

Written submission from Dr Philip BEH

EXECUTIVE SUMMARY

Victims of rape are still subject to stereotyping and prejudice. The prevalence of these prejudices have resulted in uncoordinated and ineffective care and treatment services for victims of rape. The absence of an identifiable body within government to formulate policies and monitor their implementation across government departmental boundaries is a major issue which needs to be urgently addressed.

Attitudes towards rape victims are negative amongst the general public as well as amongst professionals involved in responding and caring for victims of rape^{1,2}. This in turn has impeded necessary changes to the legislation, to service provisions and the training of the various sectors that make up the criminal justice, welfare and education systems.

Supporting information are attached in the Appendices.

We wish to recommend that a women's policy body be established by the HK Government to develop a comprehensive policy to educate the public and the "professionals" against the existing prejudices against victims of rape. This body should be given the administrative authority to direct interdepartmental co-ordination and improvement of staff training and as well as provision of care and support services to victims of rape.

1. INTRODUCTION

Rape is still a taboo subject in Hong Kong. Lee & Cheung³ in their study reported that this was associated with traditionalism. This has resulted in victims preferring to suffer in silence and not presenting themselves to care agencies. The numbers that report to the police and as such pass through the criminal justice systems are even smaller. It is always difficult to predict the number of victims who do not come forward, yet the few sources of data available suggest that under-reporting is significant (see Section 2)

The negative attitudes towards rape victims is not only found amongst the lay public but also is prevalent amongst professionals including police officers, doctors, lawyers, judges, etc. Published studies have found that the attitudes towards rape victims in Hong Kong are lacking behind those of countries such as the U.K., Germany, New Zealand, U.S., etc.¹ (Appendix 1)

Studies done by local researchers have also found that attitudes were negative amongst police officers⁴. A more recent study has also found that attitudes amongst doctors were quite negative and what was even more troubling was that a female doctor had equally negative attitudes towards rape victims².

With this pervasive, unchallenged prejudice towards the rape victims, legislation, organisational changes and services for rape victims have not improved and have remained "hostile" for the rape victim. Crisis response is bewildering and uncoordinated, long term care is often not provided because of the lack of co-ordination between the crisis response professionals and the other agencies that provide the long term care and support.

2. FIGURES AND FACTS

The annual number of reported rapes as published in the Hong Kong Police Force Annual Reports⁶ are reproduced in Figure 1. The percentage of these which are detected are also shown in Figure 1. (Appendix 2)

The Family Planning Association of Hong Kong in their annual reports⁷ also publish data of victims of rape treated at their various clinics. They include victims who have made police reports and those who have refused to make police reports. This is shown in Figure 2. (Appendix 2)

Combining the data from these two reports will show us a clearer picture of the annual numbers which are obviously higher than the published data. Figure 3. (Appendix 2)

Data from the Crime Victimization Surveys conducted by the Census & Statistics Department of the HK Government are also presented in Figure 4. (Appendix 2) These data show that a substantial proportion of victims are not reporting to the police⁵. This we believe is a reflection of the prevailing prejudice against victims of rape

3. RAPE LEGISLATION

The relevant legislation covering rape can be found in the Crimes Ordinance, Cap 200 of the Laws of Hong Kong, Section 118⁸. (Appendix 3) Progressive legislation such as marital rape laws, expansion of the definition of sexual penetration and strict shield laws have not been introduced. Rape shield laws can be found under Section 154 and 156 of the Crimes Ordinance⁸, (Appendix 3) but their enforcement are at the interpretation and discretion of judges. The exercise of this judicial discretion appears variable and arbitrary.

The absence of marital rape legislation have seen wives being raped despite expressing clearly they did not wish to have sexual intercourse with their husbands because of a fear of contracting sexually transmitted diseases from "philandering husbands". Wives are also unable to file complaints against husbands for rape whom they have fled from, but where legal separation have not been formalised.

Victims are also not able to protect themselves from rapists who may be acquaintances, ex-lovers or husbands from "stalking" them as there are no legislation against "stalking".

4. CARE AND WELFARE SERVICES

A) The Health & Welfare Branch

This is the overall government body charged with the provision of care and welfare services.

i.) The Social Welfare Department

Apart from administering the Compensation Scheme for Victims of Violent Crime, the Social Welfare Department is remarkable in the absence of services it provides for victims of rape. Crucial acute and long term psychological counselling and support for victims of rape are not available.

ii.) The Department of Health

Through the Forensic Pathology Service, rape victims are provided with a 24 hour service where crucial forensic examination is performed and forensic samples collected. This service is however "prosecution" oriented and victims are not provided with any form of treatment, medical or psychological care. The report of the examination is provided to the police with the victim's consent but is rarely provided to the victim herself. Crucial screening for pregnancy and sexually transmitted diseases are not always provided. Referrals to crucial after-care support services such as psychological counselling, post-coital contraception, etc. are not provided. Victims are also unable to chose to be examined by a female doctor if they so wish as there has been no effort to recruit female doctors into this service despite on and off complaints. Yet, there is no shortage of female

doctors in Hong Kong, the latest health & manpower survey revealing that there are 1 female doctor for every 3.5 male doctors.

The Social Hygiene Clinics provide screening and treatment for sexually transmitted diseases but there is no mechanism whereby victims of rape are seen after office hours, nor is there a mechanism where victims of rape are seen separately from the usual users of the clinics.

The AIDS Advisory Group have yet to decide on the provision of HIV screening and counselling for victims of rape.

B) The Hospital Authority

The Hospital Authority oversees all public and subvented hospitals and as such has responsibility over the provision of emergency services as well as gynaecological services in these hospitals. There is currently no co-ordinated "sexual assault" units in any of the hospitals. Rape victims are often transferred back to the Forensic Pathology Services for a second "forensic examination" despite having been examined by doctors in the hospitals. The practice often stems from doctors in the hospitals hoping to avoid being involved with the criminal justice system. There is also no training for staff on the needs and requirements of victims of rape. Support staff such as medical social workers and clinical psychologists are also not been utilised to help in the provision of care for victims of rape.

C) The HK Family Planning Association

Through its Youth Health Care Centres, The Family Planning Association of Hong Kong provide the most comprehensive care currently available to victims of rape in Hong Kong. Victims are provided with medical as well as psychological care. Services are available in one location and victims do not have to travel from one clinic to another to obtain the services they require. The one negative aspect of the services available is that the services are only available during office hours, although a 24-hour computerised hotline provides information to rape victims regarding how to seek help. Staff at these centres are also reluctant to conduct a "forensic examination" for victims.

D) Other NGO's

Counselling services are provided to victims of rape by the Association of Women Against Violence. Some other NGO's such as The Samaritans Hotline Services provide a 24-Hour hotline service that include some counselling services for victims of rape. Overall, services for rape victims are very poorly advertised not only to victims of rape but also to other professionals who are involved in the care of rape victims.

E) The Private Health Care System

Little is known about what services are provided if any. It is however possible that there are victims of rape who are cared for by private health care because they do not wish to report their case to the police and they also do not wish to use "public" services for fear of being "identified".

We therefore suggest that an integrated care and welfare service be established urgently so that victims of rape can be well informed of their situation and options and are provided with a comprehensive after-care that include medical care, psychological counselling and social support. Procedures should be streamlined and repeated examinations avoided.

