

Rape
GIRLS
Brutality
BOYS
Abuse
WOMEN
Violence
MEN

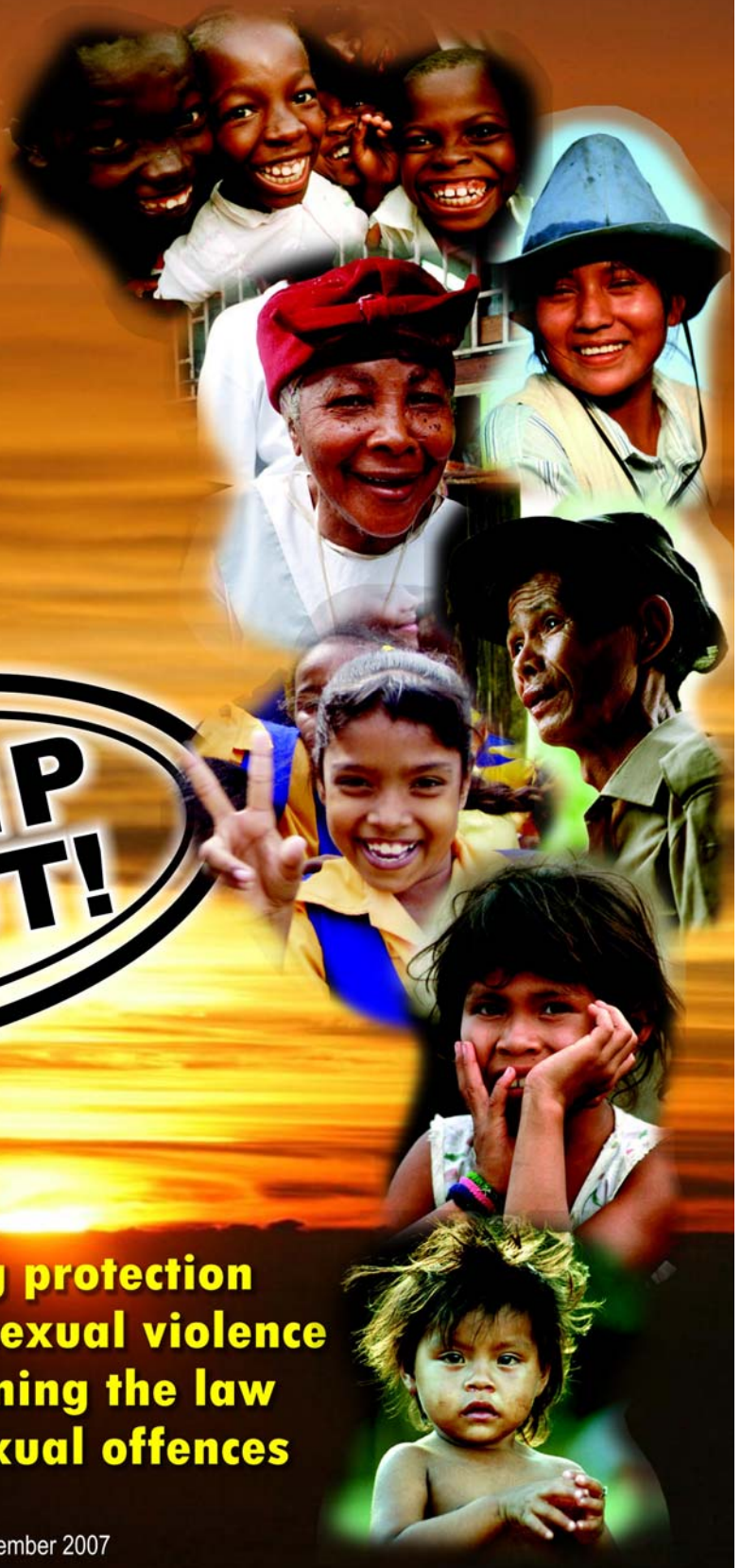
**STAMP
IT OUT!**

**Strengthening protection
against sexual violence
and reforming the law
on sexual offences**



Consultation Paper

Ministry Of Human Services & Social Security, September 2007



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Ministry of Human Services
& Social Security
Sep 2007

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STAMP IT OUT: Strengthening protection against sexual violence and reforming the law on sexual offences

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Foreword

Sexual violence is the most widespread and unpunished of crimes. It destroys lives, families and communities, holds back our society and economy, and spreads HIV/AIDS and other STDs.

