim. Charge those who use their status to intimidate rape complainants to withdraw their cases with obstruction of justice or coercion.
- Institute a more robust and proactive approach to ensure that bail is cancelled for accused rapists who threaten complainants, and to facilitate and act on criminal charges against those who threaten rape complainants.
- Seek longer sentences for rapists who harass, threaten or intimidate rape complainants in the aftermath of a rape.
- Work together with civil society organisations to develop and distribute pamphlets explaining
 - the criminality of obstructing the prosecution of a rape case.
 - that compensation and criminal prosecution are not mutually exclusive.
- Recruit more young prosecutors and create incentives for experienced attorneys to remain or to become prosecutors.
- Institute a system of early assignment of prosecutors to rape cases to guide criminal investigations, and ensure that the prosecutor who will try the case meets with the rape complainant within one week after the rape complaint is filed.
- Inform the complainant about what to expect after a rape complainant is made.
- Improve communication with rape complainants and the public about prosecution decisions, procedures and statistics.
- Give priority attention to rape cases.

- Oppose the use of postponements as stalling tactics.
- Implement the proposed provision in the Criminal Procedure Act 25 of 2004 allowing for legal representation to complainants as a pilot project in rape cases, or allow assistance to rape complainants by victim advocates during the rape trial.
- Apply some of the principles of the specialist court model in respect of rape cases.
- Establish victim support programmes to assist complainants before and after the resolution of their rape cases.
- Designate a national day of awareness of rape.
- Design initiatives to build trust with, and earn the respect of, the community.
- Solicit an internal review of the Office of the Prosecutor-General by the Office of the Ombudsman or the Anti-Corruption Commission to investigate claims of corruption and bribery, and to reassure the public that prosecution of rape cases is rigorous and unbiased.

Recommendations for National Forensic Science Institute

• Continue the roll-out of the new, improved rape kits and issue public information on the new procedures and their advantages.

Recommendations for courts

• Give priority to rape cases on court rolls.

Recommendations for the Ministry of Gender Equality and Child Welfare

- Increase the capacity of shelters, or create a placement program for rape complainants who are unable to continue with their cases because of pressure at home, or are victimised by threats of physical harm.
- Establish victim support programmes to assist complainants before and after the resolution of their rape cases.
- Apply some of the principles of the specialist court model in respect of rape cases.
- Designate a national day of awareness of rape.

Recommendations for traditional leaders

- Refuse to sanction exchanges of compensation that are arranged with the intent to pressure a rape victim to withdraw a rape case.
- Educate the community that victims can both receive traditional compensation and continue with the criminal prosecution of their rape cases.
- Insist that the rape victim be directly involved in the compensation negotiation and agreement, rather than being represented by a member of her family.
- Increase the amount of compensation if the rapist pressures a complainant to withdraw her case with threats of physical harm.

Recommendation for civil society

- Educate complainants on the societal benefits of continuing with rape cases rather than accepting compensation to withdraw their cases.
- Support women during the process of criminal prosecution by creating a network of rape survivors who have chosen to continue with rape cases.
- Mediate between, and within, families through group counselling sessions.
- Provide more support programmes for rape complainants.
- Establish victim support programmes to assist complainants before and after the resolution of their rape cases.
- Offer free group counselling sessions for rape complainants, or where this is not feasible, pair rape complainants who would like to provide mutual support.
- Design programmes to connect complainants with one another during the months and years following the report of their rape cases.
- Create a network of victim volunteers to offer information and support to rape complainants.
- Include information on evidentiary burdens as part of a "culture of justice" educational campaign.
- Work together with the Office of the Prosecutor-General to develop and distribute pamphlets explaining
 - the criminality of obstructing the prosecution of a rape case.
 - that compensation and criminal prosecution are not mutually exclusive.
- Apply some of the principles of the specialist court model in respect of rape cases.
- Designate a national day of awareness of rape.

"I rape that one, and the father of the lady says that I have to pay a cow so that the story can end... things are happening that way."

Male interviewee, Corridor 13

"They are going to be told by the man, 'No, if you don't drop that case, when I go to jail, and after that, when I come back, I will come and kill you. I will follow you and I will ask anyone at which place do you stay. And I will go there, go and kill you.' And the women are getting afraid, and saying, '...Now let us go and drop the case.'"