5. CRIMINAL JUSTICE SYSTEM

A) The Hong Kong Police Force

It investigates all crime including rape. Much effort has been made to improve the response of police officers to rape victims with the use of more female officers to interview victims and/or accompany victims. Training has also been introduced to teach officers to address issues of prejudices and stereotyping of rape victims. New, well equipped examination and interview suites have also been opened for use by rape victims. Despite all these efforts, victims frequently report insensitive and difficult encounters in their dealings with police officers when they have made police reports. Much more attention and determination is needed from the police before genuine attitude changes can take place at the front-line where officers deal with victims of rape. New facilities should be used and victims provided comprehensive medical and psychological care at such facilities. Victims however should still be provided with a choice of where and when they want to provide statements, undergo forensic examinations, etc. Victims still frequently complain about the need to provide statements at police stations, the need for long periods of "interrogation". Cases of victims being passed from one station to another on the basis of "police district and boundaries" have been particularly distressing. Police should make use of the 'video statements' and as such avoid the repetitive statement recording process when cases have to be administratively transferred. Police officers need to remind themselves to explain and report to victims of rape the progress of an investigation and its outcome. Police officers should receive frequent re-training to ensure that they are kept well informed of changes in legislation, changes in the availability of services, etc.

B) Department of Justice

Decisions on the prosecution of a rape case rests with the Prosecution section of the Department of Justice, victims of rape are often left in the dark as to the decisions taken and the rationale of such decisions. Even when cases are to be prosecuted in court, victims of rape are rarely interviewed by the prosecuting counsel prior to a trial. There is currently no victim support services where the victim is briefed on the process of the trial. The victim of rape is hardly ever consulted as to how she would like the case to progress. Prosecuting lawyers do not receive much training on sensitivity towards rape victims. They are often unaware of the short or long term effects of rape on victims. The promulgation of the Victim's Charter (Appendix 3) was a move in the right direction. Adherence to the pledges made under this should be the next logical step.

C) The Judiciary

Current rape legislation allow judges the sole privilege of deciding on the need of questioning of a victims sexual history. The exercise of this discretion appears arbitrary from case to case. Sentencing for cases found guilty by a jury are also difficult to

understand as the factors that judges consider as mitigating circumstances are often tainted with negative stereotyping of victims of rape. Victims of rape are not considered vulnerable witnesses and are not as such able to use the Closed circuit TV system available for victims of Incest and Child abuse.

6. EDUCATION

Hong Kong needs to be educated on the real issues of rape. Negative stereotyping and prejudices against rape victims need to be corrected through the planning and implementation of a curricula in schools and universities that encourage gender equality and sensitivities.

Resources should be targeted at the design of such curricula and programs for schools as well as for the general public. Academic institutions should be encouraged to study the whole spectrum of rape related issues, much of which remains unknown⁹ in the Hong Kong context. (Appendix 5)

7. CONCLUDING REMARKS

The current situation in Hong Kong for victims of rape is unacceptable. Between now and the next CEDAW Report, the Government should with top priority set up an independent central mechanism at a high level in government which is identifiable and which will formulate policies and monitor the implementation of such policies across departmental boundaries. They should develop channels for contact and liaison with all groups in the community that care about these issues.

Current services for victims of rape should be reviewed and reorganised with an emphasis on better co-ordination of existing services, governmental and non-governmental.

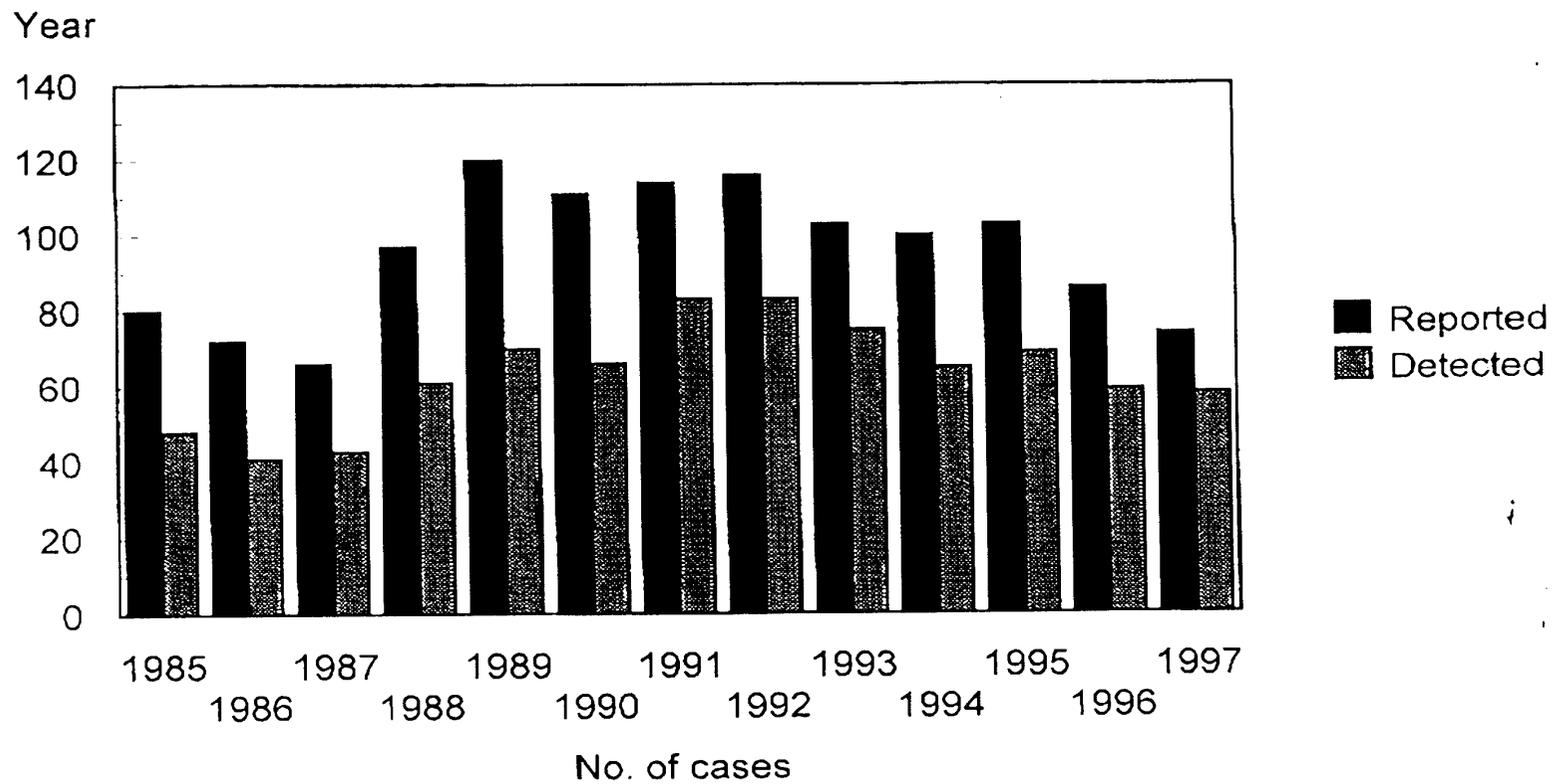
Adherence to the pledges under the Victim's Charter should be better promulgated and enforced.