Our laws are centuries out of date, and our system is failing to deliver either justice or support to victims. This is unacceptable.

Sexual violence, like any other form of violence, has no place in our society, and we aim to stamp it out.

We put forward in this Consultation Paper our proposals to reform the law, to strengthen protection, and to improve support and services for victims, whilst at the same time upholding the right of the defendant to a fair trial. We are committed to ensuring that the reforms are not just made on paper, but are put into practice across Guyana. Training will be critical to the success of our efforts.

The proposals are made against the background of our wider Justice Sector Reform Strategy, a substantial investment programme which we hope will have a major impact on access to justice over the coming years.

Society has changed over the century since our existing sexual offences laws were drafted. Discrimination on the grounds of sex, like discrimination on the grounds of other differences including race and disability, is no longer defensible, and violence in relationships can no longer be seen as acceptable or unchangeable.

We know much more about sexual violence - for example, that the vast majority of offenders are known to their victims, and that those victims are overwhelmingly women. The links to domestic violence are strong, and in this area we can build on the work already underway in Guyana.

Sexual violence is happening in our homes and in our communities. Government action alone is not enough: protecting our people from sexual violence is the responsibility of all Guyanese. A collective effort is needed, involving all sectors of society. In addition to our proposals, we want to mobilise local communities to tackle the

sexual violence that is taking place in their midst.

Changing attitudes towards women and sexual violence in our communities is vital if we are to achieve real change in practice. Serious sexual violence is also committed against men and boys, and that is also an important aspect of our proposals. Reports suggest an extremely worrying rise in sexual violence against young children. We know that people with certain mental and physical disabilities can also be vulnerable to sexual abuse, and recent studies have suggested that Amerindian women and girls are suffering disproportionately. Our proposals address these issues.

We want to hear from you. We are publishing this Consultation Paper, rather than a draft Bill at this stage, to make the debate as accessible as possible. We are committed to taking action quickly, but we also believe that it is more important to get the action right. We want your comments and suggestions to make sure that the final programme of reforms is as practical and effective as possible. We want to hear from those involved in criminal justice in Guyana, including police officers, prosecutors, magistrates and judges. We want to hear from academics, health and welfare service providers, NGOs and community groups, but most of all we want to hear from survivors of sexual violence, their families and communities. Through your participation we can achieve real change.

These reforms are a first step on what will be a long road, but together, we can stamp out sexual violence in Guyana.

Priya Manickchand
Minister of Human Services and Social Security
September 2007

Chapter 1 Overview

Scope and purpose of this Consultation Paper

1. This Consultation Paper deals with a comprehensive review of law and policy on sexual offences. It sets out proposals that we believe will improve the conviction rate through:
 - Reforming the legal framework
 - Reducing the barriers to effective prosecution
 - Reducing trauma and improving care and support for victims and witnesses
 - Tackling attitudes and prejudices relating to sexual offences.It also sets out further proposals aimed at the prevention of sexual violence in Guyana.
2. The proposals in this Paper are based on Guyanese views and experience, but have benefited from a thorough review of sexual offences reform around the world, as well as regional and international standards.
3. We have aimed to make this Consultation Paper accessible to all citizens, to encourage wide participation in the consultation process. Through consultation the proposals for law reform will be finalised and a Sexual Offences Bill will be drafted. Proposals for policy action will also be developed.

What is the Government consulting on?

4. Chapter 2 of this Paper gives some background information to the consultation. The consultation covers action against sexual violence, meaning all violence that includes an element that most people would consider to be sexual.
5. Chapters 3 and 4 deal with important general themes. Chapter 3 draws together reforms which relate to child sex abuse, including new offences, measures to assist child witnesses, and prevention strategies including powers and training for social workers.

