



ACHIEVING JUSTICE FOR
VICTIMS OF RAPE AND
ADVANCING WOMEN'S RIGHTS
A COMPARATIVE STUDY
OF LEGAL REFORM

DECEMBER 2011

**MORRISON
FOERSTER**



LATHAM & WATKINS LLP

ReedSmith

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The Reed Smith team researched the applicability of international conventions to the laws of Haiti, the results of which will be included in the second part of the report.

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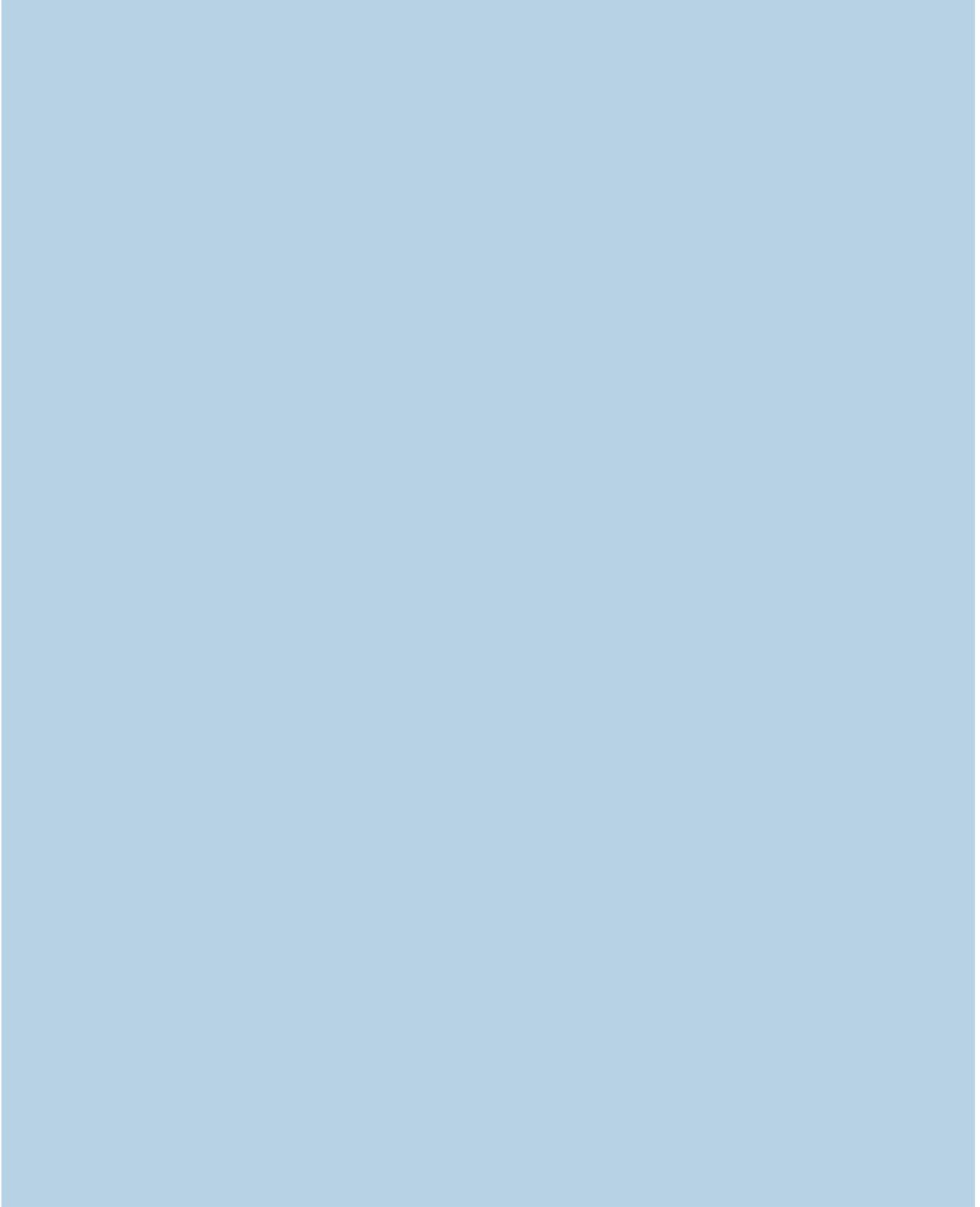
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FOREWORD

Thomson Reuters Foundation launched TrustLaw in July 2010. Our goal: to spread the practice of pro bono worldwide and empower people with trusted information. At the centre of TrustLaw is TrustLaw Connect, a global marketplace connecting NGOs and social enterprises with lawyers willing to work at no cost.

This is the first of two reports, prepared at the request of MADRE, the international women's human rights organisation. The first report focuses on the rape laws and procedures in five jurisdictions while the second one will compare current and proposed Haiti law with the best practices identified in those six countries. A French translation of the first report is also forthcoming.

These reports follow MADRE's efforts to strengthen rape law in Haiti, where there was a dramatic increase in sexual violence after the earthquake of January 2010, and rape has only been outlawed since 2005.

Our own engagement in Haiti at the Thomson Reuters Foundation started right after the earthquake when we triggered for the first time our Emergency Information Service, distributing actionable information to the local population about where they could find water, medical assistance or shelter.

In January 2011 we launched Haiti in Focus, through which we put all our free legal, humanitarian and media services to work for Haiti's recovery, and in May we hosted a first-of-its-kind forum of Haitian government officials, police, lawyers, prosecutors, doctors and women's groups in Port-au-Prince, alongside MADRE and their local partner KOFIVIV.

Now with these reports – produced thanks to the great commitment and dedication of Morrison & Foerster, in a leading role, and DLA Piper, Latham & Watkins and Reed Smith – the Foundation and MADRE hope to offer not only direct support to those involved in the redrafting of sexual violence legislation in Haiti but also an invaluable resource for the development of gender-based violence legislation all over the world.



MONIQUE VILLA

CEO, Thompson Reuters Foundation

INTRODUCTION

The catastrophic earthquake that struck Haiti on January 12, 2010, displaced more than one million people from their homes into makeshift outdoor encampments. Within months, reports of frequent rape in and near the encampments, primarily affecting women and girls but also men and boys, began to filter out. The rapes have prompted a variety of responses focused on meeting victims¹ immediate medical and psychological needs, initiating investigations and prosecutions, and improving security in the encampments to prevent additional attacks. They also once again have focused attention on the status of the law in Haiti concerning rape and other forms of sexual abuse, giving fresh impetus to long-standing calls for rape law reform.

MADRE, a U.S. based organisation that promotes the human rights of women worldwide, requested this report in order to support the Haiti law reform effort. MADRE is engaged in this effort together with its sister organisation, KOFIVIV, a grassroots organisation of Haitian women.²

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- 1 Although the term “survivor” is often preferred to “victim” in the United States and elsewhere, it should be noted that women in Haiti often choose to call themselves “victims” and, moreover, the word is used as a legal term for one who experiences a crime. The use of the term victim should not be understood to imply a lack of agency.
 - 2 KOFIVIV (Komisyon Fanm Viktim Pou Viktim or the Commission of Women Victims for Victims) is a Haitian women’s group founded in 2004 to assist and empower women victims of sexual violence. MADRE’s other Haitian partners include the grassroots organisations FAVILEK and KONAMAVID as well as the public interest law firm, the Bureau des Avocats Internationaux (BAI). International collaborators include the Institute for Justice & Democracy in Haiti (IJDH), the Center for Gender & Refugee Studies (CGRS), and the Center for Constitutional Rights (CCR).

Interestingly, this is not the first report of its kind that was prompted by conditions in Haiti. This report builds and expands upon a prior work that was prepared at the request of the Haitian Ministère a la Condition Féminine et aux Droits des Femmes (“Ministry of Women’s Affairs and Rights” or MCFDF) and published by the Raoul Wallenberg Institute of Human Rights and Humanitarian Law in 2007 as *Gender Justice, Best Practices*.³ Gender Justice surveyed international human rights law as well as the laws of several nations in order to offer “best practices” for achieving gender justice in a nation’s laws and policies. More specifically, Gender Justice examined a variety of international law sources to distill human rights principles that govern five areas of women’s rights and offered as “best practices” examples from several jurisdictions of statutes and policies that implement these principles effectively.

The work presented here builds directly on Gender Justice. While Gender Justice addressed multiple areas of the law that affect women’s rights – including rape, domestic violence, termination of pregnancy, paternity, and non-marital cohabitation – this report discusses only rape and other sexual violence. This report relies on Gender Justice for the enunciation of human rights principles that are relevant to sexual violence. It expands upon Gender Justice by surveying more jurisdictions, and delving more deeply into the law of those jurisdictions.

This report, produced to support the process of law reform in Haiti, should be equally useful to persons in other

3 Raoul Wallenberg Institute, *Gender Justice, Best Practices* (2007), <http://www.rwi.lu.se/pdf/publications/reports/genderjustice.pdf>. This report also builds on the work of the former Director General and staff of the MCFDF who, before perishing in the earthquake, worked tirelessly to make passage of a law addressing violence against women a reality.

jurisdictions where the law still reaches only the narrowest definition of rape and where victims of unwanted sexual contact remain intimidated from reporting it by a sense of futility and fear of humiliation. As stated in *Gender Justice*, “Governments and NGOs facing a legislative drafting process [will] benefit from a list of practical, good examples where the human rights of women are secured and satisfactorily fulfilled. Such a list will be inspirational and offer legislative solutions for adoption and implementation.”⁴

This report, in text and references, supplies many concrete examples of laws and policies from a range of jurisdictions that implement women’s human rights, including models for statutes, protocols for victim services, and guides to police and prosecutorial procedures. Taken together, these materials point the way toward achieving changes in law and policy concerning sexual assault that respect the experiences of victims and advance gender justice. A team of lawyers is currently researching the applicability of the international framework and best practices discussed herein to the existing laws of Haiti as well as draft violence against women legislation under discussion there. The results of this research will be the subject of a subsequent report.⁵

4 *Gender Justice* 11.

5 The authors of this report are aware that the Haitian Women’s Ministry, in collaboration with the Organisation of American States (OAS), the International Senior Lawyers Project (ISLP), and Duke University, has recently conducted comparative research regarding laws pertaining to the prevention of violence against women in Argentina, Brazil, France, Mexico, Spain and Venezuela and a review of Haitian criminal and civil codes in light of best practices. Project Completion (Final) Report to U.S. Agency for International Development (USAID)/Haiti Protection of Vulnerable Groups – Women and Disabled Program (April 2009-May 2011) Grant # 521-G-00-09-00026-00, July 2011, http://www.sedi.oas.org/ddse/documentos/discapacidad/Report_Vulnerable_Groups.pdf. The Ministry’s studies, however, do not appear to be publicly available. This series of reports does not seek to reinvent the wheel, but rather, to supplement the research, provide specific guidance for attorneys prosecuting these cases in Haitian courts, and encourage public participation. This report will be made publicly available to attorneys, advocates and other members of civil society that wish to advance reform. A public discussion is imperative. Not only will public buy-in ensure that legal reforms take place, it will also ensure that legal reforms have their intended effect – to influence the behavior of actors in the justice system and society at large.

EXECUTIVE SUMMARY

This report was commissioned by MADRE through the TrustLaw Connect programme of the Thomson Reuters Foundation. TrustLaw Connect enlisted five major international law firms to study the law of rape in a sample of jurisdictions from around the world. The report builds upon an earlier report, *Gender Justice, Best Practices*, prepared in 2007 by the Raoul Wallenberg Institute of Human Rights and Humanitarian Law at the request of the Haitian Ministry of Women's Affairs and Rights. This report studies the laws and policies that address rape and other forms of sexual violence in Brazil, Canada, France, South Africa, Sweden and the United States (specifically the states of California, New York and Pennsylvania). These jurisdictions represent a diversity of cultures and histories but almost all have contemporary and sophisticated rape and sexual violence statutes. The research investigated the statutory definitions of sex crimes and punishments, policies for the care and support of victims of such crimes, and investigation and prosecution procedures. The research generated a small library of information and reference materials that will be separately organized and made available to MADRE.

Chapter I identifies the standards of the *Gender Justice* report as an appropriate set of international human rights standards for measuring laws and policies addressing sexual offenses. In the last twenty years gender-based violence has become widely recognized as a violation of human rights, a change from its former treatment as the isolated action of individuals or the product of specific cultural or religious practices. The crime of rape has been transformed from its origins as a crime against men's private property to a crime against human rights.

Eleven criteria were distilled from the *Gender Justice* report. Legal definitions of rape and related crimes shall be gender neutral, rape is defined on the basis of lack of consent, consent is not implied by lack of resistance, corroborating evidence is not required for conviction, rape within marriage is criminalized, consent is presumed to be lacking under specific age limits, the law does not recognize mitigating circumstances, sexual offenses are defined as crimes of violence against persons, not crimes against morality, investigation of such crimes is mandatory, and there is the possibility of financial compensation within

the criminal trial. Chapter I finds that there is a high level of conformance with these standards in the jurisdictions that were studied although there is some individual variance on how the standards were met.