Attitude to Rape Victims Survey Scores

	ARVS Scores
United Kingdom	18.3
Germany	20.9
New Zealand	21.8
United States	26.2
Australia	27.5
Canada	29.5
Barbados	30
Israel	32
Hong Kong	32.9
Singapore	36.2
Turkey	39.2
Mexico	39.7
Zimbabwe	39.8
India	40.6
Malaysia	51.6

Taken from Colleen A. Ward "Attitudes toward Rape" SAGE
Publication 1995

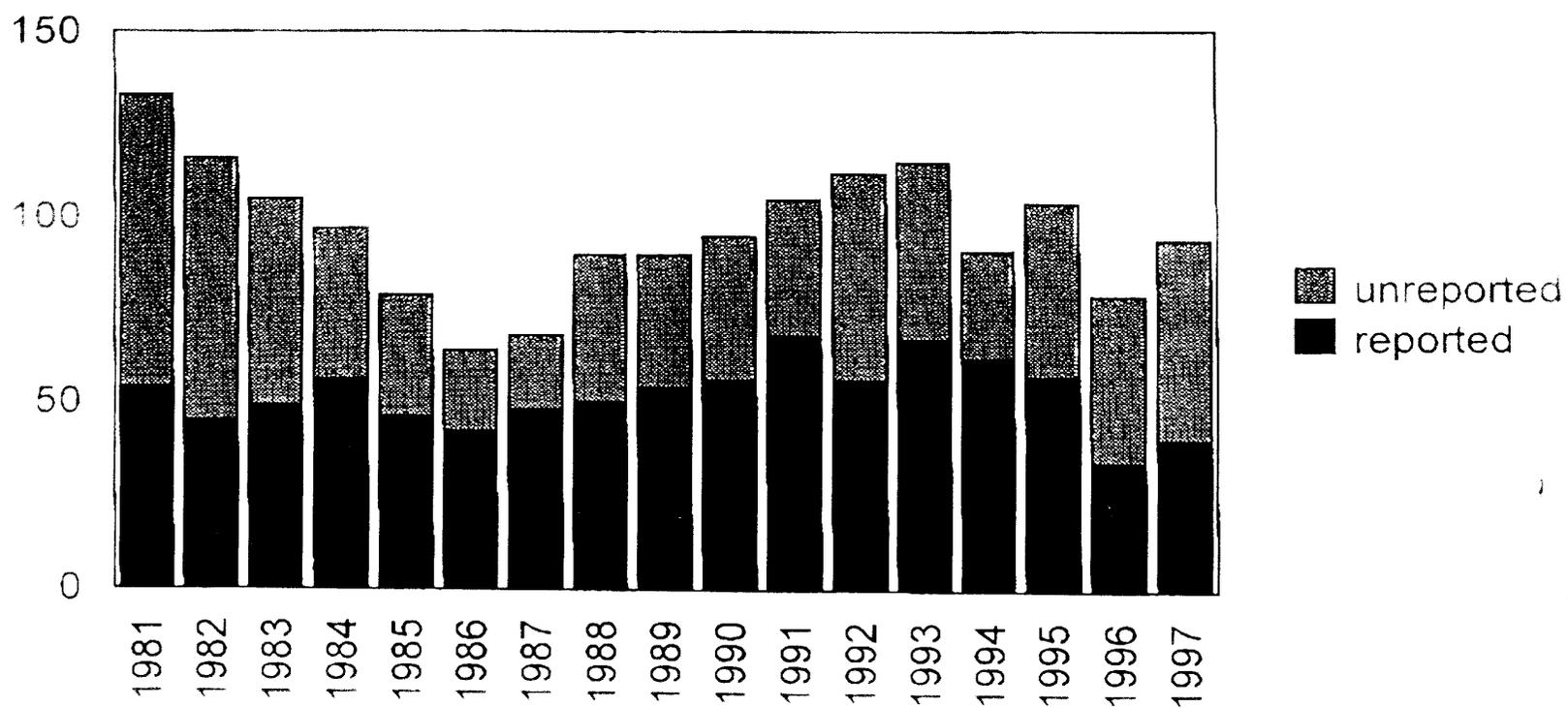
(Fig. 1) Reported rape and their detection
Data from police annual reports 85-96



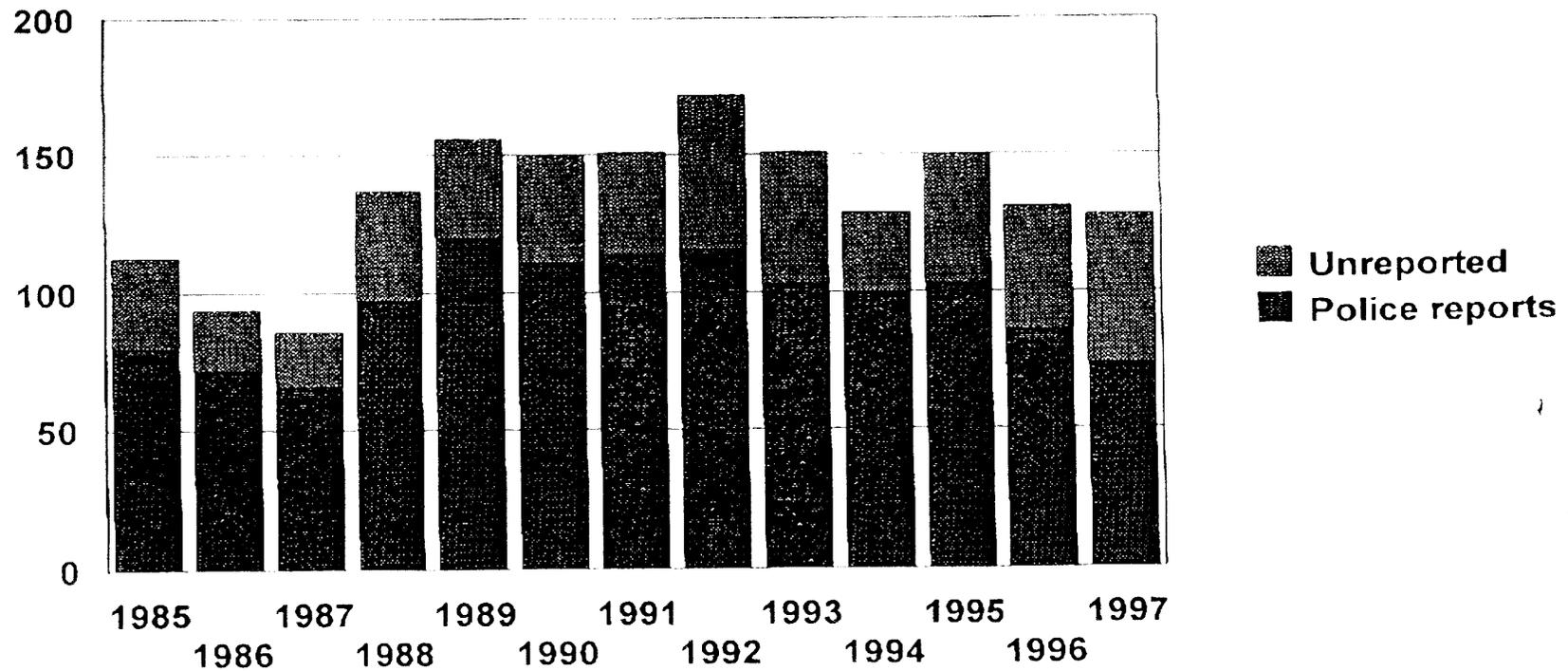
400



(Fig. 2) Rape cases seen by the FPA
(1981-1996)