6. Because recent studies have suggested that Amerindian girls and women are most vulnerable to sexual abuse in Guyana, Chapter 4 includes proposals aimed at exploring this issue, working with local communities to target action.
7. Chapter 5 covers reform of sexual offences, modernising the legal framework to provide better protection.
8. Chapter 6 covers procedures from report to charge, aimed at improving the process for the victim, building stronger investigations and ensuring that more reports are converted into cases. Key proposals are better integration of services, improved gathering of medical and forensic evidence, and new rules on bail.
9. Chapter 7 deals with reforms to court procedure, including a move to paper committals, sexual offences courts and special measures to make sure that witnesses give their best evidence. Special consideration has been given to the needs of child witnesses.
10. Chapter 8 contains proposals to modernise the rules of evidence in sexual offences cases, such as corroboration, recent complaint and sexual history evidence.
11. Chapter 9 deals with sentencing of offenders, introducing new sentencing options such as compensation, counselling and treatment orders and long-term supervision orders, and introducing sentencing guidelines to improve consistency in sentencing.
12. In Chapter 10 additional proposals on preventing sexual offences are discussed, including a National Task Force for the Prevention of Sexual Violence, education programmes, and training for law enforcement officials.

What is not being consulted on this time?

13. We will not wait an instant longer than necessary to make these changes to prevent further suffering from sexual violence and abuse. This reform

programme is therefore a first phase, aimed at making fundamental improvements to prevent direct sexual abuse.

14. This direct abuse underlies both pornography and prostitution. However, these are both complicated issues that require the time and attention of separate reviews, and so we are not consulting on pornography or prostitution in this consultation exercise. A second reform programme will deal with these issues.
15. On the same basis, consensual so-called “unnatural” offences are not included in this consultation exercise. Under the proposals in this Paper, non-consensual violence and abuse of both males and females is covered in the new offences, including rape. Existing consensual offences are not covered in this review and will not be reformed or repealed by the new legislation. Therefore, because the law will not change, these offences will not be discussed during this consultation process.

We would like to hear from you

16. We invite comments on any of the proposals in this Paper, and any other suggestions for improving protection against sexual violence and support for victims.
17. Responses should be sent to:

Melissia Marcus
Office of the Minister
Ministry of Human Services and Social Security
1 Water and Cornhill Streets
Stabroek
Georgetown

Tel: 225-6545
Fax: 225-7112
Email: sexualviolenceconsultation@gmail.com

The final date for receipt of responses is 31st December 2007.

**This information is also available at
www.gina.gov.gy**

Confidentiality

18. Please state in your response if you want the information you provide to be treated as confidential.

Alternative formats

19. Please contact the Ministry if you require a copy of this Consultation Paper in any other format, e.g. large font or audio.

Consultation meetings

20. A series of consultation meetings will be held around the country for discussion and oral contributions to the consultation. A timetable for the consultations will be published.

Post-consultation information

21. A summary of the responses received will be published within 3 months of the closing date for this consultation, and will be made available on the Ministry's website.

Chapter 2 Background

22. This Chapter outlines what we know about the nature and incidence of sexual violence in Guyana, and highlights some of the main problems.

DID YOU KNOW?

In Guyana:

- A 2005 study found that approximately 1 % of rapes reported to the police result in a conviction
- A 2007 study found that:
- 92% of victims are female (women and girls)
- 69% of victims are 16 years or below
- The accused is known to the victim in 3 out of 4 cases
- 1 in 5 perpetrators are related to the victim
- More than two-thirds of sexual offences take place in the home of the victim or the accused
- Only 43% of victims report to the police within 24 hours

Regionally and internationally:

- Across the Caribbean, fewer than 1 in 8 rape victims report the crime to the police
- Studies have found that only 3% of rape allegations are false - no higher than for any other crime