Chapter II examines the relevant rape statutes in more detail. Chapter II has four parts. It addresses the definition of consent, what acts are criminalized, procedures for protecting victims during trial such as rape shield laws, and the range of punishments for sexual offenses. In each area of inquiry, it summarizes the treatment of the issue by the jurisdictions that were studied.

Consent

Modern statutes typically cover not only sexual intercourse without consent but also other types of sexual conduct. Consent, rather than the use of force, is the touchstone of modern definitions of rape in the criminal law. Consent is defined as the absence of coercion. The circumstances in which consent is not found include the use of force and threats of force, coercion, fraud, and incapacity by virtue of mental or physical status or age. All of the jurisdictions studied recognize that consent is absent where sexual conduct is achieved by force. Consent is also considered absent where there is an abuse of authority or a trust relationship or where fraud, fear, or coercion is involved. Some jurisdictions limit a defendant's ability to escape responsibility where a defendant mistakenly believes in consent. All the jurisdictions deny consent by virtue of marriage or present or past relationships.

Prohibited Acts

Modern statutes typically criminalize not only sexual intercourse without consent but also other forms of nonconsensual sexual penetration and, in many cases, sexual touching. Sexual acts against children or others with limited ability to consent often trigger additional criminal provisions. Nearly all jurisdictions criminalize incest but the definition of the protected group varies. The newest area of criminal jurisdiction is crimes involving the internet, especially involving contact with children that result in prohibited sexual activity.

Trial Procedures

In a major change from the past, most jurisdictions no longer require corroborating evidence but find that the victim's testimony alone can be sufficient to convict. Most jurisdictions limit or prohibit the introduction of evidence about a victim's personal sexual history via "rape shield" statutes. The identity of the victim is protected in all jurisdictions although the procedures vary. Where minors are involved, there are always special provisions to protect

them yet obtain their testimony. The courts are often empowered to limit access to the courtroom in special circumstances.

Punishments

The base level of punishments ranges from two to six years in Sweden to fifteen years imprisonment in France. Monetary fines are sometimes authorized. All jurisdictions provide for increased penalties when specific aggravating factors are present. Other factors that increase sentences include multiple participants in the attack and use of drugs or weapons. Again, sex crimes involving children or others of limited capacity may result in increased punishment.

Chapter III moves from the statutory world to the law in practice. It has two major parts: the first addresses victim support measures and the second addresses police, prosecution and judicial procedures. There are many good practices that are described in publicly available materials.

Victim Support Measures

Hospitals are often the first agencies that victims of rape have contact with. Most of the jurisdictions studied have established special rape treatment centers or employ medical staff who have received specialized training on the care of rape victims. In all jurisdictions, victims of sexual assault are entitled to emergency medical care, including protection from pregnancy as well as sexually transmitted diseases. In addition, in some of the jurisdictions, victims have access to rape crisis advocates whose role is to support them in their immediate dealings with medical and police personnel.

Nearly all jurisdictions provide some form of continuing psychological care or trauma counseling for the victim.

Several jurisdictions make substantial efforts to support victims throughout the legal process. Such measures include special pre-trial programs educating victims about the judicial process or even a plaintiff assistant or rape advocate. Nearly all the jurisdictions provide some form of financial assistance to victims of sexual assault as part of general crime victim compensation schemes. These vary, and may include free medical and psychological care, emergency accommodations and travel assistance funds.

Most jurisdictions authorize a protective order from the court to prevent contact with the alleged sex offender. Other measures include the option to temporarily jail the alleged assailant to protect the victim, restricting visiting rights of the aggressor with his or her children or protecting information concerning the victim's address.

Rape Reporting, Investigation and Procedure

In most jurisdictions the initial report of rape is made to the police. The law generally requires that reports of rape be investigated; the old idea that only rapes immediately reported be investigated has been abandoned. Law enforcement officers are often trained on appropriate procedures for handling reports of rape but the extent and intensity of training varies considerably. Finally reports of rape can be made by others than the victim including social workers, doctors or school officials.

The jurisdictions studied universally recommend that the victims have a medical examination as promptly as possible after a sexual attack so evidence is collected before it is compromised or gone. Procedures also should be established to ensure that evidence is properly retained, while giving the victim time to decide whether to press charges. A common practice is to have a standard rape kit and a supplemental search kit for use when officials suspect drugs were used to facilitate the assault.

Nearly all jurisdictions have a specialized police unit dedicated to sex crimes. Police officers in such units receive special training and, for the most part, follow detailed protocols for interviews and conducting investigations. One jurisdiction has a specialized unit for particularly serious crimes and a second unit for sexual offenses against minors.

Special provisions are in place in many jurisdictions to ensure that child victims of sexual attacks are cared for and protected. It is common to have specialized units to investigate offenses against children. During interviews and testimony, children may be assisted by a third party.

Most jurisdictions also have special units of prosecutors trained to handle sexual assault offenses. Where special units do not exist or are being implemented, sex crimes are handled within the scope of other specialized units such as child victim units.

Prosecutors generally must undergo special training to prosecute sex crimes, including in some cases specifically violence against women and minors.

In several jurisdictions, the judiciary receives special training for the administration of rape trials. The training is provided variously, sometimes by governmental authorities and sometimes by NGOs.

South Africa, as well as at least one jurisdiction in the United States, has established specialized courts for sex offenses in some jurisdictions. The South African courts have produced higher conviction rates for these crimes. The court in the United States is a relatively new entity and there undoubtedly will be lessons learned from its experience.

This report ends here. However, a subsequent report will focus on applying the international framework and best practices discussed in this report to the existing laws of Haiti as well as draft violence against women legislation circulating there. It will provide recommendations for legal and policy reform in this area including strategies for including meaningful involvement of civil society in Haiti.

1. COMPLIANCE WITH INTERNATIONAL HUMAN RIGHTS STANDARDS FOR RAPE LAW

1 FROM PRIVATE OFFENSE TO VIOLATION OF HUMAN RIGHTS

“It is currently undisputed that violence against women can constitute a human right violation regardless of whether it occurs within the public or the private sphere of life.”⁶ This single sentence encapsulates a lengthy and, indeed, stunning recent history of rape law reform. Fewer than twenty years ago, scholars critiqued then-prevailing human rights norms in the *Harvard Human Rights Journal*, writing, “Gender-based violence is not recognized as a violation of human rights, but rather as the product of particular cultural or religious practices or the isolated actions of individuals.”⁷

This sea change in attitude toward the significance of rape and other forms of gender based violence was predated by a “wave of feminist advocacy” for rape law reform.⁸ A brief review of the reform movement is necessary to understand the significance of the human rights standards that now apply to the law of rape.

Taking the United States as an example, before the reform movement of the 1970s and 1980s, the common law definition of rape as “unlawful carnal knowledge of a woman by force and against her will” prevailed in state law.⁹ A woman’s testimony that she did not consent to a sexual act was insufficient for conviction as a matter of law. Not only were corroboration, “earnest resistance,” and timely report requirements standard, but complainants were cross-examined on their personal sexual history to test whether they had a “tendency to consent.” Rape statutes reached only acts that involved “penetration,” and

6 *Gender Justice* 23.

7 Pamela Goldberg & Nancy Kelly, *Recent Developments: International Human Rights and Violence Against Women*, 6 *Harvard Human Rights Journal* 195 (1993).

8 Stacy Futter & Walter R. Mebane, Jr., *The Effects of Rape Law Reform on Rape Case Processing*, 16 *Berkeley Women’s Law Journal* 72 (2001)

9 *See generally id.* at 72-75 for a brief summary of the rape law reform movement.

husbands were exempted from prosecution for rape, because wives were considered to have given blanket and irrevocable consent to sexual acts when they married. Further, rape law's central concern with forced sex between strangers was rooted as much in protecting what was seen as a father's or husband's property interest in controlling sexual access to "their" women as in concern for women's well being. Thus, rape laws with severe penalties, often life imprisonment or death, coexisted with widespread and tacitly accepted sexual abuse of women who were not under a father's or husband's protection, as well as men's own wives and children.

The rape reform movement challenged each of these aspects of prevailing law. The particulars of reform are detailed more thoroughly below, but the overall impact was to uproot rape from its original categorization as a crime against men's private property and replant it as a crime against the bodily integrity of anyone who is made to engage in sexual activities without consent. This paved the way for recognition of rape and other sexual violations as crimes against human rights. Legal changes won by national women's rights movements were paralleled by and contributed to developments in international human rights law, so that today international norms related to genderbased violence complement and reinforce domestic norms and obligations.¹⁰

As summarized in *Gender Justice*:

[G]ender-based violence is acknowledged to constitute a form of discrimination with detrimental effects on women's ability to enjoy human rights on a basis of equality with men...Relevant rights are, inter alia, non-discrimination and equality, equality before the law, right to the highest attainable standard of physical and mental health, right to life, right to be free from torture and inhuman or degrading treatment, right to security and liberty of persons, right to equality in the family, right to housing and judicial rights.¹¹

10 See, e.g., Rome Statute of the International Criminal Court, 2187 U.N.T.S. 90, U.N. Doc. A/CONF.183/9 (entered into force July 1, 2002); Fourth World Conference on Women, Beijing, China, Sept. 4-15, 1995, Report of the Fourth World Conference on Women, U.N. Doc. A/ CONF.177/20/Rev.1 (Oct. 17, 1995); Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ("Convention of Belem do Para"), 33 I.L.M. 1534 (entered into force Mar. 5, 1995); Convention on the Elimination of All Forms of Discrimination Against Women, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981).

11 *Gender Justice* 23. The report also notes general agreement that legislation on this subject should be "nondiscriminatory and equal for women and men alike." *Id.*

2 HUMAN RIGHTS STANDARDS SET FORTH IN THE *GENDER JUSTICE* REPORT

In 2007, at the request of the Haitian Minister of Women’s Affairs and Women’s Rights, the International Legal Assistance Consortium commissioned the Raoul Wallenberg Institute of Human Rights and Humanitarian Law to prepare a report on “best practices” in gender justice from around the world. The results of this report, titled *Gender Justice, Best Practices* and referred to here as *Gender Justice*, were presented at a meeting in Haiti in September 2007.

Gender Justice defines best practices in several areas—including rape, domestic violence, and termination of pregnancy—with the guidance of international human rights standards. In particular, it notes that a best practice is a “practice that represents significant steps toward the realization of the rights in question and that demonstrates the state’s willingness and commitment to the full implementation of international human rights standards.”¹² The *Gender Justice* report provides relevant human rights standards, as ascertained from a variety of human rights sources, and then discusses laws and policies drawn from a study of several countries that its authors believe comply with these standards. With respect to rape, *Gender Justice* focused on the practices followed in Canada, South Africa and Spain.

Best practices, as the concept is used in the *Gender Justice*, offer a spectrum of possible ‘legal’ approaches that meet international human rights standards within a specific area. But statutory law is clearly insufficient on its own: “A legal statute can be ever so good, but if it is not implemented properly, it remains too abstract.”¹³ Thus, “[b]esides legal technical solutions, the practice, as evident from the word itself, shall also entail policies for implementation and the outcome of implementation in the society.”¹⁴ Therefore, in addition to giving examples of statutory language, *Gender Justice* also gives examples of policies that accompany statutes and make their implementation more effective.

For each aspect of law studied, *Gender Justice* lists criteria drawn from international human rights standards that a nation’s laws should, at minimum, meet. As a starting point for the analysis presented here, here are key human rights criteria for rape laws, as identified in *Gender Justice*.¹⁵

1. Legal definitions of rape and other sexual offenses are gender neutral

¹² *Gender Justice* 12.

¹³ *Gender Justice* 12.

¹⁴ *Gender Justice* 12.

¹⁵ These criteria are drawn from *Gender Justice* 23–25, 87–88.

2. Rape is defined based on lack of consent, not use of violence/force/coercion
3. Consent is not implied by lack of resistance
4. Corroborating evidence is not required for conviction; the victim's testimony can be sufficient
5. Rape within marriage is criminalized
6. Incest is defined as a specific crime
7. Specific age limits, under which consent is presumed to be lacking, protect young persons
8. The law does not recognize any discriminatory mitigating circumstances, such as defense of honor or reduced sentences if the rapist marries the victim
9. Sexual offenses are defined as crimes of violence against persons, not as crimes against morality
10. Crimes are treated as public offenses so investigation is mandatory
11. There is a possibility of financial compensation within the criminal trial

3 CONFORMANCE WITH HUMAN RIGHTS STANDARDS IN THE JURISDICTIONS

In general, the jurisdictions studied herein—Brazil, Canada, France, South Africa, Sweden and the United States (California, New York and Pennsylvania)—have a high level of conformance with the human rights standards for the law of rape that are set out in Gender Justice. Here is a summary of findings regarding these jurisdictions:

(1) Legal definitions of rape and other sexual offenses are gender neutral

Legal definitions of rape and other sexual offenses are gender neutral in all jurisdictions studied.