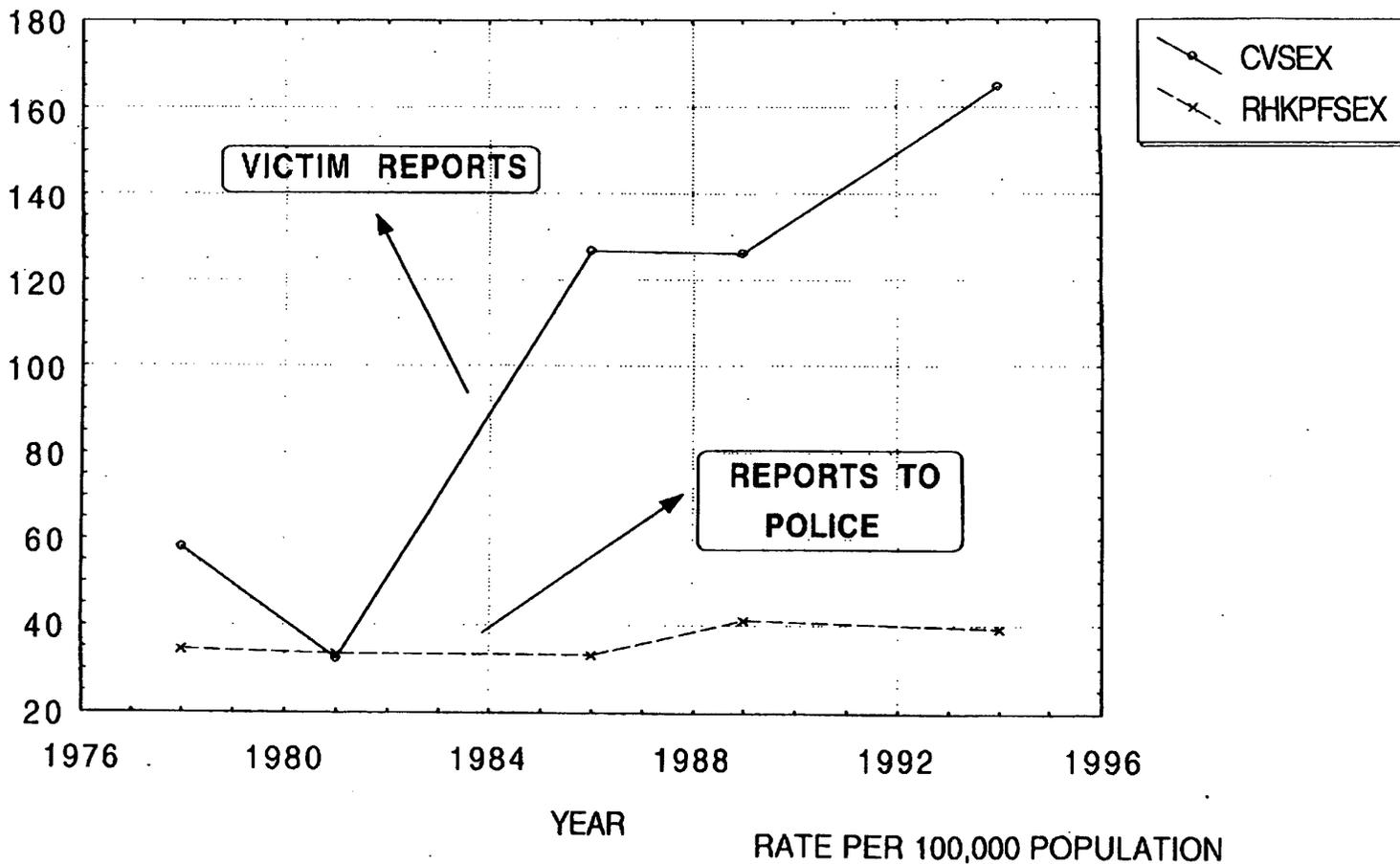


Actual number of known rape cases in HK (85-97)



Combining data from the HK Police Force and the FPA

CVS & RHKPF ESTIMATES OF SEXUAL AND INDECENT ASSAULT 1978-1994



- (a) the premises, vessel or place are or is used wholly or mainly by 2 or more persons for the purposes of prostitution; or
(Amended 90 of 1991 s. 2)
- (b) the premises, vessel or place are or is used wholly or mainly for or in connexion with the organizing or arranging of prostitution.
(Added 1 of 1978 s. 6)
[cf. 1956 c. 69 s. 45 U.K.]

Sexual offences

118. Rape

(1) A man who rapes a woman shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for life. [cf. 1956 c. 69 s. 1 U.K.]

(2) A man who induces a married woman to have sexual intercourse with him by impersonating her husband commits rape.

(3) A man commits rape if—

- (a) he has unlawful sexual intercourse with a woman who at the time of the intercourse does not consent to it; and
(b) at that time he knows that she does not consent to the intercourse or he is reckless as to whether she consents to it. (Added 25 of 1978 s. 3) [cf. 1976 c. 82 s. 1(1) U.K.]

(4) It is hereby declared that if at a trial for a rape offence the jury has to consider whether a man believed that a woman was consenting to sexual intercourse, the presence or absence of reasonable grounds for such a belief is a matter to which the jury is to have regard, in conjunction with any other relevant matters, in considering whether he so believed. (Added 25 of 1978 s. 3) [cf. 1976 c. 82 s. 1(2) U.K.]

(5) In relation to such a trial as is mentioned in subsection (4) which is a trial in the District Court or a summary trial before a magistrate or in a juvenile court, references to the jury in that subsection shall be construed as references to the District Court, the magistrate or the juvenile court, as the case may be. (Added 25 of 1978 s. 3) [cf. 1976 c. 82 s. 7(3) U.K.]

(Added 1 of 1978 s. 6)

118A. Non-consensual buggery

A person who commits buggery with another person who at the time of the buggery does not consent to it shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for life.

(Added 90 of 1991 s. 3)

- (a) 該處所、船隻或地方由 2 人或由超過 2 人完全或主要用以賣淫；或 (由 1991 年第 90 號第 2 條修訂)
- (b) 該處所、船隻或地方完全或主要用以組織或安排賣淫，或與組織或安排賣淫有關而使用。

(由 1978 年第 1 號第 6 條增補)
(比照 1956 c. 69 s. 45 U.K.)

性罪行

118. 強姦

(1) 任何男子強姦一名女子，即屬犯罪，一經循公訴程序定罪，可處終身監禁。
(比照 1956 c. 69 s. 1 U.K.)

(2) 任何男子冒充一名已婚女子的丈夫，誘使該女子與他性交，即屬強姦。

(3) 任何男子——

- (a) 與一名女子非法性交，而性交時該女子對此並不同意；及
(b) 當時他知道該女子並不同意性交，或罔顧該女子是否對此同意，
即屬強姦。(由 1978 年第 25 號第 3 條增補) (比照 1976 c. 82 s. 1(1) U.K.)

(4) 現予聲明，在強姦罪行的審訊中，陪審團如須考慮一名男子是否相信一名女子同意性交，則在考慮此事時，除須顧及其他有關事項，亦須顧及該名男子是否有合理理由相信該女子同意性交。(由 1978 年第 25 號第 3 條增補) (比照 1976 c. 82 s. 1(2) U.K.)

(5) 有關第(4)款所述的審訊，如在地方法院進行，或在裁判官席前或在少年法庭循簡易程序進行，則在該款中凡提述陪審團，即須解釋為提述地方法院、裁判官或少年法庭(視屬何情況而定)。(由 1978 年第 25 號第 3 條增補) (比照 1976 c. 82 s. 7(3) U.K.)

(由 1978 年第 1 號第 6 條增補)

118A. 未經同意下作出的肛交

任何人與另一人作出肛交，而在肛交時該另一人對此並不同意，即屬犯罪，一經循公訴程序定罪，可處終身監禁。

(由 1991 年第 90 號第 3 條增補)

(2) Subject to subsection (3), any person who without lawful authority or reasonable excuse—

- (a) interferes with any lock, bar or other thing used to close any premises or place subject to a closure order; or
- (b) enters or is in any premises or place that has been closed under a closure order,

shall be guilty of an offence and shall be liable on conviction to a fine of \$10,000 and to imprisonment for 6 months.

(3) Subsection (2) does not apply—

- (a) where the closure order is no longer in force or is suspended under section 153I;
- (b) to a public officer acting in the course of his duty;
- (c) to a person who has the permission in writing of a magistrate.