Sources, Guyana data: Guyana Human Rights Association

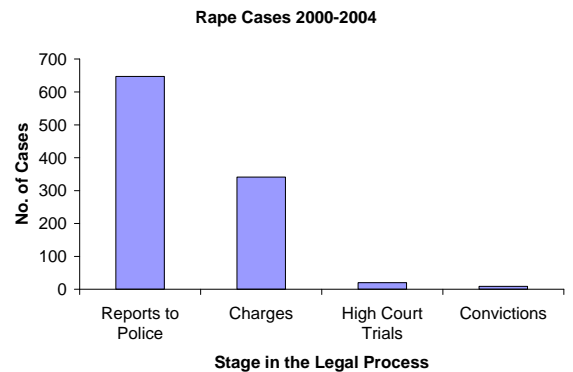
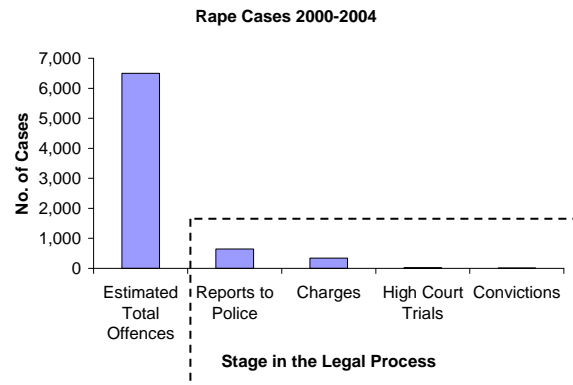
23. Similar to Guyana, studies in Jamaica and Trinidad and Tobago have found that girls under 16 were the most vulnerable group, that most offenders were known to the victim and that offences often occur in the victim or offender's home.

Sexual violence in the criminal justice system in Guyana

24. The graphs below illustrate how rape cases progress through the justice system in Guyana, using the following figures for 2000-2004 from a 2005 study:

- Reports to Police: 647
- Offenders Charged: 341
- High Court Trials: 20
- Convictions: 9

The first graph also includes the estimated total rape offences of 6,500, assuming a reporting rate of 1 in 10:



Underreporting

25. As the graphs illustrate, the vast majority of sexual offences are never reported to the police. A 1998 study found that across the Caribbean (including Guyana), only 1 in 8 women who had gone to rape crisis centres had reported the crime to the police. As many women would not even go to the crisis centre, the true level of underreporting is thought to be much higher. A study in Guyana in 1988 found that only 6% of *domestic violence* victims reported the matter to the police. One of our major challenges is to increase levels of reporting of sexual violence in Guyana.

26. Why are so few sexual offences reported? There are many factors at work, but the fundamental problem is attitudes in communities and society to women who have suffered sexual violence. Studies have confirmed that where victims receive a negative response from family, friends and community they are much less likely to report the offence to the police.
27. In many instances in Guyana, female victims of sexual violence are made to feel ashamed, or are judged to be responsible for the violence they have suffered. Where the violence takes place in a relationship, society can put pressure on the victim to stay in the relationship and “work it out” rather than go to the police or leave. The victim, rather than the accused, will suffer serious social consequences such as increased risk of sexual assault and damage to marriage prospects.
28. A major study in Guyana found that a level of male violence is widely tolerated, reducing support for women who might otherwise report the criminal offences against them. Another finding was that economic and social dependence on the abuser causes women not to report.
29. Further, survivors have described going through the legal process as being in some ways as devastating as the rape itself. This is known as “secondary trauma”, and is another key reason for low levels of reporting to the police. As well as fear, there is a lack of faith that the case will get anywhere.
30. Guyana has an adversarial, rather than an inquisitorial system, in which the victim is traditionally just a witness and the focus is on the prosecution and defence attacking each other’s case. There is a global move towards recognising the rights of the victim, including to information, protection, health and welfare services, and compassion.

Charging the offender

31. The figures quoted above show that in 2000-2004 the police charged the offender in only half of the rape cases reported to them. Studies have shown that there is not a higher level of false allegations of rape than for any other crime; in fact research in the UK found a false allegation rate of only 3%. This suggests that many genuine cases reported to the police in Guyana are not being investigated, leaving the perpetrator free to abuse again.
32. In some instances the victim will withdraw from the legal process, put off by the treatment she receives from the police. Whilst good work is being done by some police officers, the beliefs that many victims make false allegations, and that domestic violence is a “private matter” are still widespread, and this causes some police to send away genuine victims.