(2) Rape is defined based on lack of consent, not use of violence/force/coercion

In most jurisdictions studied, the most serious rape and sexual assault offenses are usually premised upon force, violence or threats. Lower level rape and sexual assault offenses are usually premised upon lack of consent alone, without the need to show force, threats or violence. Many jurisdictions studied provide that a rape or sexual assault offense is more serious, that is, deserving

of greater punishment, when committed against a member of a vulnerable class of persons, such as children under a particular age or people with mental disabilities, and do not require any showing of force, threats, or violence in these cases.

(3) Consent is not implied by lack of resistance

Resistance is not generally required in most jurisdictions studied, particularly where the victim is disabled, intoxicated, threatened, intimidated, confused or vulnerable. One jurisdiction explicitly states that consent must be free and voluntary, and that the victim must understand the nature of the act. One jurisdiction studied requires positive cooperation to show consent, whereas another jurisdiction studied requires that a defendant who claims consent must show that a reasonable person would have understood the victim's words and acts as showing consent.

(4) Corroborating evidence is not required for conviction; the victim's testimony can be sufficient

Most jurisdictions studied provide that the victim's testimony may be sufficient to convict, without corroborating evidence, particularly where the testimony is consistent across different times. One jurisdiction requires a forensic examination if the rape is reported while it is still possible to obtain traces of the crime, but that jurisdiction permits conviction without forensic examination evidence if the prosecution brings forth other equally convincing evidence of the crime. In that jurisdiction, if the rape is reported at a time when it is not possible to do the forensic examination, testimony of the victim and witnesses can replace forensic examination.

(5) Rape within marriage is criminalized

All jurisdictions studied prohibit rape and sexual offenses within marriage. One jurisdiction, however, presumes that encounters between spouses are consensual, which can be rebutted by proving lack of consent.

(6) Incest is defined as a specific crime

Incest is defined as a crime in most jurisdictions studied. One jurisdiction studied does not define incest as a crime, but provides for higher punishments in cases of sexual assault perpetrated by a family member.

(7) Specific age limits, under which consent is presumed to be lacking, protect young persons

All jurisdictions studied provide that consent to sexual acts will be absent as a matter of law if the victim is below a specified age. In some jurisdictions, the minimum age of consent varies according to the age of the perpetrator, so, for

example, a 16 year old cannot by law consent to sex with someone who is over 21, but can consent to sex with a partner of the same age. In other jurisdictions, the minimum age of consent is the same in all circumstances.

(8) No discriminatory mitigating circumstances, such as defense of honor or reduced sentences if rapist marries victim

None of the jurisdictions studied establish any mitigating circumstances for rape.

(9) Sexual offenses are defined as crimes of violence against persons, not as crimes against morality

In most of the jurisdictions studied, sexual offenses are defined as crimes against the person. In one jurisdiction studied, sexual misconduct is defined as a crime against the victim's "sexual dignity," which is effectively part of their person.

(10) Crimes are treated as public offenses so investigation is mandatory

In all jurisdictions studied, investigation is mandatory.

(11) There is a possibility of financial compensation within the criminal trial

While several jurisdictions studied provide for financial compensation to a victim through a criminal trial, the more common provisions entitle rape victims to the same benefits as other victims of crime, such as reimbursement for the costs of medical expenses, counseling, destroyed property and loss of wages.

2. STATUTORY PROVISIONS

This chapter examines rape statutes in detail, describing which sexual offenses are generally punishable by law, statutory safeguards concerning the trial of sexual offenses, and the range of punishments for these offenses.

Consent is the touchstone of modern definitions of rape in the criminal law. The old requirement that sexual contact be achieved by force in order to be criminal has been largely abolished. Rather, rape and other forms of sexual assault are defined as sexual contact occurring without consent.¹⁶ Consent is defined with reference to voluntariness and the absence of coercion, as, for example, “positive cooperation in act or attitude pursuant to an exercise of free will,”¹⁷ or “voluntary agreement . . . to engage in the sexual activity in question,”¹⁸ as well as the capacity to consent. Defining consent, or more precisely, defining when consent is absent is the subject of Part A, below.

Modern statutes typically reach not only sexual intercourse without consent, but also other types of sexual contact. The acts prohibited in the jurisdictions studied are the subject of Part B. Statutory provisions that protect victims during trial are discussed in Part C. The authorized punishments for sexual offenses are the subject of Part D.

16 See, e.g., N.Y. Penal Law § 130.25 (defining third degree rape as sexual intercourse without consent); South African Sexual Law (Sexual Offences and Related Matters) Amendment Act, § 3 [hereinafter S. Afr. Amend. Act] (defining rape as an act of sexual penetration without consent), available at <http://www.justice.gov.za/legislation/acts/2007-032.pdf>. While Brazil defines only forced penetration as rape, it, too, recognizes other sexual crimes not involving force. Braz. Crim. Code arts. 215–216.

17 Cal. Penal Code § 261.6.

18 Can. Crim. Code §§ 265, 273.1. See also e.g. S. Afr. Amend. Act § 1(2) (“‘consent’ means voluntary or uncoerced agreement”).

1 CONSENT

The jurisdictions studied recognize a range of circumstances in which sexual contact is criminal because it occurs without consent. These circumstances include the use of force and threats of force, coercion, fraud, and when the victim is incapable of consent for one or more reasons, including age. Because consent is often the contested issue in rape prosecutions, defining the circumstances where consent will be found absent is a critical aspect of rape law.

(1) Force

All jurisdictions studied recognize that there is no valid consent to sexual contact when the contact is achieved by force. "Force" is defined broadly, for example, as "force, violence, duress, menace, or fear."¹⁹ While all jurisdictions recognize some sexual offenses that do not involve force, many treat sexual contact achieved by force as a more serious offense.²⁰

(2) Coercion or fraud

The jurisdictions studied also recognize circumstances where consent, even if given, is not voluntary and the contact is therefore criminal. These include abuse of authority or abuse of a position of trust or power in relation to the complainant. Brazil, for example, defines sexual harassment as constraining a person for the purpose of obtaining a sexual favor or benefit "by making use of a hierarchically superior position or other special powers inherent to the exercise of one's job position."²¹ Many statutes specify that inducing consent to a sexual act by fraud, fear, or coercion is a crime. One jurisdiction defines this crime as inducing consent to a sexual act by causing fear that causes the victim to act "contrary to the person's free will."²² California's statute specifies that there is no consent where the victim "was not aware, knowing, perceiving or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact; [or] was not aware, knowing, perceiving or cognizant of the essential characteristics

19 Cal. Penal Code § 261; see also S. Afr. Amend. Act § 57 (force, intimidation, threat of harm to the person or person's property); Can. Crim. Code § 272 (threatening to cause bodily harm to another person).

20 See, e.g., Can. Crim. Code §§ 271-272 (defining offenses based on presence or absence of force); N.Y. Penal Law §§ 130.25, 130.30 & 130.35 (same); Braz. Crim. Code arts. 213 & 215 (defining rape as involving force, while recognizing other sexual crimes where victim impeded from stating free will); 18 Pa. Cons. Stat. Ann. §§ 3121 (sexual intercourse by force is first degree felony) & 3124.1 (sexual intercourse without consent is second degree felony).

21 Braz. Crim. Code art. 216. See also Can. Crim. Code § 273.1(2)(c) (no consent where accused "abus[es] a position of trust, power or authority"); S. Afr. Amend. Act § 1(3) (b) (recognizing absence of consent where "there is an abuse of power or authority" by accused); Fr. Crim. Code arts. 222-228 (abuse of trust is an aggravating factor used in sentencing).

22 Cal. Penal Code § 266c; see also Swed. Penal Code ch. 6, § 2 (prohibiting "sexual coercion," defined as inducing a person to take part in a sexual act "by unlawful coercion,"); Brazil Crim. Code art. 215 (prohibiting sexual acts committed by fraud or by means that impede victim from stating his or her free will, or to obtain economic advantage); S. Afr. Amend. Act § 1(3) (a) (no consent where complainant submits to act as result of intimidation or threat to harm the person or property of complainant or a third person).

of the act due to the perpetrator's fraudulent representation that the sexual penetration served a professional purpose when it served no professional purpose."²³ French law prohibits rape and other "sexual aggressions," defined as "any sexual harm committed with violence, constraint, threat or surprise," and specifies that "the constraint may be physical or moral and may result from the age difference" between the actor and the victim or the "legal authority" of the actor over the victim.²⁴

(3) Mistaken belief in consent

In addition to circumstances such as fraud, coercion, or abuse of power, some jurisdictions further limit a defendant's ability to escape responsibility for a sexual assault by claiming a mistaken belief in consent. For example, Canadian law specifies that the accused's belief that the complainant consented is not a defense when the belief arose from the accused's self-induced intoxication, recklessness or willful blindness, or the accused did not take reasonable steps to ascertain the complainant's consent.²⁵ Canada also expressly provides that consent is absent when the complainant revokes consent after initially having given it.²⁶ In New York, while a defendant may show consent through implied acquiescence, this defense will not hold where a reasonable person would have understood the victim's words and expressions as showing a lack of consent.²⁷

(4) Marriage

Old rape statutes legally excluded the possibility of prosecuting a husband for raping his wife. Those laws have been changed. Notably, the existence of a present or past relationship, including marriage, is not a defense to a sexual crime in any of the jurisdictions studied.²⁸ One jurisdiction, France, has gone beyond removing the marital exemption and considers a spousal relationship as an aggravating factor that can increase the penalty for rape.²⁹

23 Cal. Penal Code § 266c; *see also* S. Afr. Amend. Act § 1(2)-(3)(c) (consent entails "voluntary or uncoerced agreement" and is absent "where the sexual act is committed under false pretences or by fraudulent means").

24 Fr. Crim. Code arts. 222-22 & 222-22-1.

25 Can. Crim. Code § 273.2.

26 Can. Crim. Code § 273.1(2)(e).

27 N.Y. Penal Law § 130.05.

28 *See, e.g.,* S. Afr. Amend. Act § 56(1) (existence of a marital or other relationship is not a valid defense to rape or sexual assault); Fr. Crim. Code art. 222-22 (sexual crimes may be charged "regardless of the nature of the existing relationship between the aggressor and its victim, including when they are related by marriage"); Can. Crim. Code § 278 (husband or wife may be charged with sexual assault whether or not living together). However, statutes that criminalize, for example, *any* sexual touching of a minor, may make exceptions for married minors. *See, e.g.,* Can. Crim. Code § 150.1(2.1)(b) (marriage is defense to crime of touching person under age 16 for sexual purpose).

29 Fr. Crim. Code art. 222-24 (enhanced penalty where rape committed by the spouse, concubine, or civil partner of the victim).

(5) Lack of capacity to consent in adults

Nearly all jurisdictions define situations in which an adult complainant is deemed either permanently or temporarily incapable of consenting to sexual activity.³⁰ Thus, it is a crime to have sexual contact with people who cannot consent by reasons of mental illness or mental disability. For example, South African law details that there is no consent where the complainant is “mentally disabled,” which is defined as unable to appreciate the nature or consequences of sexual acts, unable to resist, or unable to communicate unwillingness to participate in the act.³¹

Likewise, most jurisdictions studied recognize a variety of temporary circumstances where consent is impossible. In Sweden, for example, rape includes improperly exploiting the victim’s lack of consent due to unconsciousness, sleep, intoxication or other drug influence, illness, physical injury, mental disturbance, or otherwise helpless state.³² California criminalizes sexual contact where the victim is at the time “unconscious of the nature of the act, and this is known to the accused,” defining “unconscious of the nature of the act” to include “incapable of resisting because the victim...was unconscious or asleep [or] was not aware, knowing, perceiving or cognizant that the act occurred.”³³

30 France does not address a lack of capacity to consent in its definition of sexual crimes. However, it does consider certain states of vulnerability as an aggravating factor for sentencing purposes. Fr. Crim. Code art. 222-28. French case law also provides examples of situations in which the courts have concluded that a rape or other sexual aggression has occurred based, in part, on the victim’s state of vulnerability. *See, e.g.*, Cass. Crim., 25 June 1857 (the French Supreme Court held in 1857 that there is rape where a person sneaked into the room and the bed of a woman who was asleep while her husband was absent and took advantage of the woman’s mistake to have sex with her).

31 S. Afr. Amend. Act §§ 1(1) (definition of “person who is mentally disabled”) & 57 (mentally disabled person is incapable of consent). In Brazil, a sexual act perpetrated on someone who “(i) lacks the proper judgment to practice the act, due to mental retardation or other intellectual disability, or due to an infirmity; or (ii) cannot offer resistance for any other reason” is a “crime per se” and does not require proof of lack of consent or that the act be accomplished by violence or under serious threat. Braz. Crim. Code, art 217-A, ¶ 1. *See also* Can. Crim. Code, § 273.1(2)(b) (no consent where complainant is “incapable” of consenting); N.Y. Penal Law § 130.5 (“A person is deemed incapable of consent when he or she is... (b) mentally disabled; or (c) mentally incapacitated”); 18 Pa. Cons. Stat. Ann. § 3121, § 3123, § 3125, and § 3126 (criminalizing sexual contact with a victim “who suffers from a mental disability which renders the complainant incapable of consent”).