(Amended 69 of 1990 s. 7)

Restrictions on evidence and on publishing details regarding identity

154. Restrictions on evidence at trials for rape etc.

(1) If at a trial before the High Court any person is for the time being charged with a rape offence or indecent assault to which he pleads not guilty (whether or not at the trial he, or any other person, is for the time being charged with an offence which is not a rape offence or indecent assault), then, except with the leave of the judge, no evidence and no question in cross-examination shall be adduced or asked at the trial, by or on behalf of any defendant at the trial, about any sexual experience of a complainant with a person other than that defendant. (Amended 32 of 1979 s. 2)

(2) The judge shall not give leave in pursuance of subsection (1) for any evidence or question except on an application made to him in the absence of the jury by or on behalf of a defendant; and on such an application the judge shall give leave if and only if he is satisfied that it would be unfair to that defendant to refuse to allow the evidence to be adduced or the question to be asked.

(3) In subsection (1) "complainant" (申訴人) means a woman upon whom, in a charge for a rape offence or indecent assault to which the trial in question relates, it is alleged that rape or indecent assault was committed, attempted or proposed. (Amended 32 of 1979 s. 2)

(4) Nothing in this section authorizes evidence to be adduced or a question to be asked which cannot be adduced or asked apart from this section.

(Added 25 of 1978 s. 4)
(cf. 1976 c. 82 s. 2 U.K.)

(2) 除第(3)款另有規定外，任何人無合法權限或合理辯解而——

- (a) 干預任何用以封閉受封閉令規限的任何處所或地方的鎖、門門或其他物品；或
- (b) 進入或身在任何已根據封閉令封閉的處所或地方，

即屬犯罪，一經定罪，可處罰款\$10,000及監禁6個月。

(3) 第(2)款並不適用於以下情況或以下的人——

- (a) 封閉令已不再有效或已根據第153I條暫停執行；
- (b) 在執行職務中行事의公職人員；
- (c) 獲裁判官書面准許的人。

(由1990年第69號第7條增補)

對證據及發布有關身分詳情之限制

154. 就強姦等進行的審訊中對證據之限制

(1) 在高等法院席前進行的審訊中，如任何人當其時被控犯強姦罪行或猥褻侵犯而不認罪(不論在審訊中該被告人或其他人當其時是否被控上述罪行以外的其他罪行)，除非獲得大法官的許可，否則在該審訊中任何被告人或其代表不得提出有關申訴人與該被告人以外的其他人的性經驗的證據，或在該問中提出有關此事的問題。(由1979年第32號第2條修訂)

(2) 除非被告人或其代表於陪審團退席時向大法官申請，否則大法官不得依據第(1)款就任何證據或問題給予許可；大法官接獲該項申請後，如信納拒絕容許被告人或其代表提出該等證據或問題會對被告人不公平時則須給予許可，亦只有在此情況下方可給予許可。

(3) 在第(1)款中，“申訴人”(complainant)指在有關審訊關乎的強姦罪行或猥褻侵犯的控罪中，指稱遭人強姦或猥褻侵犯，或指稱遭人企圖強姦或猥褻侵犯，或指稱有人打算將其強姦或對其猥褻侵犯的女子。(由1979年第32號第2條修訂)

(4) 本條並無規定，授權任何人提出若非因本條的規定則不能提出的證據或問題。

(由1978年第25號第4條增補)
(比照1976 c. 82 s. 2 U.K.)

155. Application of s. 154 to committal proceedings, District Court and summary trials

(1) Where, on a hearing under Part III of the Magistrates Ordinance (Cap. 227), a magistrate inquires into a rape offence or indecent assault, then, except with the consent of the magistrate, evidence shall not be adduced and a question shall not be asked at the hearing which, if the hearing were a trial at which a person is charged with a rape offence or indecent assault and each of the accused at the hearing were charged at the trial with the offences of which he is accused at the hearing, could not be adduced or asked without leave in pursuance of section 154. (Amended 32 of 1979 s. 3)

(2) On an application for consent in pursuance of subsection (1) for any evidence or question the magistrate shall—

- (a) refuse the consent unless he is satisfied that leave in respect of the evidence or question would be likely to be given at a relevant trial;
- (b) give the consent if he is so satisfied.

(3) Where a person charged with a rape offence or indecent assault is tried for that offence either in the District Court or summarily before a magistrate under Part V of the Magistrates Ordinance (Cap. 227) or in a juvenile court under the Juvenile Offenders Ordinance (Cap. 226) section 154 shall have effect in relation to the trial as if— (Amended 32 of 1979 s. 3)

- (a) the words "in the absence of the jury" in subsection (2) thereof were omitted; and
- (b) for any reference to the judge there were substituted—
 - (i) in the case of a trial in the District Court, a reference to the District Judge before whom the trial takes place;
 - (ii) in the case of a trial before a magistrate, a reference to the magistrate;
 - (iii) in the case of a trial in a juvenile court, a reference to the juvenile court.

(Added 25 of 1978 s. 4)
[cf. 1976 c. 82 s. 3 U.K.]

438 156. Anonymity of complainants

(1) Subject to subsection (9)(a), after an allegation is made that a specified sexual offence has been committed no matter likely to lead members of the public to identify any person as the complainant in relation to that allegation shall either be published in Hong Kong in a written publication available to the public or be broadcast in Hong Kong except as authorized by a direction given in pursuance of this section.

(2) If, before the commencement of a trial at which a person is charged with a specified sexual offence, he or another person against whom the

155. 第 154 條對交付審判程序、地方法院審訊及簡易程序審訊的適用範圍

(1) 凡裁判官在根據《裁判官條例》(第 227 章)第 III 部進行的聆訊中，對強姦罪行或猥褻侵犯進行查訊，而假若該聆訊是任何人被控犯強姦罪行或猥褻侵犯的審訊，以及該聆訊中的各被控人在該審訊中均被控以其在該聆訊中的控罪，即須依據第 154 條取得許可，方可提出某項證據或問題，則除非獲得裁判官的同意，否則在該聆訊中亦不得提出該項證據或問題。(由 1979 年第 32 號第 3 條修訂)

(2) 裁判官接獲任何人依據第 (1) 款就任何證據或問題提出申請以取得同意後——

- (a) 除非信納在有關審訊中相當可能會就該項證據或問題給予許可，否則須拒絕給予同意；
- (b) 如信納在有關審訊中相當可能會就該項證據或問題給予許可，則須給予同意。

(3) 凡被控犯強姦罪行或猥褻侵犯的人因該罪行在地方法院受審，或根據《裁判官條例》(第 227 章)第 V 部循簡易程序在裁判官席前受審，或根據《少年犯條例》(第 226 章)在少年法庭受審，則第 154 條對於該審訊具有效力，猶如該條——(由 1979 年第 32 號第 3 條修訂)

- (a) 已略去第 (2) 款中“於聆審團退席時”一段文字；及
- (b) 凡提述大法官之處，均代之以下列提述——

- (i) 如在地方法院某地方法院法官席前進行審訊，則為對該地方法院法官的提述；
- (ii) 如在某裁判官席前進行審訊，則為對該裁判官的提述；
- (iii) 如在某少年法庭進行審訊，則為對該少年法庭的提述。

(由 1978 年第 25 號第 4 條增補)
(比照 1976 c. 82 s. 3 U.K.)