Charge to conviction

33. According to the figures quoted above, an offender was charged in 341 rape cases between 2000 and 2004. There was a conviction in only 9 of those cases. The many factors contributing to this situation are discussed in more detail in Chapter 6; they can include poor investigation, long delays, lack of confidence in the criminal justice system and fear of appearing in court, fear of the offender, young children being unable to give evidence in court under the current system, and the initial response of the police when the victim reports.

Rape myths

34. The emotional responses to and consequences of sexual violence are often misunderstood, and the true picture often turns conventional wisdom on its head. The response thought to be “normal” can in fact be the least likely. Studies have shown that these misconceptions, sometimes caused by stereotypes and prejudice, play a part in decision-making by police, prosecutors, magistrates, judges and juries, and are contributing to low levels of reporting, prosecution and conviction.

35. For example, people often do not understand why rape victims might not bear marks of physical resistance, may have delayed reporting the offence, blamed themselves, or tried to play down the events and injuries. People can take this behaviour to mean that the victim is not telling the truth, when in fact they are all normal responses to rape.
36. For example, many rape victims make a rational decision not to continue physically resisting during the attack, because this can increase the level of violence being used against them; they may be in fear of death or serious physical injury as well as the sexual assault. Another example is that juries expect victims of sexual violence to be hysterical or tearful when giving evidence in court and disbelieve them if they are not. Whilst some rape victims react this way, many others mask their feelings and appear calm and composed, despite how they may be feeling inside.

What do we know about sexual violence?

37. There are many different forms of sexual violence; for example, paedophilia (sex offending against young children) is a very different issue from violence between adults. However, dominance, humiliation and control are common to all.
38. We know that the vast majority of victims of sexual violence are women and girls. A 1988 study in Guyana found that poor, rural women suffer violence most frequently and in its most severe forms. Therefore special efforts must be made to ensure that the reforms benefit poor rural women in particular, and we look forward to working with these communities during consultation.
39. We know that most offenders are known to the victim, and that much sexual violence is also domestic violence, meaning violence perpetrated within a relationship (whether a family relationship or a sexual relationship). A 2002 study in the UK found that almost half of all rapes are committed by a current partner, and that these rapes are much less likely to be reported to the

police than rape by a stranger. We know that these rapes are as traumatic as stranger rape, and can sometimes be even worse, because of the breach of trust involved. In some countries, this is reflected in longer sentences for rapes committed within relationships.

Child sex abuse

40. Prosecutors and health care workers have reported increasing levels of violence against young children in Guyana. We know that in most cases the offender is known to the child. In addition to the figures on Guyana quoted above, there have been international studies such as the South Africa Demographic and Health Survey 1998, which found that 33% of child abusers were teachers, 21% family, and up to 31% otherwise known to the child. These figures may reflect underreporting of abuse within the family.
41. Attitudes towards young girls are also a problem in achieving convictions. Defence lawyers often raise lewd details of the child's past sexual experiences, despite the fact that the victim is a child and those past experiences constituted criminal offences against her. To look at teenage sexual activity in a different light, surveys from 9 Caribbean countries found that 48% of adolescent girls who had already had sex reported that their first experience had been forced.

Amerindian women and girls

42. While the 1988 study referred to earlier found that poor, rural women suffer violence most frequently and in its most severe forms, a recent study suggested that 12-16 year old Amerindian girls in Region 1 are the sector most vulnerable to sexual abuse in Guyana. We want to work with Amerindian communities during consultation to understand this issue and how best to tackle it. This matter is discussed further in Chapter 4.

Persons with disabilities

43. In other countries, persons with disabilities have been found to be particularly

vulnerable to abuse. No statistics are available in Guyana, but we look forward to the participation of persons with disabilities and relevant organisations in this consultation to build a picture of what is known in Guyana and what special measures might be needed.