32 Swed. Penal Code ch. 6, § 1.

33 Cal. Penal Code § 261(a)(4). *See also* S. Afr. Amend. Act § 1(3)(d) (recognizing absence of consent where complainant unable to appreciate the nature of the sexual act, asleep, unconscious or under the influence of a substance which adversely impacts on the complainant’s consciousness or judgment); Can. Crim. Code, § 273.1 (consent means the voluntary agreement of the complainant to engage in the sexual activity in question. No consent is obtained where the complainant is incapable of consenting to the activity); N.Y. Penal Law, § 130.5 (“Lack of consent results from... (b) incapacity to consent.” “A person is deemed incapable of consent when he or she is... (c) mentally incapacitated; or (d) physically helpless...”); 18 Pa. Cons. Stat. Ann. § 3121, § 3123, § 3125, and § 3126 (criminalizing sexual contact with a victim “who is unconscious or where the person knows that the complainant is unaware that the [conduct] is occurring [or]... where the person has substantially impaired the complainant’s power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance”).

(6) Lack of capacity to consent due to age

All jurisdictions recognize an age of consent, that is, the earliest age at which a young person is seen as having the capacity to consent to sexual contact. In general, any contact with children below such an age is criminal. The most common age of consent in the jurisdictions studied is 15, 16 or 17.³⁴ Some jurisdictions, recognizing that teenagers are sometimes in consensual sexual relationships with their peers, either relax the age of consent or provide for minimal punishment for sexual acts between teenagers who are close in age.³⁵

2 PROHIBITED ACTS

Modern rape laws typically criminalize not only sexual intercourse without consent, but also other forms of nonconsensual sexual penetration and, in many cases, sexual touching.

(1) Sexual contact without consent

Canadian law criminalizes as sexual assault all touching of a sexual nature without consent, and does not distinguish sexual penetration from other forms of sexual contact.³⁶ New York's prohibitions include "forcible touching," defined as intentionally, forcibly touching the intimate parts of a purpose, for the purpose of degrading or abusing the victim, or satisfying the perpetrator's sexual desire, and "sexual abuse," defined as sexual contact without consent.³⁷

34 The age of consent is 17 in New York, N.Y. Penal Law § 130.05(3)(a); 16 in Canada, Can. Crim. Code § 150.1(1); 15 in Sweden, Swed. Penal Code ch. 6, § 6; and 14 in Brazil, Braz. Crim. Code art. 217-A. California does not set a specific age limit under which consent is presumed to be lacking, but criminalizes sexual intercourse with a minor, and defines a minor as a person under 18. Cal. Penal Code § 261.5. According to French case law, "the very young age of the victims does not allow them to realize the nature or the gravity of the acts imposed on them," Cass. Crim, 7 December 2005, N°05-81.316, and victim age under 15 is an aggravating factor in sentencing a person convicted of rape or sexual violence. Fr. Crim. Code arts. 222-24 & 222-29. South African law states 12 as the minimum age of consent, S. Afr. Amend. Act § 57(1), but this applies only to consensual sexual contact with others ages 12–15; otherwise, 16 is the age of consent for sexual contact with adults. See S. Afr. Amend. Act §§ 15-16 (criminalizing consensual sexual penetration and sexual violation with child) and § 1(1)(b) (defining "child" in reference to §§ 15–16 as ages 12–15).

35 For example, in circumstances where there is no abuse of trust or authority or condition of dependency, Canadian law permits a 12 or 13 year old to consent to sexual contact with someone no more than 2 years older, and a 14 or 15 year old to consent to sexual contact with someone no more than 5 years older. Can. Crim. Code §§ 150.1(2) & 150.1(2.1). In Pennsylvania, the age of consent is 16, but a person aged 13–15 may consent to sexual contact with someone no more than 4 years older. 18 Pa. Cons. Stat. Ann. §§ 3121(a) (6), 3122.1, 3123, 3125 & 3126. South Africa has similar provisions. S. Afr. Amend. Act §§ 15(2)(a) & 16(2)(a) (requiring written authorization for prosecutions when both parties are children ages 12–15) & § 56(2)(b) (allowing defense to charge of "consensual sexual violation" where person charged is a child and within two years of complainant's age). California takes a different approach, defining as "unlawful sexual intercourse" any intercourse with a person under 18, but classifying it as a misdemeanor where the age difference is less than 3 years. Cal. Penal Law § 261.5(a)–(b).

36 Can. Crim. Code § 271 (criminalizing "sexual assault"), as interpreted by Canada's Supreme Court in *R. v. Ewanchuk*, 1 S.C.R. 330 (Can. 1999) (defining elements of sexual assault to be touching of a sexual nature without consent).

37 N.Y. Penal Law §§ 130.52, 130.55, 130.50. Under New York law, the lack of consent necessary for a sexual abuse conviction may be shown by "any circumstances, in addition to forcible compulsion or incapacity to consent, in which the victim does not expressly or impliedly acquiesce in the actor's conduct." N.Y. Penal Law § 130.05(2)(c).

In addition to rape and other acts of sexual penetration, South Africa also prohibits other types of forced sexual contact, as well as compelling other sexual acts including masturbation, exposing oneself, or being forced to witness sexual acts.³⁸

(2) Acts involving persons with limited capacity to consent

Many jurisdictions recognize additional sexual acts as criminal when they are perpetrated against children or adults who lack the capacity to consent. These include New York, where “aggravated sexual abuse” is the use of a finger or object to penetrate a victim who is “physically helpless” or a child;³⁹ Sweden, where “sexual exploitation” is a sexual act induced by gross abuse of the victim’s dependency, lack of consciousness, mental disturbance, or other helpless state;⁴⁰ and Canada, which protects persons with a mental or physical disability against being induced by anyone in a position of responsibility or authority to touch themselves or another person “for a sexual purpose,” without consent.⁴¹

(3) Acts against children

Beyond defining an age of consent, below which any sexual contact with a child is criminal, nearly all jurisdictions provide children with additional protection against sexual abuse. Many jurisdictions, for example, punish sexual crimes against the youngest victims with the greatest penalties.⁴² Some countries address children’s vulnerability to sexual exploitation in other ways. South Africa is a model in this respect, with prohibitions against any form of involvement with paying for a child to perform a sexual act or arranging anyone’s sexual access to children (regardless of the child’s consent); “sexual grooming of children,” meaning doing anything to prepare or induce a child to engage in a sexual act;

38 S. Afr. 2007 Amend. Act §§ 3-9. Other examples from the jurisdictions surveyed include Brazil, Braz. Crim. Code arts. 213, 215 (rape defined as sexual penetration, or the active or passive practice of any other libidinous act); Fr. Crim. Code arts. 222-22, 222-22-1, 222-27-222-31 (prohibiting and prescribing punishment for “sexual aggression,” understood as sexual contact without consent and without penetration). Swed. Penal Code ch. 6, § 1 (defining rape to include sexual act “comparable” to sexual intercourse) & § 2 (“sexual coercion,” defined as coerced sexual act other than rape); Cal. Penal Code § 243.4 (“sexual battery” is nonconsensual touching, directly or through clothing, of intimate part of another person); 18 Penn. Cons. Stat. Ann. § 3101, 3126 (criminal “indecent assault” includes nonconsensual touching of another person’s sexual parts for purpose of arousing or gratifying sexual desire).

39 N.Y. Penal Law §§ 130.66, 130.67, 130.70.

40 Swed. Penal Code ch. 6, § 2.

41 Can. Crim. Code § 153.1(1).

42 See, e.g., N.Y. Penal Law §§ 130.25, 130.30 & 130.35 (escalating gravity of offense when victim is under 17, 15, and 11); Cal. Penal Code § 264.1 (enhancing penalty for crimes committed against child under 14); Fr. Crim. Code art. 222-24 (enhancing penalty for rape when victim is under 15).

or compelling children to observe sexual acts.⁴³ California, New York, Brazil and Sweden are among the other jurisdictions with some or all of these provisions.⁴⁴

(4) Incest

All but one of the jurisdictions studied—Brazil—define incest as a specific crime.⁴⁵ The particular family relationships that give rise to the crime of incest vary among the jurisdictions studied, with some defining incest as sexual intercourse with an offspring, a grandchild or full blood sibling,⁴⁶ and others including a broader group, such as “ancestor or descendant, a brother or sister of the whole or half blood or an uncle, aunt, nephew or niece of the whole blood.”⁴⁷ France also includes any member of the family having legal or actual authority over the victim.⁴⁸ South Africa includes in its definition all persons “who are not legally permitted to marry one another,” which includes persons related as a result of adoption.⁴⁹ Among the jurisdictions studied, incest is a crime regardless of the age of the persons involved, except in France, whose incest law specifically protects only “underage” persons.⁵⁰

(5) Crimes involving the Internet

Recognizing that the law cannot stay static and must respond to changing risks, some jurisdictions are amending their laws to protect against dangers posed by the Internet, to both adults and children. South Africa, Brazil and Canada prohibit online communications with a child for sexual purposes.⁵¹ In France, the fact that the perpetrator of a sexual crime initiated contact with the victim online can add five years to the perpetrator’s sentence,⁵² and in New York, a defendant who engages in sex with a child after contacting the victim online faces an additional five years added to the maximum sentence.⁵³

43 S. Afr. Amend. Act §§ 17–20.

44 Cal. Penal Code §§ 266h, 266i, 266j; N.Y. Penal Law §§ 235.22, 263.05, 263.10, 265.15; Braz. Crim. Code arts. 218, 218-A, 218-B; Swed. Penal Code ch. 6, §§ 4, 5, 8, 9 & 10. Similarly, while not thoroughly researched for this report, a number of jurisdictions, including South Africa, Canada, California, and New York, criminalize making, displaying, distributing and/or possessing child pornography. See, e.g., Can. Crim. Code § 163.1; S. Afr. Amend. Act §§ 10, 19–20; N.Y. Penal Law §§ 235.22, 263.05, 263.10 & 265.15; Cal. Penal Code § 311.4.

45 While Brazil does not have a specific crime of incest, sexual offenses carry higher penalties when committed by someone having authority over the victim, such as a parent, step-parent, uncle/aunt, or brother/sister. See Braz. Crim. Code, art. 226 II.

46 See Swed. Penal Code ch. 6, § 7; Can. Crim. Code § 155.

47 18 Pa. Cons. Stat. Ann. § 4302; see also N.Y. Penal Law § 2225.24.

48 Fr. Crim. Code art. 222-31-1.

49 S. Afr. Amend. Act § 12(1).

50 Fr. Crim. Code art. 222-31-1.

51 S. Afr. Amend. Act § 18(2)(d)(ii); Braz. Law No 8.069, of 13 July 1990 (“Law for the Protection of Children and Teenagers”), art. 241-D; Can. Crim. Code § 172.1.

52 Fr. Crim. Code §§ 222-24, 222-28.

53 N.Y. Penal Law §§ 255.26-255.27.

(6) Attempting, aiding and abetting

Most jurisdictions studied also impose criminal liability for an attempt to commit a sexual crime, or for aiding or abetting another in committing a sexual crime, regardless of whether the underlying crime involves the use of force.⁵⁴

3 TRIAL PROCEDURES

The jurisdictions studied have adopted statutes that govern aspects of trial procedure in order to improve the fairness of criminal proceedings involving sexual offenses.⁵⁵

(1) Evidentiary requirements

Historically, rape prosecutions were often hampered by extraordinary corroboration requirements, which reflected not only the unique nature of sexual crimes, but also a distrust of women's accounts of rape.⁵⁶

Most of the jurisdictions studied have done away with these requirements, and provide that the victim's testimony can be sufficient to convict, without corroborating evidence.⁵⁷

Some countries state this explicitly in their criminal codes; for example, Canada specifies that no corroboration is required for a conviction under the sexual assault law.⁵⁸ In some jurisdictions, this is a matter of case law.⁵⁹ South African law specifies that a complainant's previous consistent statements are admissible as evidence, that delay in reporting a rape cannot be the basis of any negative inference, and warns judges against treating a complainant's testimony "with caution" simply because the complaint is of a sexual assault.⁶⁰ Of the jurisdictions studied, only Brazil requires a forensic examination for conviction, and even there, if the rape is reported at a time when it is no longer possible

54 See, e.g., Swed. Penal Code ch. 23, § 1 (imposing criminal liability where a person attempts a crime and there was a danger that such attempt would lead to the completion of the crime or completion was precluded only because of fortuitous circumstance); *id.* § 4 (imposing criminal liability where a person furthers a crime by advice or deed or induces another to commit a crime); S. Afr. Amend. Act § 55; Fr. Crim. Code art. 121-7 (imposing criminal liability for aiding or abetting the commission of a crime or offense or causing the crime or offense to be committed); Braz. Crim. Code art. 14, II (attempt); Cal. Penal Code § 264.1 (aiding and abetting rape); Can. Crim. Code § 21 (defining those who aid or abet another in committing an offense as "part[ies]" to the offense).

55 Additional information about policies governing prosecutors and judicial officers is found below in Part III(B).

56 See Futter & Mebane, *supra* note 8, at 76.

57 Of course, as with any crime, the availability of independent evidence to support a victim's account will make prosecution more likely and enhance the possibility of its success.