156. 申訴人身分的保密

(1) 除第 (9)(a) 款另有規定外，在有人指稱發生指明性罪行後，凡相當可能會致使公眾識別與該項指稱有關的申訴人身分的事項，除依據本條所發出的指示許可者外，不得在香港於可供公眾閱讀的書刊中發布或在香港廣播。

(2) 任何人被控犯指明性罪行的審訊開始前，該人或可預期在審訊中被申訴人提出證據指證的其他人，如依據本款向法官申請發出指示，並使法官信納——

the Court shall direct that subsection (1) shall not, by virtue of such allegation of a specified sexual offence as is specified in the direction, apply in relation to a complainant so specified.

(6) Subsection (5) shall apply in relation to a conviction of an offence tried summarily as mentioned in section 155(3), and, in so applying for references to the Court of Appeal there shall be substituted references to a judge and the reference to notice of an application for leave to appeal shall be omitted. [cf. 1976 c. 82 s. 5(3) U.K.]

(7) For the purposes of this section an allegation of a specified sexual offence is made if—

- (a) it is made to a police officer; or
- (b) a complaint is made to or an information is laid before a magistrate alleging that a person has committed a specified sexual offence against the complainant; or
- (c) a person appears before a magistrate or a court charged with a specified sexual offence against the complainant; or
- (d) a person is committed for trial at the High Court on a charge alleging a specified sexual offence against the complainant; or
- (e) an indictment charging a person with a specified sexual offence against the complainant is preferred before the High Court,

and references in this section to an allegation of a specified sexual offence shall be construed accordingly. (Replaced 26 of 1980 s. 2)

(8) In this section—

“broadcast” (廣播) means a broadcast by wireless telegraphy of sound or visual images intended for general reception;

“complainant” (申訴人), in relation to an allegation of a specified sexual offence, means the person against whom the offence is alleged to have been committed; and

“written publication” (書刊) includes a film, a sound track and any other record in permanent form but does not include an indictment or other document prepared for use in particular legal proceedings.

(9) Nothing in this section—

- (a) prohibits the publication or broadcasting, in consequence of an allegation of a specified sexual offence, of matter consisting only of a report of legal proceedings other than proceedings at, or intended to lead to, or on an appeal arising out of, a trial at which a person is charged with that offence; or
- (b) affects any prohibition or restriction imposed by virtue of any other enactment upon a publication or broadcast,

and a direction in pursuance of this section does not affect the operation of subsection (1) at any time before the direction is given.

(Added 25 of 1978 s. 4. Amended 32 of 1979 s. 3; 26 of 1980 s. 2; 90 of 1991 s. 23)

[cf. 1976 c. 82 s. 4 U.K.]

則雖有指示內指明的指明性罪行的指稱，上新法院須指示第(1)款並不憑藉該項指稱而適用於指示內指明的申訴人。

(6) 第(5)款適用於第155(3)條所述的循簡易程序審訊的罪行的定罪，但適用時，該款中凡提述上新法院時，須代之以提述大法官，而凡提述發出申訴上新許可的通知時，則予以省略。(比照1976 c. 82 s. 5(3) U.K.)

(7) 就本條而言，凡有下列情形，即為作出指明性罪行的指稱——

- (a) 向警務人員作出該項指稱；或
- (b) 向裁判官作出申訴或在裁判官席前提出告發，指稱某人曾對申訴人犯指明性罪行；或
- (c) 某人在裁判官或法庭席前，被控對申訴人犯指明性罪行；或
- (d) 某人因一項指稱對申訴人犯指明性罪行的控罪，被交付高等法院審判；或
- (e) 一項公訴在高等法院席前提出，指控某人對申訴人犯指明性罪行，

而在本條中，凡提述指明性罪行的指稱時，亦須據此解釋。(由1980年第26號第2條代替)

(8) 在本條中——

“申訴人”(complainant)就指明性罪行的指稱而言，指該指稱為所犯罪行的對象的人；
“書刊”(written publication)包括影片、聲帶及其他永久形式的紀錄，但不包括公訴書或為供某一法律程序使用而擬備的其他文件；及
“廣播”(broadcast)指透過無線電訊供大眾接收的聲音或影像廣播。

(9) 本條並無規定——

- (a) 禁止由於指明性罪行的指稱而就只包括關於法律程序(但任何人被控該罪行的審訊的法律程序，或旨在引致該審訊的法律程序，或因該審訊而產生的上訴的法律程序則除外)的報導的事項作發布或廣播；或
- (b) 影響憑藉其他成文法則而施加於任何發布或廣播的禁制或限制，而依據本條發出的指示，並不影響在指示發出前任何時間第(1)款的施行。

(由1978年第25號第4條增補。由1979年第32號第3條修訂；由1980年第26號第2條修訂；由1991年第90號第23條修訂)

[比照1976 c. 82 s. 4 U.K.]

complainant may be expected to give evidence at the trial applies to a judge for a direction in pursuance of this subsection and satisfies the judge—

- (a) that the direction is required for the purpose of inducing persons to come forward who are likely to be needed as witnesses at the trial; and
- (b) that the conduct of the applicant's defence at the trial is likely to be substantially prejudiced if the direction is not given,

the judge shall direct that subsection (1) shall not, by virtue of the accusation alleging the offence aforesaid, apply in relation to the complainant.

(3) If after the commencement of a trial at which a person is charged with a specified sexual offence a new trial of the person for that offence is ordered, the commencement of any previous trial at which he was charged with that offence shall be disregarded for the purposes of subsection (2). [cf. 1976 c. 82 s. 5(2) U.K.]

(3A) A direction that subsection (1) shall not apply in relation to such complaint or such matter as is specified in the direction may be given, where it is necessary for the purpose of seeking information which may lead to the arrest of a person responsible for an alleged specified sexual offence, or is for any other reason in the public interest—

- (a) by a police officer of the rank of Senior Superintendent or above, where the complainant consents in writing to such a direction being given; or
- (b) by the Attorney General in any other case,

and notice of any such direction shall be published in the Gazette. (Added 26 of 1980 s. 2)

(4) If at a trial at which a person is charged with a specified sexual offence the judge or, as the case may be, the District Judge, magistrate or juvenile court, is satisfied that the effect of subsection (1) is to impose a substantial and unreasonable restriction upon the reporting of proceedings at the trial and that it is in the public interest to remove or relax the restriction, the judge or, as the case may be, the District Judge, magistrate or juvenile court, shall direct that subsection (1) shall not apply to such matter relating to the complainant as is specified in the direction; but a direction shall not be given in pursuance of this subsection by reason only of an acquittal of a defendant at the trial.

(5) If a person who has been convicted of an offence and given notice of an appeal to the Court of Appeal against the conviction, or notice of an application for leave so to appeal, applies to the Court of Appeal for a direction in pursuance of this subsection and satisfies the Court—

- (a) that the direction is required for the purpose of obtaining evidence in support of the appeal; and
- (b) that the applicant is likely to suffer substantial injustice if the direction is not given,

- (a) 該指示需予發出以誘使相當可能需要他在審訊中擔任證人的人前來作證；及
- (b) 如不發出該指示，相當可能會在實質上不利於申請人在審訊中所作的辯護。

則雖有指稱有上述罪行的指控，法官須指示第(1)款並不憑藉該項指控而適用於申請人。

(3) 任何人被控犯指明性罪行的審訊開始後，如有命令就該罪行重新審訊該人，則就第(2)款而言，無須理會以往該人被控該罪行的審訊曾開始進行。(比照 1976 c. 82 s. 5(2) U.K.)