Female interviewee, Warmbad

"The lady was encouraged by the parents to forgive the man. Then she forgive.... But it was not her willing. It was just for the willing of the parents."

Female interviewee, Oshakati

"I have heard... of women who have withdrawn cases because of briberies. Or a woman has withdrawn a case because of the family; they are related to one another and they are afraid of destroying this relationship. Sometimes the victim is afraid of the rapist if he have an expensive lawyer who can defend him in court."

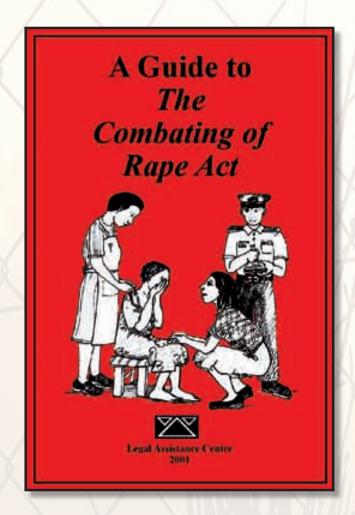
Male interviewee, Oshakati

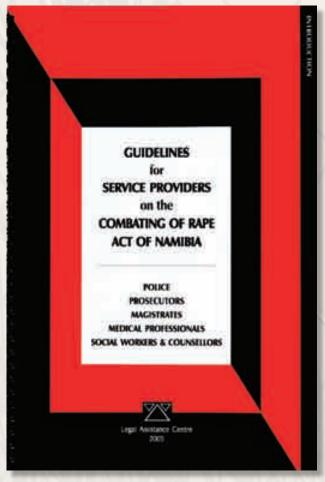
"These perpetrators are not brought to justice, because there is always a way for them to get what they want."

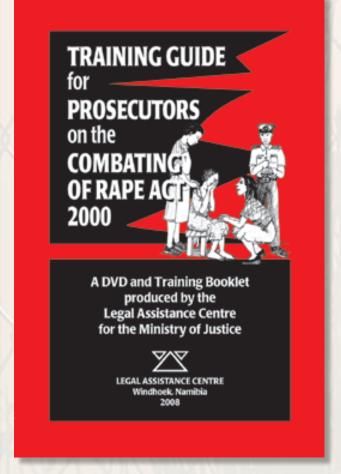
Female interviewee, Keetmanshoop

Other recent publications
on the topic of rape
produced by the
Gender Research and
Advocacy Project
of the
Legal Assistance Centre

(Available from the LAC office in Windhoek or the LAC website: www.lac.org.na)







BASIC FACTS ON THE COMBATING OF RAPE ACT









What is do if you are report





Poolset THE COMBATING **GUIDE OF RAPE ACT**





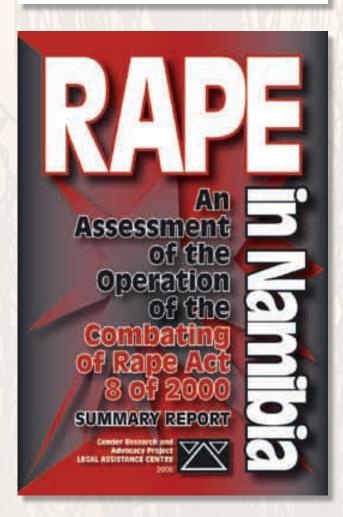
What is rape?

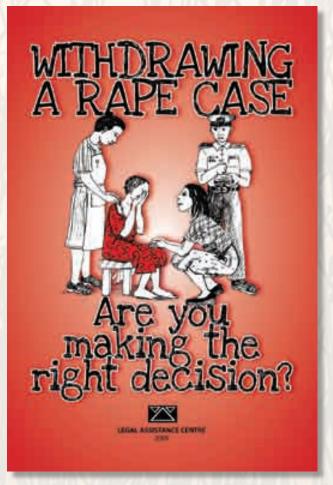
Rape is "the intentional commission of a sexual act under rive circumstances

Both men and women can be reped.

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English, Afrikaans, Oshiwambo and Otjiherero Fact Sheet and Pocket Guide available in

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