58 Can. Crim. Code § 274.

59 See, e.g., *People v. Garcia*, 89 Cal. App. 4th 1321 (2001) (California); *Commonwealth v. Hyatt*, 401 Pa. Super. 14 (1990) (Pennsylvania); Cass. Crim., 15 December 1999, No. 99-80.532 (France) (stating that the victim's testimony can be sufficient for a rape conviction, and that a victim's consistent statements over time supported her credibility).

60 S. Afr. Amend. Act §§ 58-60.

to perform a forensic examination, testimony of the victim and witnesses can suffice for conviction.⁶¹

(2) Protecting Complainants' Privacy

(A) RAPE SHIELD LAWS

Recognizing that rape victims historically have been reluctant to press charges in part because of their often humiliating treatment during trial, many jurisdictions have enacted provisions to safeguard a complainant's privacy. Statutes that limit the introduction of evidence about a complainant's personal sexual history are known as "rape shield" statutes. Among the jurisdictions studied, rape shield statutes are present in South Africa,⁶² Canada⁶³ and in the states of California, New York and Pennsylvania.⁶⁴ In these jurisdictions, the use of evidence of past sexual conduct of the victim is generally forbidden, with some exceptions such as specific instances of the victim's prior sexual conduct with the defendant;⁶⁵ where such evidence is needed to show the defendant's good faith belief that the victim consented;⁶⁶ or where the court finds this type of evidence otherwise relevant.⁶⁷ Two states specify that evidence concerning the manner in which the victim was dressed at the time of the offense is admissible only if the court finds it suitable in the interest of justice.⁶⁸

(B) PROTECTING THE VICTIM'S IDENTITY

The identity of the victim of a sex offense is protected in all jurisdictions studied, either by statutory provision,⁶⁹ upon request by the victim to the relevant authority;⁷⁰ or based on specific legislation related to press freedom.⁷¹

61 Brazil Crim. Procedure Code art. 158.

62 S. Afr. Crim. Procedure Act 51 of 1977, § 227(2), and Dep't of Justice, *National Guidelines for Prosecutors in Sexual Offences Cases*, ¶ 10.

63 Can. Crim. Code § 276.

64 Cal. Evidence Code § 1103(c); N.Y. Crim. Procedure Law §§ 60.42, 60.43; 18 Pa. Cons. Stat. § 3104(a).

65 N.Y. Crim. Procedure Law §§ 60.42, 60.43; 18 Pa. Cons. Stat. § 3104(b).

66 Cal. Evidence Code § 1103(c)(1).

67 S. Afr. Crim. Procedure Act 51 of 1977, § 227(2).

68 Cal. Evidence Code § 1103(c)(2); N.Y. Crim. Procedure Law § 60.48.

69 N.Y. Civil Rights Law § 50-b; Cal. Penal Code § 293.5; Braz. Crim. Code art. 234-B; Can. Crim. Code § 486.4(1); S. Afr. Amend. Act § 66(2); Sweden, Offentlighets-och Sekretesslagen (2009:400) (Public Access to Information and Secrecy Act).

70 See, e.g., Adult Sexual Assault Response Team (SART) Protocol for San Mateo County, California 16 [hereinafter San Mateo SART Protocol]; San Diego, California Sexual Assault Response Team (SART) Standards of Practice 28 [hereinafter San Diego SART Standards].

71 Fr. Art. 39 *quinquies* of the Law dated 29 July 1881 on the freedom of press.

(C) SPECIAL PROVISIONS FOR MINORS

All jurisdictions studied make special provisions to obtain the testimony of minors about sexual offenses perpetrated against them. These provisions reflect a general concern with the child's psychological and emotional stress, as well as a special concern in handling such cases expeditiously.⁷²

These provisions center on allowing the child to give testimony in a comfortable setting that avoids direct confrontation with the defendant in an open courtroom, while preserving the capacity of the defendant to challenge the testimony. The many approaches include allowing the child to testify by closed-circuit television or video display, or from behind a screen or a one-way mirror.⁷³ In Canada, when an accused is representing himself or herself, judges may appoint counsel for the sole purpose of cross-examining the child victim in order to avoid a traumatic confrontation with the accused.⁷⁴ Some courts allow testimony to be collected through interviews conducted by intermediaries (e.g., psychologists, pediatricians and child care workers);⁷⁵ or by interrogations recorded outside the court room and shown during trial.⁷⁶ Other jurisdictions provide for a special legal or psychological assistant to the minor.⁷⁷ The jurisdictions studied also protect the child's identity.⁷⁸ In Brazil, the investigation and prosecution of rape crimes is confidential,⁷⁹ and witnesses under the age of 14 are not required to give sworn testimony, or to provide personal details such as name, age or home address.⁸⁰

(d) Limiting public access to proceedings

Except in New York, all the jurisdictions studied enable judges in some circumstances to limit access to courtrooms during proceedings on sexual offenses. For instance, in France, judges can deny courtroom access to individuals under the age of eighteen years old, and the victim is entitled to ask for a closed hearing.⁸¹ Canadian law allows judges to exclude the public from proceedings including those involving sexual offenses, as well as proceedings

72 Cal. Penal Code § 1048(b); San Mateo County, California Children's Sexual Abuse Protocol at 22; N.Y. Exec. Law § 642-a; 42 Pa. Cons. Stat. § 5985; Swed. Code Judicial Procedure ch. 5, §§ 1, 3; S. Afr. Crim. Procedure Act 51 of 1977, § 170A; Brazil, Law for the Protection of Children and Teenagers.

73 N.Y. Crim. Procedure Law §§ 190.30(4) & 190.32; Cal. Penal Code §§ 1346-1347.5; S. Afr. Crim. Procedure Act §§ 158(3) & 170A; Can. Crim. Code § 486.2(1).

74 Can. Crim. Code § 486.3(1).

75 S. Afr. Crim. Procedure Act §§ 158(3) & 170A.

76 Swed. Code Judicial Procedure ch. 5, §§ 1, 3; Fr. Crim. Procedure Code art. 706-52.

77 N.Y. Exec. Law § 642-a; Swed. Code Judicial Procedure ch. 5, §§ 1, 3; Fr. Crim. Procedure Code arts. 706-51-1 & 706-53; Can. Crim. Code § 486.1(1).

78 Can. Crim. Code § 486.4(1); S. Afr. Crim. Procedure Act § 154; N.Y. Civil Rights Law §50-b; Braz. Crim. Code art. 234-B.

79 Braz. Crim. Code art. 234-B.

80 Braz. Crim. Procedure Code art. 208.

81 Fr. Crim. Procedure Code art. 306.

involving child witnesses.⁸² In Brazil, judges may also limit access to the courtroom generally if publicity may result in scandal, inconvenience, or serious danger.⁸³

4 PUNISHMENT

The base level punishment for rape in the jurisdictions studied ranges from two to six years imprisonment in Sweden, to fifteen years imprisonment in France.⁸⁴ In some jurisdictions, monetary fines may be imposed in addition to imprisonment for certain sexual crimes. For example, in California, a fine not exceeding \$ 10,000 may be imposed in addition to two to four years in a state prison for sexual battery.⁸⁵ In France, a € 75,000 fine may be imposed along with a five year prison sentence for sexual aggressions other than rape.⁸⁶

The jurisdictions studied vary widely in the level of punishment imposed for an attempted sexual crime, or for aiding and abetting the commission of a sexual crime. At the most punitive end of the spectrum, South Africa imposes the same level of punishment for an attempted sexual crime that it imposes for the underlying crime itself.⁸⁷ South Africa and France also both punish an aider or abettor of a sexual crime at the same level as the underlying actor.⁸⁸ At the less punitive end of the spectrum, for an attempted sexual crime, Brazil imposes one-third to two-thirds of the penalty that would have been imposed had the crime been fully committed.⁸⁹

All jurisdictions studied increase penalties for sexual crimes when certain aggravating factors are present. Such factors can significantly increase the punishment for sexual crimes. For example, in France, when a rape results in the death of the victim, the term of imprisonment increases from fifteen years to thirty years,⁹⁰ and in Canada, use of a firearm or participation in a gang rape can

82 Can. Crim. Code § 486. A judge who refuses a prosecutor's or witness's request for exclusion of the public from proceedings on sexual offense charges must state the reasons. *Id.* § 486(3).

83 Braz. Crim. Code art. 792 § 1. Likewise in South Africa, S. Afr. Crim. Procedure Act § 153, and Sweden, Swed. Code of Judicial Procedure ch. 5, §§ 1, 3, certain circumstances allow for closing the courtroom in criminal proceedings.

84 Swed. Penal Code ch. 6, § 1; Fr. Crim. Code art. 222-23. In Canada, the crime of "sexual assault," which consists of any touching of a sexual nature without consent, can be charged as a summary offense with a maximum sentence of 18 months, or as an indictable offense with a maximum penalty of 10 years. Can. Crim. Code § 271.

85 Cal. Penal Code § 243.4.

86 Fr. Crim. Code art. 222-27. Where aggravating circumstances are present, the penalty increases to a €100,000 fine and seven years imprisonment. *Id.* art. 222-28.

87 S. Afr. Amend. Act § 55(a).

88 S. Afr. Amend. Act § 55(b); Fr. Crim. Code art. 121-7.

89 Braz. Crim. Code art. 14.

90 Fr. Crim. Code art. 222-25.

increase the maximum sentence to fourteen years from ten, while aggravated sexual assault can draw a sentence of life imprisonment.⁹¹

Some aggravating factors concern the means used to commit the crime, for example, the use of drugs to induce a victim's compliance,⁹² or the use of weapons.⁹³ Canada particularly targets sexual assaults involving weapons with mandatory minimum sentences and enhanced penalties for repeat offenders.⁹⁴ Other aggravating factors concern what may be thought of as the motive for committing the crime: sexual crimes committed for financial gain or as an abuse of authority over the victim may be more seriously punished.⁹⁵ The degree of injury to the victim is also taken into account. Canada, Brazil, France and Sweden all enhance charges when more than one person takes part in a sexual assault,⁹⁶ and many jurisdictions impose enhanced sentences where a sexual crime results in serious injury or death.⁹⁷

Sexual crimes are often punished more severely when they are committed against children or against adults of limited capacity. In some jurisdictions, such as New York, age or limited capacity determine the degree of the offense, and thus the penalty applicable to the offense.⁹⁸ French law has a comprehensive list of aggravating circumstances, including young age and particular physical

91 Can. Crim. Code §§ 272(2) (b) & 273(2) (b).

92 *See, e.g.*, N.Y. Penal Law § 130.90 (illegal drugs aggravate sex offenses when used without consent of victim); 18 Pa. Cons. Stat. Ann. § 3121 (if drugs are used in commission of rape, an additional term of ten years and an amount not to exceed \$100,000 can be levied against the defendant); Cal. Penal Law § 667.61(e)(6) (administering controlled substance to person while committing sexual offense results in minimum sentence of 15 years to life); Fr. Crim. Code arts. 222-24 (enhanced penalty where rape committed by a person who was intoxicated or on drugs).

93 *See, e.g.*, Can. Crim. Code § 272(1) (a); Fr. Crim. Code arts. 222-24, 222-28; N.Y. Penal Law § 70.02 (defining "violent felony" offenses, including rape and other sexual crimes) & §§ 265.08-265.09 (criminalizing use of gun to commit violent felony offense).

94 Can. Crim. Code §§ 272-273.

95 *See, e.g.*, S. Afr. Amend. Act § 56(7) (enhancing sentence where offender intends to or in fact does gain from the commission of the offense); Fr. Crim. Code art. 222-28 (aggravated circumstance where the aggression was committed by a person having legal or de facto authority over the victim or by a person who abused the power granted by his or her position); Braz. Crim. Code art. 226 (aggravated circumstance where sexual crime is committed by someone having authority over the victim).

96 Can. Crim. Code § 272(1) (d); Brazil Crim. Code art. 226; Fr. Crim. Code arts. 222-24, 222-28; Swed. Penal Code ch. 6, § 1 (requiring consideration of multiple perpetrators in determining whether crime is "gross rape" with higher punishment).

97 *See* N.Y. Penal Law § 130.96 (first degree sexual crime becomes predatory sexual assault when in the course of the crime or immediate flight there from, the defendant causes serious physical injury to the victim); Cal. Crim. Code § 667.61(d) (6)-(7) (establishing minimum sentence of 25 years to life where defendant causes great bodily injury to victim or, for victim under 14, bodily harm); Fr. Crim. Code arts. 222-24 (providing enhanced sentence when rape causes mutilation or permanent impairment), 222-25 (same, where rape leads to the death of the victim), 222-26 (same, where rape was preceded, accompanied or followed by torture or barbarity); Braz. Crim. Code art. 217-A; Can. Crim. Code § 273 ("aggravated sexual assault" where assailant also wounds, maims, disfigures or endangers the life of the complainant).