(3A) 凡為尋求可致使對指稱的指明性罪行須負責任的人被捕的資料，或基於公眾利益的其他理由，而需發出指示，規定第(1)款不適用於指示內指明的申請或事項，則——

- (a) 在申請人以書面同意下，指示可由高級警司或以上職級的警務人員發出；或

(b) 在其他情況下，指示可由律政司發出，並須在憲報刊登該指示的公告。(由 1980 年第 26 號第 2 條增補)

(4) 在任何人被控犯指明性罪行的審訊中，大法官、地方法院法官、裁判官或少年法庭(視屬何情況而定)如信納第(1)款的規定會有對審訊中法律程序的報導施加實質而不合理限制的效果，並信納解除或放寬該項限制有利公眾利益，則大法官、地方法院法官、裁判官或少年法庭(視屬何情況而定)須指示第(1)款不適用於指示內指明與申請人有關的事項；但不得僅因被告人在審訊中被裁定罪名不成立，而依據本款發出指示。

(5) 任何人被裁定罪名成立，而就該項裁定向上訴法院發出提出上訴的通知或發出申請上訴許可的通知後，如依據本款向上訴法院申請發出指示，並使上訴法院信納——

- (a) 該指示需予發出以取得證據支持該項上訴；及
- (b) 如不發出該指示，相當可能會在實質上對申請人不公平。



Victim's Charter

(Note: This publication was issued by the former "Legal Department" which became the "Department of Justice" on 1 July 1997. Also on that date, the post of "Attorney General" was replaced by the "Secretary for Justice". The publication is now in the process of being revised and updated and will be re-issued.)

The charter sets out the rights and duties of victims of crime.

"All members of the community who come into contact with the criminal justice system, but particularly victims of crime, are entitled to know what their obligations are in helping the law enforcement agencies and, in return, what standard of service they can expect to receive from those involved in the criminal justice system."



The Victim's Charter

Topics include:

- who is a victim?
- the duty to help maintain law and order
- the victim's right to be treated with courtesy and respect
- the victim's right to have a proper response to complaints of crime
- the victim's right to information - reporting the crime
- the victim's right to information - investigation and prosecution
- the victim's right to proper facilities at court
- the victim's right to be heard
- the victim's right to seek protection
- the victim's right to privacy and confidentiality
- the victim's right to prompt return of property
- the victim's right to support and aftercare
- the victim's right to seek compensation.

BACK

ORIGINAL COMMUNICATION

Rape in Hong Kong: an overview of current knowledge

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SUMMARY. This paper summarises all published and unpublished material available on the topic of rape in Hong Kong. Data including epidemiology, victim profile, assault characteristics, are presented. Most of the data shown are from the 15-year period between 1981 and 1995. Gaps in knowledge are highlighted so as to direct the attention of local researchers and overseas research collaborators.

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INTRODUCTION

A search of the literature reveals a paucity of published material about rape in Hong Kong, predominantly from official statistics as contained in crime figures published in the annual reports of agencies such as the Hong Kong Police Force¹ and the Family Planning Association.² Some work has been done by Cheung and Chung,³ and Cheng et al⁴ on rape attitudes; Lee and Lau⁵ on sex crimes and sentencing; Kwan⁶ on victim support services; Lu⁷ on offender profiles; and Andry⁸ on actions required to address problems concerning rape and sexual crimes. Apart from Lu⁷ and Kwan,⁶ work has not been based on direct involvement with rape victims or offenders. The author reviewed the records of 350 victims of reported rape seen at the Hong Kong Island office of the Forensic Pathology Service.⁹ In Hong Kong, doctors from the Forensic Pathology Service are called upon by the police to examine victims of all reported rapes. This paper is a review and summary of all these data. This paper is by no means a comprehensive review of all that should be known about rape in Hong Kong. If anything, it will be a stimulus for further focussed research that will allow a clearer and better understanding of the occurrences of rape in Hong Kong.

INCIDENCE AND TREND

Hong Kong is no different from other countries in that rape is an under-reported crime.¹⁰ Table 1 shows published police figures from 1985 to 1996.¹ The annually reported incidence of rape varied from a low of 66 in 1987 to a high of 120 in 1989. This represents a rate of from 2.5 per 100 000 females to 4.2 per 100 000 females. The detection rate of these reported cases varies from a low of 57% in 1986 to a high of 73% in 1991 and in 1993. The figures published by the Hong Kong Family Planning Association (FPA),² an organization that provides a range of support services for rape victims, are shown in Table 2. It is clear from these two tables that not all victims of rape make police reports. Cheung and Law,¹⁰ using victimization surveys conducted by the Census and Statistics Department of the Hong Kong Government, suggested that from one-quarter to one-half of sex-crime victims do not make police reports. It must be pointed out that these estimates were based on all sex-crimes and not rapes alone. It is, however, safe to say that at the very least one-third of rape victims are non-reporting, as can be seen from the number of non-reporting victims seen by the FPA. The annual figures of known rapes appear to be stable or even slightly decreasing in the period between 1985 and 1996: rates rising from 2.5:100 000 to 4.2:100 000 and dropping again to 2.7:100 000. These rates are very low and it is unclear how much of it is affected by non-reporting

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VICTIM PROFILE

The age-distribution of rape victims is shown in Table 3. It can be seen that victims are found in all age groups

Table 1 Annual reported rapes and their detection rates¹

Year	Reported rapes	Detected Rapes	Detection rate
1985	80	48	60%
1986	72	41	57%
1987	66	43	65%
1988	97	61	63%
1989	120	70	58%
1990	111	66	60%
1991	114	83	73%
1992	116	83	72%
1993	103	75	73%
1994	100	65	65%
1995	103	69	67%
1996	86	59	69%

with a concentration in the young age groups.²² This is similar to the data published by the FPA (Table 4). It is alarming that over 60% of victims were under the age of 21. Not surprisingly, therefore, the largest group of victims were students, followed by factory, construction and office workers. The youngest victim was 4 years and 2 months, and the oldest 66 years old. In both sets of data, students formed the predominant group of victims. One hundred and sixty-nine (48%) of the victims had previous sexual experience.⁹ This needs to be borne in mind when victims are found to have no genital injuries.

ASSAILANT PROFILE

Police figures (Table 5) show that assailants are also from all age groups, with the largest number from the 21-30 age group followed closely by that of the 16-20 age group.¹ Lu¹ showed that the convicted rape offenders had a higher incidence of family pathology and incidence of subcultural orientation: a history of unemployment; a history of offending; and a higher level of premeditation in carrying out the offence when compared to offenders convicted of indecent assault. His study was, however, based on a small sample of 17 rape offenders and 24 indecent assault offenders. More research is clearly appropriate.

VICTIM-ASSAILANT RELATIONSHIP

The author's work showed that the victim was acquainted with the assailant in 53% of cases.²³ Of the stranger rapes, 20% also involved robbery. Rape by more than one attacker was reported in 23% of cases. More research is needed to compare the different group of victims, i.e. stranger vs. acquaintance rape, single attacker vs. 'gang' rapes, etc. In particular, the author found that, of the acquaintance rape victims, 21% of the victims had been attacked on more than

Table 2 Data of victims of rape seen at the Family Planning Association²

Year	Victims who have reported	Victims who have not reported	Total
1981	54	79	133
1982	45	71	116
1983	49	56	105
1984	56	41	97
1985	46	33	79
1986	42	22	64
1987	48	20	68
1988	50	40	90
1989	54	36	90
1990	56	39	95
1991	68	37	105
1992	56	56	112
1993	67	48	115
1994	62	29	91
1995	57	47	104
1996	34	45	79

Table 3 Age distribution of victims seen at the Forensic Pathology Office (82-91)

Age-group of victims	Number
Under 10 year	13
10-16	76
16-20	82
20-30	117
30-40	46
40-50	12
50-60	3
Over 60	1

one occasion by the assailant and there was invariably a long interval between the assault(s) and the report. It is likely that some of the reasons behind the long delay in reporting are self-blame and worries about not being believed.