98 N.Y. Penal Law §§ 130.25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.55, 130.60 and 130.65.

or mental vulnerability, which enhance the penalty for rape by five years.⁹⁹ In South Africa, under certain circumstances, including the victim being physically disabled or mentally ill, rape can lead to a minimum sentence of twenty-five years where a first offense otherwise would lead to a minimum sentence of ten years imprisonment.¹⁰⁰

Finally, particularly in the U.S. jurisdictions reviewed, repeat sexual offenders are subject to increased penalties. California and Pennsylvania allow imposition of a sentence of 25 years or more upon a second conviction for a sex offense.¹⁰¹ New York classifies many sexual offenses as “violent felonies,” and imposes lengthy mandatory minimum sentences on repeat offenders.¹⁰²

99 Fr. Crim. Code art. 222-24; *see also id.* art. 222-29 (same factors enhance penalty for sexual aggression). California law similarly sets higher sentences for sexual offenses committed under a number of circumstances, including against minors, the elderly, or people with disabilities. Cal. Penal Code §§ 288.3(c) & 667.9(a)-(b). Offenders who commit acts including kidnapping, burglary, torture, or binding the victim during a sexual assault are subject to minimum prison terms of 15 or 25 years. *Id.* § 667.61.

100 S. Afr. Amend. Act § 105. Brazil also increases penalties when the victim is young or lacking in mental capacity. Braz. Crim. Code art. 217-A. Sweden does not enhance penalties for especially vulnerable adults, but does require consideration of a child’s young age in deciding whether a crime is subject to higher penalties as “gross rape of a child.” Swed. Penal Code ch. 6, § 4.

101 Cal. Crim. Code § 667.71; 42 Pa. Cons. Stat. § 9718.2. The Pennsylvania law sets the sentence at life in prison for a third conviction of a sexual offense. *Id.*

102 N.Y. Penal Law §§ 7002, 70.04, 70.07, 70.08 & 70.10. *See also id.* § 130.53 (defining crime of “persistent sexual abuse”).

3. THE LAW IN PRACTICE

Chapter II shows how the law of rape has been reformed to eliminate many of the barriers that impeded justice for victims of sexual assault in the past. By making the absence of consent the defining feature of unlawful sexual contact, and by broadening the types of contact that are treated as criminal offenses when imposed without consent, the law now recognizes that rape and other forms of sexual abuse violate the victim's bodily integrity. Rape shield laws and provisions for protecting victims from public exposure reduce the humiliation that has often accompanied bringing such private violations to the attention of the authorities for investigation and prosecution. Authorized punishments are often severe.

Statutes alone, however, do not suffice to bring about true reform in the law of rape, and the jurisdictions studied recognize this.¹⁰³ The reality is that in many, if not most, societies, victims of rape and other sexual abuses continue to experience stigma and shame. Historically, these experiences often have been compounded by investigation and prosecution practices to such an extent that victims compared their experience of bringing rape charges to being "raped" for a second time.¹⁰⁴

For these reasons, the jurisdictions studied have gone beyond statutory reform to implement policies and procedures that ease the suffering of victims and that

103 Some scholars and feminist activists caution against relying on law reform per se as a mechanism for change as it, among other things, "leaves untouched the institutions and practices that are at the root of women's subordination." Kwong-leung Tang, *Rape Law Reform in Canada: The Success and Limits of Legislation*, *Int'l Journal of Offender Therapy and Comparative Criminology*, 42(3), 1998.

104 South Africa's National Policy Framework for the Management of Sexual Offence Matters (March 2011) [hereinafter *S. Afr. Framework*], available at http://www.ecdlc.org.za/images/stories/downloads/National_Policy_Framework_Management_Sexual_Offences_2011.pdf, describes this experience as "secondary victimization," and defines it as "an attitude, process, action and /or omission that may intentionally or unintentionally contribute to the re-victimization of a person who has experienced a traumatic incident as a victim through failure to treat the victim with respect and dignity, disbelief of the person's account, unsympathetic treatment, blaming the victim, [or] lack of (or insufficient) coordinated support services to assist the victim at interpersonal, institutional and broad social level." *S. Afr. Framework* 9-10. The recent report of a roundtable discussion on sexual violence sponsored by the United States Department of Justice and the White House described hostility and disbelief toward victims as major reasons that only one-fourth to one-third of rapes and other sexual assaults in the United States are ever reported to police. *Sexual Violence in the United States: Summary of the Roundtable Proceedings* 6, 11-13 (March 2011), available at <http://www.ovw.usdoj.gov/sexual-violence-reportmarch.pdf>.

facilitate the reporting, investigation, and prosecution of sexual offenses. While there is no sharp dividing line between supporting the victim and facilitating prosecution, Part A of this chapter focuses primarily on victim support measures, and Part B focuses on police, prosecution and judicial procedures.

1 CARE AND SUPPORT FOR VICTIMS OF SEXUAL ASSAULT

(1) Specially trained medical personnel

Hospitals are often the first agencies that victims of rape have contact with. Most of the jurisdictions studied have established specialized rape treatment centers in at least some locations, or have specialized training for medical staff who work with rape victims.

In Ontario, Canada, for example, there are thirty-five hospital-based Sexual Assault/Domestic Violence Treatment Centers with staff available twenty-four hours a day who specialize in medical care and emotional support for victims of sexual assault.¹⁰⁵ Similarly, South Africa, Sweden, France, California, New York, and Pennsylvania all have dedicated rape crisis centers in some locations.¹⁰⁶

The staff in these centers are specially trained to conduct the medical examination of sexual assault victims, including the collection of physical evidence for possible prosecution, with sensitivity to their recent experience of violation.¹⁰⁷ Some U.S. jurisdictions certify individuals who have had such specialized training as Sexual Assault Nurse Examiners or Sexual Assault Forensic Examiners.¹⁰⁸ These examiners may also have training in interviewing mentally disabled or dependent adult victims of sexual crimes.

South Africa has developed a model of holistic and victim-centered care for adult and child victims of sexual assault that is recognized by the United

105 See http://www.satcontario.com/en/our_centres.php (describing rape crisis centers in Ontario).

106 The preferred approach in California is either to take victim to a medical facility that is designed for sexual assaults or to consult with such a facility. See, e.g., San Mateo SART Protocol, *supra* note 70, at 5 (“Law Enforcement duties”). Victims who are not in a specialized facility should be seen by a Sexual Assault Nurse Examiner for a forensic examination. *Id.* New York has state-certified “SAFE Centers of Excellence.” These are hospitals that provide Sexual Assault Forensic Examiner services, which use an interdisciplinary approach, working with rape crisis centers, law enforcement, and prosecutors’ offices, while also providing psychological, social, and legal support. N.Y. Public Health Law § 2805-i (4-b). See also S. Afr. Framework, *supra* note 104, at 16–17 (recognizing need for special care, including Clinical Forensic Medical Centres to examine and treat victims of sexual assault).

107 See also S. Afr. Framework, *supra* note 104, at 16 (noting victims’ need to be treated by “specially-trained personnel who are free of . . . discriminatory beliefs” such as “victim blaming”).

108 See generally <http://www.health.ny.gov/nysdoh/safe/2004/safestandards2004attachment07.pdf> (setting forth standards for certification as a Sexual Assault Forensic Examiner in New York State); San Diego SART Standards, *supra* note 70, § 5.0 (Sexual Assault Forensic Examiner duties include “collecting evidence, maintaining the chain of custody, providing emotional support, treating for STD exposure and for injury, referring for follow-up care, consulting with law enforcement and prosecutors and testifying as an expert witness at trial”).

Nations General Assembly as a “world best-practice model” in the field of gender-violence management and response. The Thuthuzela Care Centers, which take their name from a Xhosa word meaning “comfort,” are one-stop facilities located in public hospitals in communities where the incidence of rape is particularly high. The centers transport victims from busy police stations to a quiet and welcoming environment. Crisis counseling begins en route. The patient receives an explanation of the medical examination procedure and gives consent. After the exam, the victim has an opportunity to bathe and put on fresh clothes before meeting with a trained investigator, who takes a statement. Immediate medical treatment is provided and longer-term medical and psychological care are arranged. The victim is offered transport home or, if indicated, to another safe place.¹⁰⁹

Many communities in the U.S. have adopted the Sexual Assault Response Team, or “SART” model. A SART is an inter-disciplinary group of people representing medical, psychological, advocacy and criminal justice resources in the community who work under mutually adopted guidelines to give victims coordinated care and promote effective prosecution of sexual assaults.¹¹⁰ For example, the SART in San Mateo County, California, includes county police, a hospital-based sexual assault treatment center, a rape victims’ advocacy and treatment organisation, the district attorney’s office, the government-run victim services agency, and a county agency that assists adults with mental disabilities and the elderly.¹¹¹ Members of the SART team have clear responsibilities for meeting the short-and long-term needs of victims of sexual violence. While collecting evidence to support an eventual prosecution is an important goal of the team, its governing protocol makes clear that victims will receive comprehensive services whether they do or do not elect to press charges.

(2) Emergency medical care

In all of the jurisdictions studied, victims of sexual assault may obtain emergency medical care. This care generally includes emergency contraception and prophylaxis against HIV and other STDs.¹¹² South Africa, which has a high prevalence of HIV among the populace, requires the police to advise sexual

109 <http://www.info.gov.za/aboutgovt/justice/npa.htm>; http://www.unicef.org/southafrica/hiv_aids_998.html

110 See generally http://stopvaw.org/Sexual_Assault_Response_Teams.html (explaining SART concept and giving examples of similar approaches worldwide).

111 See generally San Mateo SART Protocol, *supra* note 70.

112 See, e.g., S. Afr. Amend. Act § 28; Sweden, *National Plan of Action for Health and Medical Services in the care of victims of sexual assault* 39; Government of Brazil, *Pacto Nacional pelo Enfrentamento à Violência contra as Mulheres* 25 (2010) [National Pact to Combat Violence Against Women] (describing plan to increase availability of prophylactic contraceptives, including “morning after pill,” to rape victims), available at http://www.sepm.gov.br/publicacoes-teste/publicacoes/2010/PactoNacional_livro.pdf; Cal. Penal Code § 13823.11; N.Y. Public Health Law § 2805-p; 28 Pa. Code §§ 117.52-117.53.

assault victims of their right to get medical treatment, including prophylaxis against HIV infection and other medications that prevent sexually transmitted infections and pregnancy.¹¹³ Most jurisdictions studied also require police officers to offer victims immediate transportation to a medical facility.

(3) Crisis advocacy and psychological support

In a number of the jurisdictions studied, victims have access to rape crisis advocates whose role is to support them in their immediate dealings with medical and police personnel. In Ontario, Canada, rape crisis counselors may be dispatched to provide immediate on-site service to victims (with the victim's consent) and may also be available for long-term assistance through community agencies.¹¹⁴ California recommends that the "first responders" to a sexual assault include a certified Sexual Assault Counselor,¹¹⁵ and Pennsylvania and New York both require hospitals that provide sexual assault emergency services to give victims an opportunity to consult with a rape crisis center or sexual assault counselor.¹¹⁶ Brazil maintains a hotline for rape victims to receive free and confidential support and advice.¹¹⁷

Nearly all of the jurisdictions studied provide some form of continuing psychological care or trauma counseling for the victim. Brazil includes psychological assistance in its required emergency medical care and specifies that it continue to be provided to sexual assault victims for as long as necessary,¹¹⁸ and in France, victims may have counseling paid for through the victim indemnification commission.¹¹⁹ Local municipalities in Sweden must ensure that crime victims and their next of kin receive financial, practical, and psychological support.¹²⁰ South Africa similarly aspires to comprehensive

113 S. Afr. Amend. Act § 28(3). In addition, alleged sex offenders in South Africa are subject to compulsory HIV testing. S. Afr. Amend. Act § 28(b). In California, victims can request that an alleged sex offender be ordered to undergo an HIV test, Cal. Health & Safety Code §§ 121050 & 121055, and in New York, a victim may request that a convicted sex offender be tested for HIV. N.Y. Crim. Procedure Law § 390.15.

114 See <http://www.attorneygeneral.jus.gov.on.ca/english/ovss/programs.asp> (listing victim services provided in Ontario).

115 See, e.g., San Mateo SART Protocol, *supra* note 70, at 7 (requiring police officer to inform victim of the right to have Sexual Assault Counselor and other support person at the medical-legal evidentiary exam and any prior or subsequent interview with police or prosecutors). California hospitals may also have Rape Crisis Advocates available.

116 28 Pa. Cons. Stat. § 117.52; N.Y. Public Health Law § 2805-i (3). See generally N.Y.S. Crime Victims Board, *The Rights of Crime Victims in New York State*, <http://www.ovs.ny.gov/Files/Complete%20revisions%20to%20CV%20pamphlet%201%2015%2009.pdf>, 20–23 (detailing statutory rights of rape and sexual assault victims).

117 <http://www.sepm.gov.br/ouvidoria/central-de-atendimento-a-mulher>.

118 Braz. Administrative Ruling from the Ministry of Health No. 1.508, of 1 September 2005.

119 Fr. Crim. Procedure Code art. 706-3.

120 Similarly, the crime victims assistance agency in New York City conducts interviews with victims, witnesses, and family members to assess social, emotional, and financial needs, and provides services that include crisis intervention, referrals to shelters and community agencies, accompaniment to court appearances, assistance for child victims, advocacy for government entitlements, and compensation assistance. The Victim

services, and in one region a comprehensive protocol exists for the examination and treatment of victims to ensure that their clinical, psychological and forensic needs are addressed. However, no such protocol is implemented in other, more rural regions.¹²¹

(4) Support through the legal process

Several of the jurisdictions studied make substantial efforts to support victims throughout the legal process. One notable example comes from Sweden, where crime victims in some locales are invited to attend a special pre-trial program at the courthouse where their case will be heard. The program includes a tour of the courthouse and talks that explain the trial process and the reactions commonly felt after being subjected to a crime.¹²² Victims who are treated in South Africa's Thuthuzela CareCenters have the opportunity to consult with prosecutors before the case goes to court, and to receive an explanation of the outcome of the trial process.¹²³

The Manhattan (New York) District Attorney's Office and Ontario (Canada) Victim Services Secretariat are examples of government agencies that provide comprehensive victim support, such as information to help victims understand the court process and their role in it, and counseling to help victims deal with the emotional impact of victimization and the difficulties associated with participation in the legal process.¹²⁴

Sweden permits the prosecutor of a sexual offense to apply for appointment of a "plaintiff assistant" to provide legal and personal support to the victim throughout the investigation and trial. In New York, Pennsylvania, and California, rape crisis advocates or similar counselors can support the victim throughout the investigation, and prosecution processes.¹²⁵

(5) Financial assistance

All jurisdictions studied provide some form of financial assistance to victims of sexual assault, as part of general crime victim compensation schemes. The most limited of these is in South Africa. There, judges can enter a restitution order

Services Secretariat in the Canadian province of Ontario also provides crisis intervention and emotional support, as well as community agency referrals.

121 People Opposing Women Abuse, *Criminal Injustice: Violence against Women in South Africa* 12 (March 2010).

122 There is also an interactive online resource that prepares victims on what to expect when they go to court: <http://www.courtintroduction.se> (English language version).

123 http://www.unicef.org/southafrica/hiv_aids_998.html.

124 See <http://manhattanda.org/witness-aid-services-unit> (listing services provided by Manhattan (New York) District Attorney's Office; <http://www.attorneygeneral.jus.gov.on.ca/english/ovss/programs.asp> (listing victim services provided by Ontario Victim Services Secretariat).

125 In California, the victim has a statutory right to have an advocate present during follow-up interviews with law enforcement, the prosecutor, and the defense attorney. Cal. Penal Code § 679.04.

requiring a convicted criminal defendant to pay the costs of a victim's medical costs, counseling, lost earnings, and vocational training, among other expenses; however, victims of impoverished defendants receive no money.¹²⁶ In France and Brazil, victims of violence are entitled to free medical and psychological care, and Brazil also provides free shelter care for victims and their children.¹²⁷ Sweden,¹²⁸ New York,¹²⁹ California,¹³⁰ and Pennsylvania¹³¹ have extensive compensation provisions. Canada's is perhaps the most comprehensive. Funds are available for emergency counseling as well as immediate expenses such as crime scene clean-up, emergency accommodation and meals, transportation and dependent care. The Vulnerable Victims and Family Fund assists with the costs of participating in the legal process, such as travel to court, interpretation services when observing trials, and special accommodations as needed for victims with disabilities to testify. A provincial compensation board may provide longer-term funds for medical costs, therapy, legal services, travel, pain and suffering, and loss of income.¹³²

(6) Protection from the alleged assailant

In most jurisdictions studied, the victim may receive a protective order from the court to prevent contact with the alleged sex offender. Brazil, Canada, Sweden, and the U.S. jurisdictions all provide that the victim of an alleged sexual attack may receive a court order protecting against contact with the alleged offender. For example, in Brazil, police may request that the judge enter a protective order prohibiting the aggressor from coming close to the victim, the witnesses or their families, prohibiting the aggressor from frequenting specific places, requiring the aggressor to move out of the home (if the aggressor shares a home with the victim), restricting visiting rights of the aggressor with his/her children, and prohibiting the aggressor from selling common property owned with the victim.¹³³ France and Brazil both permit more extreme measures to keep the complainant safe from the defendant, allowing the defendant to be temporarily

126 The South African government is studying the feasibility of establishing a compensation fund for crime victims. Media Statement by the South African Law Reform Commission Concerning its Investigation into Sentencing - A Compensation Fund for Victims of Crime (Project 82, 2011).

127 Braz. Administrative Ruling from the Ministry of Health No. 1.508, of 1 September 2005. See <http://www.sepm.gov.br/subsecretaria-de-enfrentamento-a-violencia-contra-as-mulheres/coordenacao-geral-defortalecimento-da-rede-de-atendimento>; http://www.campanhapontofinal.com.br/download/informativo_01.pdf; http://www.violenciamulher.org.br/index.php?option=com_content&view=category&id=17&Itemid=11.

128 Swed. Crim. Injuries Compensation Act (1978:413).

129 See www.ovs.ny.gov/services/VictimCompensation.aspx.

130 See <http://www.vcgcb.ca.gov/victims/coverage.aspx>.

131 See www.pacrimevictims.org.

132 For an example from one province, see: <http://www.attorneygeneral.jus.gov.on.ca/english/ovss/programs.asp#crisisAssistance>.

133 Braz. Law No. 11.340, of 7 August 2006, arts. 22-24; see also, e.g., Cal. Penal Code §§ 136.1 & 136.2 (authorizing protective order); Toronto Police, *A Guide for Sexual Assault Survivors*, <http://www>.

jailed during the investigation or prosecution.¹³⁴ Sweden and France both allow the victim's address to be kept secret during proceedings, as well.¹³⁵

2 RAPE REPORTING, INVESTIGATION AND PROSECUTION

(1) Reporting and investigation

The initial report of rape is generally made to the police, though in some jurisdictions, including France and Brazil, the initial report may be made to the Public Prosecutor or by other means. At one time, the laws in many jurisdictions provided that only rapes that had been immediately reported would be investigated, reflecting a distrustful attitude toward complainants. Such requirements generally are no longer in force.¹³⁶ South African guidelines, for example, require police to accept a report of a sexual offense without regard to when or in which jurisdiction it occurred.¹³⁷ Training for New York City police specifies that it is not uncommon for victims of rape to delay in reporting to police, and advise officers to document the reason for the delay, taking care to avoid implying that the victim was wrong to delay reporting.¹³⁸ Some jurisdictions place clear limits on when a sexual offense can be reported, for example, six months from the date on which the offender is identified in Brazil;¹³⁹ and ten years from a rape or three years from a sexual assault in France (corresponding to the statute of limitations for these offenses).¹⁴⁰

In an effort to reduce the trauma to victims and improve the likelihood that they will prosecute an offense, some jurisdictions provide detailed instructions for the initial interview of a rape victim by police officers. South Africa, for example, directs the responding officer to talk with the victim in a private area; to allow the presence of another person if requested by the victim; and to allow the victim to talk without interruption, while offering reassurances that everything possible will be done to prevent retraumatization. The officer also explains the procedures that will be followed, encourages the victim to have a medical

torontopolice.on.ca/publications/files/a_guide_for_sexual_assault_survivors.pdf; Swed. Restraining Orders Act § 24.

134 Fr. Crim. Procedure Code art. 137 et seq.; Braz. Laws No. 8.072, of 25 July 1990 and No. 11.340, of 7 August 2006, art. 22-24.

135 Swed. National Registration Act § 16; Fr. Civil Code art. 9.

136 See, e.g., Can. Crim. Code § 274 (noting abrogation of former rules requiring "recent complaint").

137 This guidance appears in the "National Instruction" for investigation of sexual offenses, published in the *South African Government Gazette* 31330 of Aug. 15, 2008 (hereinafter "S. Afr. National Instruction").

138 New York State Coalition Against Sexual Assault, *Pocket Guide for Police Response to Sexual Assault 4* (2011), available at <http://nyscasa.org/information/manuals> (download "Police Pocket Guide").

139 Braz. Crim. Code art. 38.

140 Fr. Crim. Procedure Code arts. 7-8.

examination, and must advise the victim of the availability of free treatment to prevent HIV and other infections.¹⁴¹

The jurisdictions studied do not require that the report of rape come directly from the victim; rather, most allow any individual who has information about a rape to report it. Recognizing that child victims and those with severe mental disabilities are unlikely to report sexual attacks, many jurisdictions mandate that others report such crimes to the police. In South Africa, anyone with knowledge that a sexual offense has been

committed against a child or a person who is mentally disabled is required to immediately report it to the police.¹⁴² In other jurisdictions, various people with responsibility toward children, such as social workers, doctors, or school officials are legally obligated to report such offenses.¹⁴³

(2) Initial evidence collection

The jurisdictions studied universally recommended that victims have a medical examination as promptly as possible after a sexual attack, so that any available biological evidence can be collected before it is compromised or gone.¹⁴⁴

Because victims may not decide immediately whether they want to press charges, some jurisdictions have established procedures for evidence to be collected within the first several days after the attack, and then stored while the victim decides whether to proceed. For example, in California, if evidence is collected from a victim who has not filed a police report, it is numbered for reference and kept for three months, in case the victim decides to report the crime.¹⁴⁵

Several jurisdictions have a rape kit protocol for evidence collection. For example, New York has put together two kits, a standard rape kit, and a kit to search for drugs where officials suspect drugs were used to facilitate the assault.¹⁴⁶ In Canada, rape kits contain instructions and receptacles for physical evidence collection. These rape kits are stored until the end of the appeal period of the case, or for 6 months if the victim does not report the rape to the police. If no suspect is found, the Centre of Forensic Sciences holds the evidence for one

141 S. Afr. National Instruction at 5(3). New York law requires that victims of sexual offenses be interviewed in private, and that the only persons present be the victim, persons conducting the interview, a professional providing support to the victim, if desired by the victim, and for child victims, parents if desired. Police officers are also required to tell victims in writing how to contact the nearest rape crisis center. N.Y. Exec. Law § 642(2-a).

142 S. Afr. Amend. Act § 54.

143 See, e.g., Swed. Social Services Act ch. 14, § 1; N.Y. Social Services Law § 413.

144 The recommended maximum time for collection of viable evidence after an assault ranges from 48 hours in Brazil to 10 days in New York.

145 See San Mateo SART Protocol, *supra* note 70, Part F(4).

146 <http://criminaljustice.state.ny.us/ofpa/evidencekit.htm>. In Pennsylvania, medical examiners search for drug use if the offense is reported within 72 hours. Beaver County (Pa.) Sexual Assault Guidelines, 4.

year, though this period may be extended upon a request by the investigating officer.¹⁴⁷

With respect to the collection of evidence from the suspect, investigators should take fingerprints as well as samples of blood and saliva, clothing, and hair. In California, Brazil, and South Africa, the police are given special instructions on how to inspect, photograph, and preserve the crime scene, and to identify all persons having knowledge of the offense using a checklist to create sexual offense statements.¹⁴⁸

(3) Investigation by police

All of the jurisdictions studied with the exception of France have a special police unit dedicated to sex crimes. In Brazil, police units staffed by officers with specialized training are open 24 hours a day to investigate violence against women and children, including sexual offenses.¹⁴⁹ Police officers may be instructed to follow detailed protocols for interviewing victims of sexual offenses and conducting investigations.¹⁵⁰ In Canada, police must be specially accredited to deal with sex offenses. After an initial, brief interview with a victim, further interviews are conducted only by these sexual assault investigators.¹⁵¹

In France, investigations of sex crimes are carried out by usual police investigators who may be assisted by a special unit (the central office for the repression of violence against persons) if the offenses appear to have been perpetrated in several places on the French territory.¹⁵² There is also a special unit to investigate sexual offenses against minors, known as the Brigade des mineurs, or “Minors brigade.”

(4) Special services for child victims

Special provisions are in place in many jurisdictions to ensure that child victims of sexual attacks are cared for and protected. In South Africa and California, authorities must determine whether the child victim needs to be placed in

147 www.attorneygeneral.jus.gov.on.ca/inquiries/cornwall/en/hearings/exhibits/Wendy_Leaver/pdf/14_05-05_2002.pdf.

148 See, e.g., California Guidelines for Sexual Assault Investigation (1999), <http://lib.post.ca.gov/publications/42653792.pdf> 16; Braz. Crim. Proc. Code art. 6; S. Afr. National Instruction.

149 <http://190.152.119.247/AccesoJusticia/insegundoindex.html>. Ordinary police units must also have specialized personnel to investigate violence against women. <http://www.sepm.gov.br/search?SearchableText=delegacia>.

150 See, e.g., California Guidelines for Sexual Assault Investigation (1999), <http://lib.post.ca.gov/publications/42653792.pdf> 13; Pennsylvania Coalition Against Rape, Manual on Police Response to Crimes of Sexual Violence, <http://www.pcar.org/sites/default/files/file/PoliceResponseToCrimesofSV.pdf>.