LOCATION OF THE RAPE

Not surprisingly, for a densely populated and built-up area such as Hong Kong, over 78% of the rapes occur indoors:²⁴ 42% of these are in the premises of the assailant; 30% are in the victims' homes; 16% of the rapes occur in hotel/motel rooms; and 13% in lifts, back staircases, and on rooftops or in refuse rooms of high-rise apartment blocks.² Measures have been initiated to improve security in such high rises, with the installation of surveillance cameras in lifts and strategic areas of high rises. It is the author's firm belief that these measures can go a long way to minimize the occurrence of not only rape, but also other crimes committed in such places, such as robbery. Only 15% of rapes occur outdoors, usually in poorly-lit parks, beaches, trails and inside parked vehicles. The data from the FPA also show a similar pattern.⁹

Table 4 Age group distribution of victims seen at the Family Planning Association

Year	Under 16	16-20	Over 21
1981	31	43	42
1982	35	56	42
1983	33	36	36
1984	26	29	42
1985	22	29	28
1986	22	19	22
1987	28	20	20
1988	29	31	30
1989	33	29	28
1990	N/A	N/A	N/A
1991	35	31	39
1992	39	43	30
1993	39	40	36
1994	26	25	40
1995	38	25	41
1996	30	25	24

TIME OF ASSAULT

Rape occurs at any time.⁶ Over one-half of assaults are, however, concentrated in the period between 20:00 and 04:00 hours. This fact alone highlights the need for all rape-related services to be available round the clock. Data are, however, unavailable on the time it takes before a victim of reported rape is seen by police and, perhaps more importantly, before being seen by medical personnel. This author found that 63% of victims were medically examined within 24 h of the reported rape.

CHARACTERISTICS OF THE ASSAULT

Weapons were used in only 18% of reported rapes, threats made in 29% of cases and physical force used in 44% of cases.⁶ These facts highlight, yet again, the myth that victims of rape must show bodily injuries. In this study, the use of alcohol and/or drugs was reported in only 19% of the cases. The assault involved vaginal penetration only in 84% of the cases, vaginal and anal penetrations in 3% of the case, vaginal and oral penetrations in 6% of cases, and penetration of all three orifices in 1% of cases. The low percentage of reported anal and oral penetrations is likely to be due to victims under reporting such assaults as well as to investigators not posing the questions owing to a combination of inexperience and embarrassment of the investigator as well as the victim. Ejaculation was reported in only 51% of the cases. It is uncertain if this percentage is due to true non-ejaculation of the assailant. If indeed, it were, it

Table 5 Age-group distribution of persons arrested/prosecuted⁷

Year	7-15 year	16-20	21-30	31-60	61 and over
1986	3	12	25	10	0
1987	5	34	20	10	0
1988	7	40	26	19	0
1989	5	31	47	18	0
1990	10	39	32	24	1
1991	10	27	27	21	1
1992	3	28	30	21	3
1993	5	32	33	27	0
1994	0	19	35	28	2
1995	5	29	38	28	1
1996	6	22	20	17	2

would support the argument that rape is not about male sexual gratification. This is further supported by the finding that only 40% of the victims had their clothing totally removed. The use of condoms was reported in only 4% of cases, highlighting the need for post-assault pregnancy screening as well as screening for sexually transmitted diseases.

POST-RAPE VICTIM BEHAVIOUR

Thirty-eight per cent of victims of reported rape cleaned or washed their genitalia immediately after the rape.⁶ Their reactions are perfectly understandable, but such action decreases the likelihood of obtaining forensic evidence, in particular the detection of semen from the assailant. Many rape crisis centres issue advice to victims to refrain from cleaning or washing the perineum, this is, however, advice that is more easily given than observed. A properly organized response, whereby the victim is examined at the earliest possible opportunity, may be a more realistic approach, as DNA techniques can now be used successfully on even a very minute quantity of material; theoretically one cell is sufficient!

MEDICAL FINDINGS

Only 35% of victims showed signs of bodily injuries.⁶ Bleeding from genital injuries was noted in only 12% of victims. Vulval injuries were found in only 8% of victims. Recent hymenal injuries were found in only 10% of victims. Such a lack of injuries is likely to be a result of the inability or futility of the victims' resistance, as well as the fear of injury and death. This finding has helped the author effectively refute suggestions by defence lawyers that victims of rape should exhibit more injuries.

SERVICES AVAILABLE FOR RAPE VICTIMS IN HONG KONG

All victims of reported rapes are seen by a trained forensic doctor from the Forensic Pathology Service of the Department of Health. This service is available round the clock and every day of the year. These doctors will provide reports and give evidence in legal proceedings. The FPA of Hong Kong provides a comprehensive range of after-care services including birth control, screening for sexually transmitted diseases and, more importantly, psychological counselling. Victims with serious injuries are admitted to hospital where they will be treated for their injuries by the appropriate specialists. Several volunteer agencies offer counselling services, however, their activities are not well publicised and are not always known to victims. There is also an absence of a systematic coordination of all these services, whereby the various service providers work together to provide a 'total' service for the victim.

ATTRITION RATE OF REPORTED RAPES

Very little is known in this area. The perception of the author and colleagues working with rape victims is that the prosecution rate is low and the conviction rate even lower. Working from data published by the police on reporting and detection rates, and those published by Lee and Lau¹ in their study of cases in the High Court in the period 1981-1986, this author estimated that assailants were convicted of a crime in 22% of cases and of rape in only 18.6% of cases. Accurate data, however, can only be obtained if a prospective follow-up study is conducted.

SENTENCING FOR RAPE CONVICTIONS

The legislation provides for a life sentence on conviction for rape. Lee and Lau¹ in their study showed that the average sentence was between 5 and 7 years on conviction for a single charge of rape and from 6 to 12.3 years for conviction for multiple charges. The study also highlighted the fact that sentencing appears quite consistent, but the rationale is often not known. In cases where it is known, the reasons provided for discounted sentences highlight the strong influence of rape myths on members of the judiciary, in particular, their notion that women who have had previous sexual experience are somehow 'less damaged' and less likely to suffer long-term effects of the assault. Another often-quoted myth is that because the victim had not suffered serious bodily injury, the assailant was entitled a discounted sentence.

RAPE LEGISLATION

The current rape legislation in Hong Kong can be found in part XII of the Crimes Ordinance (Cap 200). Section 118 defines rape as unlawful sexual intercourse with a woman who at the time of the intercourse does not consent to it, and at the time the assailant knows that she does not consent to the intercourse or is reckless as to whether she consents to it.¹¹ Section 123 states that unlawful sexual intercourse with a girl under 13 shall be liable, on conviction, to life imprisonment. Section 154 deals with restrictions on evidence of the previous sexual experience of the victim, except with the leave of the judge. Section 156 provides for the anonymity of the victim. Many of the more recent legislative changes, such as the redefinition of rape to include any penetration of bodily orifices and marital rape have yet to be discussed in Hong Kong.

CONCLUSION

It is acknowledged that this paper represents the results of various studies conducted during different periods of time by different authors and some of the findings represent estimates of the author. It is, however, an effort to collate what is available with regard to the studies on rape known to the author. The purpose of this paper would have been achieved if it had provided a reference point for future research as well as highlighting the obvious gaps where future research and services could be targeted. Indeed, efforts are now being made to do a prospective in-depth study of rape, whereby it is hoped that victims can be interviewed and followed through from assault and reporting to treatment, counselling, trial and recovery. It is felt that the gaps identified can only be addressed by such a prospective study. We realize, however, that such a study will require the work and cooperation of a dedicated team from various backgrounds. Such a prospective study will also help to coordinate the available services into a truly comprehensive and total service for victims.

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