151 See, e.g., <http://www.torontopolice.on.ca/sexcrimes/sas/faq.php> (describing sex crimes investigation procedures in Toronto, Ontario).

152 Fr. Criminal Procedure Code art. D8-1.

protective custody.¹⁵³ In these jurisdictions, as well as in Sweden, special facilities and resources may be placed at the disposal of the child.¹⁵⁴

Some of the jurisdictions studied also have specialized units to investigate offenses against children. South Africa's guidelines on taking statements from child victims require that police officers take all necessary steps to ensure the safety and protection of the child.¹⁵⁵ Pennsylvania requires that police interviewing child victims use vocabulary that is appropriate for the development of the child and avoid multiple interviews to reduce trauma.¹⁵⁶

During interviews and testimony, children may be assisted by a third party: a counselor, a psychologist, a doctor, or a family member. In Brazil, the legal representative of the child must accompany him or her during the interview. If there is a conflict of interest between the minor and his or her parents or tutors, a special curator will be nominated by the judge to represent or assist the minor.¹⁵⁷

(5) Specialized prosecution units

Most of the jurisdictions studied have a special unit of prosecutors trained to handle sexual assault offenses.¹⁵⁸ Where a special unit for sex crimes does not exist (France), or is in the process of being implemented (Brazil),¹⁵⁹ sex crimes may be handled within the scope of other specialized units, such as units for cases concerning child victims. Prosecutors generally must undergo special training to prosecute sex crimes. For instance, in Sweden, the Office of the Public Prosecutor has a development center for sex crimes.¹⁶⁰ In Brazil, prosecutors, public defenders, and police officers are trained to investigate violence against women and minors, including sex offenses.¹⁶¹ In South

153 San Mateo County Children's Sexual Abuse Protocol

154 An evaluation of the child houses in Sweden may be found in the report Barnahusutredningen 2010.

155 S. Afr. National Instruction.

156 23 Penn. Cons. Stat. § 6365(c).

157 Braz. Law for the Protection of Children and Teenagers, art. 142.

158 Specialized prosecution units were identified in California, New York, Pennsylvania, South Africa and Sweden.

159 The first sex crimes unit was created in August 2011 in the State of Rio de Janeiro, to investigate crimes involving sexual violence against children and teenagers. Resolution GPGJ No 1674, of 8 August 2011, from the Prosecutor's Office of the Rio de Janeiro State, available at http://www.cnpj.org.br/html/index.php?id_texto=18612; see also http://www.mp.rj.gov.br/portal/page/portal/Internet/Consulta_Juridica/Resolucoes/Resolucoes_2011/Resolucao_1674.pdf.

160 The development center, Sw. Åklagarmyndighetens Utvecklingscentrum, is located in Göteborg, Sweden. Additional information is available at <http://www.aklagare.se/Sok-aklagare/Utvecklingscentrum/Utvecklingscentrum-Goteborg>.

161 See Brazil, National Pact to Combat Violence Against Women, *supra* note 112, at 47-50 (describing training for prosecutors, judges, police officers, doctors, and others coming into contact with victims on responding to sexual violence), and this site, describing a seminar organized in 2006 by the Brazilian Government to train prosecutors, judges, lawyers and police chiefs to handle crimes involving violence against women: http://midia.pgr.mpf.gov.br/hotsites/diadamulher/docs/cartilha_violencia_domestica.pdf.

Africa, directives provide guidelines to prosecutors dealing with sex offense cases, indicating when a charge may be withdrawn and the manner in which prosecutors shall deal with victims and witnesses.¹⁶²

(6) Judicial training

In several of the jurisdictions studied, the judiciary receives special training for the administration of rape trials. In Sweden, this training is mandatory for judicial authorities and employees of the judicial system,¹⁶³ and in California, it is required for judicial authorities involved with victims of child sexual abuse.¹⁶⁴ South Africa also recognizes judicial training as an important element in effectively addressing sexual offenses.¹⁶⁵ Both governmental and non-governmental agencies offer judicial training on sexual assault.¹⁶⁶

(7) Sex offense courts

In addition to specialized police and prosecution units for sex offenses, at least two jurisdictions studied, South Africa and New York State, have established specialized courts for sex offenses in some jurisdictions.

South Africa has led in the development of this concept. Its first Sexual Offense Courts were established in the early 1990s. These courts, which exist in limited jurisdictions, hear only sexual offenses against adults and children, and some work in tandem with the Thuthuzela Care Centers for victims described above.¹⁶⁷ Prosecutors receive indepth training on sexual offenses, which includes common obstacles in bringing successful cases as well as techniques to avoid further trauma to victims. The courts have facilities such as waiting rooms to ensure that victims do not have to unnecessarily confront offenders and accredited health care professionals and other victim support services on hand if and when

162 S. Afr. Amendment of Prosecuting Policy to Provide for Directives Relating to Criminal Matters, March 2006; Parliament, Republic of South Africa, *Fulfilling its Mandate? The National Policy Framework (Management of Sexual Offences Matters)* (17 June 2011).

163 "Utbildningsprogram för bättre bemötande av sexualbrottsoffer i rättsväsendet – redovisning av ett regeringsuppdrag" ("Training programs for better treatment of sex crime victims in the justice system – accounting of a government commission"), Regeringsuppdrag Ju2007/4690/KRIM, Ju2005/9830/KRIM (2009), <http://www.brottsoffermyndigheten.se/Sidor/EPT/Bestallningar/PDF/Utbildningsprogram%20f%C3%B6r%20b%C3%A4ttre%20bem%C3%B6tande%20av%20sexualbrottsoffer%20i%20r%C3%A4ttsv%C3%A4sendet.pdf>.

164 Cal. Penal Code §§ 13828-13828.1.

165 S. Afr. Framework, *supra* note 104, at 13–14.

166 Violence Against Women Education Project, <http://www.courts.ca.gov/documents/vawep.pdf>; Pennsylvania Coalition Against Domestic Violence, <http://www.pcadv.org/About-Contact/State-Projects/PA-Stop-Violence-Against-Women-Judicial-Training.asp>; Pennsylvania Coalition Against Rape, <http://www.pcar.org/judiciary>. Also, the Administrative Office of Pennsylvania Courts includes a Judicial Education Department that is responsible for continuing education for Pennsylvania judges. <http://www.courts.state.pa.us/T/AOPC/JudicialEducation.htm>; <http://education.pacourts.us/DesktopDefault.aspx>. Extensive judicial training materials on sexual assault and related issues are available from the U.S.-based National Judicial Education Project, <http://www.legalmomentum.org/ourwork/vaw/njep.html>.

167 *Supra* Part III (A)(1).

required by the victim. The courts are equipped with audio-visual equipment so that, for child cases and upon application in adult cases, testimony may be given from outside the courtroom. While not flawless, the courts have been credited with improving participation of victims in prosecutions and increasing conviction rates of sex offenders.¹⁶⁸

New York State opened the first Sex Offense Court in the United States in 2005.¹⁶⁹ The stated mission of these courts is “to promote justice by providing a comprehensive approach to case resolution, increasing sex offender accountability, enhancing community safety and ensuring victim safety while protecting the rights of all litigants.”¹⁷⁰ The courts emphasize frequent contact with offenders who are not in prison, but instead are living in the community and getting sex offender treatment that is intended to prevent them from repeating their crimes. This emphasis is important because, “[p]ublic perception to the contrary, many sex offenders spend little time in prison. Instead, cases are pled to lower charges and the majority of sex offenders across the United States are on probation or other community supervision, rather than serving substantial prison sentences.”¹⁷¹

In New York jurisdictions that are covered by these courts, all cases involving serious sex offense charges are referred at the earliest possible stage to the Sex Offense Court, which is staffed by a designated judge or judges who have special training in the dynamics of sex offenses as well as effective interventions that can enhance victim safety and reduce the likelihood of subsequent offenses. The concentration of these cases in one courtroom helps victims get early access to advocacy and counseling services, which can increase their willingness to participate in the prosecution. Offenders who are released on bail pending trial can be required to attend preventive services as a condition of bail. Those who are convicted, whether they are sentenced to probation or to incarceration, regularly report back to the court to assess compliance with court-ordered conditions as well as with any applicable sex offender registration requirements, and violations can be punished quickly.

168 *Sexual Offences Courts: Do More Courts Mean Better Justice?*, Nedbank ISS Crime Index 4:2 (2000), <http://www.iss.co.za/pubs/CRIMEINDEX/00Vol4No2/SexualOffences.html>; *Efficient Management of Sexual Offences Cases*, <http://www.innovations.harvard.edu/awards.html?id=6035>.

169 Similar courts are now operating in Ohio and a first sex offender court opened in 2011 in Pittsburgh, Pennsylvania. *Commonwealth's First Sex Offender Court Opens in Pittsburgh*, 13 *Lawyers Journal* 9 (2011).

170 For a full description of the development and operation of the New York Sex Offense Courts, see articles collected at <http://www.courtinnovation.org/topic/sex-offending>; see also http://www.nycourts.gov/courts/problem_solving/so/home.shtml.

171 Center for Court Innovation, *Sex Offense Courts: Supporting Victim and Community Safety through Collaboration* 1–2 (2010).

4. CONCLUSION

Universally in the jurisdictions that were studied, significant progress was made over three decades, both in reforming the laws of sexual violence and establishing effective programs such as sexual assault response teams¹⁷² to respond to victims of sexual violence. In the United States these efforts have been described as a “revolution [that] began in the 1970’s.”¹⁷³ U.S. changes came in several waves of reform and evaluation and further reform efforts continue. Parallel efforts and changes can be found throughout the jurisdictions analyzed. See, e.g., Swedish Commission on Sexual Offences of 1982 and Commission on Violence Against Women (1993) and the Swedish Action Plan for Combatting Men’s Violence against Women, Honor-Related Violence and Repression and Violence in Same-Sex Relationships (2007), South African Law Reform Commission, Project 107 Sexual Offenses Report (December 2002). The political process that produced the reforms varies from country to country but both the direction of reform and the momentum behind it are unmistakable.

International human rights standards concerning sexual violence are not simply aspirational. To the contrary, jurisdictions from widely varying locales offer an abundance of examples for how rape statutes, services for rape victims, and police, prosecution and judicial practices regarding rape can implement the human right to be free from sexual violence. Indeed, according to one study looking at the effects of rape law reforms and practices in the United States from 1970–1992, “[t]he effects of reform have not been limited to the symbolic ones achieved through changes in legal doctrine.”¹⁷⁴ Rather, “changes in rape

172 California SART Report, California Clinical Forensic Medical Training Center (April 2009). “Sexual assault response teams (SARTs) were created several decades ago in reaction to the serious problem of sexual assault victimization. Following the initial creation of SARTs in California...the field of sexual assault response, investigation, prosecution, and advocacy has advanced substantially. SART initiators have seen their revolutionary ideas become mainstream, from a mere handful of SARTs operational in the early days to established practice in many California counties by 2007.” Many legal and institutional advances in the field of forensic medicine and SARTs have occurred during the past two decades, and SARTs have become widely accepted as the optimal way of responding to sexual assault in California.

173 The Advocates for Human Rights, *Sexual Assault in the United States*, <http://www.stopvaw.org/a6200a22-49cf-4680-a01b-e862d23ccfb6.html>. The Advocates for Human Rights offers an exceptional, international on-line collection of in-depth materials on sexual assault from a human rights perspective: http://www.stopvaw.org/Sexual_Assault.html.

174 Futter & Mebane, *supra* note 8, at 111.

law have had real, instrumental effects.”¹⁷⁵ Progress has and can be made in satisfying international human rights standards and in protecting victims of sexual violence. A subsequent report will assess and provide recommendations for comprehensive legal reform efforts currently underway in Haiti.

¹⁷⁵ *Id.*

INTERNET SOURCES FOR STATUTES

Internet sources for statutes cited (in English except as noted).

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Brazilian Criminal Procedure Code available at: http://www.planalto.gov.br/ccivil_03/Decreto-Lei/Del3689.htm (in Portuguese)

Canadian Criminal Code available at: <http://laws-lois.justice.gc.ca/eng/acts/C-46/index.html>

French Criminal Code available at: <http://195.83.177.9/code/liste.phtml?lang=uk&c=33>

South African Sexual Law (Sexual Offences and Related Matters) Amendment Act available at: <http://www.justice.gov.za/legislation/acts/2007-032.pdf>

Swedish Penal Code available at: <http://www.sweden.gov.se/sb/d/3926/a/27777>

California statutes available at: <http://www.leginfo.ca.gov/calaw.html> (choose Penal Code or other relevant code and click on Search)

New York statutes available at: <http://public.leginfo.state.ny.us/menugetf.cgi?COMMONQUERY=LAWS> (select Penal Law or Criminal Procedure Law from menu)

Pennsylvania statutes available at: http://www.legis.state.pa.us/cfdocs/legis/li/public/cons_index.cfm

FRONT COVER PHOTO A girl walks hand-in-hand with a woman on their way to church in the Fort National neighborhood of Port-au-Prince. Allison Shelley / Reuters



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