Consequences and costs of sexual violence

44. The mental and physical effects of sexual violence on the victim are severe. Physical effects can include injury, pregnancy and sexually transmitted infections. The trauma to the victim can cause permanent psychological effects including anxiety and depression, fear, humiliation, degradation, shame, inability to trust, for children, inability to form relationships in adult life, self harm and suicide. Globally, the World Bank estimates that violence against women is as serious a cause of death and incapacity, amongst women of reproductive age, as cancer, and a greater cause of death than traffic accidents and malaria combined.
45. The costs of sexual violence are also borne by the survivor's family and society at large. In addition to damaged health, there is loss of wages, family instability, the costs of treatment, disability, long periods of absence from work, decreased productivity, the effect on children of witnessing violence, and reduced quality of life due to fear of further abuse. Canada has estimated the cost of violence against women, of which sexual violence is a significant part, at US\$2.75 billion per year. New Zealand has estimated the cost at \$1.2 billion, and Fiji at \$297 million annually (7% of GDP).

Policy framework

46. Taking action against sexual violence is a priority for this Government. In addition, the Constitution, and the international obligations it incorporates, place obligations on the State towards the eradication of violence against women and

children. Guyana has obligations under the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, the UN Convention on the Elimination of all forms of Discrimination Against Women, the UN Convention on the Rights of the Child, the UN Declaration on the Elimination of Violence Against Women and Declaration of the Basic Principles of Justice for Victims of Crime and Abuse of Power and the Platform for Action of the 4th World Conference on Women in Beijing.

47. The proposals in the following Chapters of this Paper are made against this background and comply with these obligations.

Chapter 3 Children

48. One of the most worrying aspects of sexual violence in Guyana is the rising level of offending against children, both adolescent and increasingly very young children. Some prosecutors have estimated that almost half of their current sexual offence cases concern child victims. As mentioned above, the vast majority of offences are committed by family members or persons well known to the victim.
49. Prevention of child sex abuse and conviction of offenders is a very high priority. The measures in this Paper form part of our wider strategy under the National Plan of Action to protect Orphans and Vulnerable Children from All Forms of Abuse, and more protections are included in the forthcoming Children's Bills.
50. We believe that the key is better co-ordination between services (particularly social services, health services, education services and the police), not least, to prevent children being abused within the system, for example in care homes or training institutions, as well as in the home.
51. All of the reforms in this Paper will benefit child victims as well as adults, but some, listed in the table opposite, tackle the particular problems for child victims and child witnesses.

Reforms proposed in this Consultation Paper:

- New offences: an expanded child sex abuse offence, abuse of position of trust, preventing a minor from testifying; to protect boys, new gender-neutral definitions of rape and child sex offences, and an age of consent for boys (see Chapter 5)
- Obligation for police to coordinate with social workers and, where possible, conduct a joint investigative interview (see Chapter 6)
- Forensic evidence to help build cases (see Chapter 6)
- Child-friendly environment to report offences and at court (see Chapters 6&7)
- Paper committals to reduce number of appearances in court, new definition of competence to give evidence, measures to assist the child witness give evidence, reform of corroboration and recent complaint rules (see Chapter 7)
- Training for police, prosecutors, magistrates and judges on working with child witnesses (see Chapter 10)
- Education for children and parents on how to recognise abusive behaviour and where to get help (see Chapter 10)

Reforms contained in other Bills:

- Protection of Children Bill:
 - i. Powers for social workers to take action to protect children at risk in their homes
 - ii. Obligation to report suspected child abuse
 - iii. Obligation to investigate allegations of child abuse
 - iv. Register of people unfit to work with children
- Child Care and Development Services Bill:
 - i. Stronger regulation of residential child care
- Juvenile Offenders Bill:
 - i. Protection in training institutions

Enhanced use of existing legislation:

- Ongoing work to increase use of the Domestic Violence Act to protect children

Chapter 4 Amerindian Women and Girls

52. One of the beauties of our country is its variety of cultures, regions and communities. In tackling sexual violence, this means that we have to adapt our reforms so that they work to help victims in their local circumstances as far as possible.
53. In particular, since recent studies have reported that Amerindian women and girls are particularly vulnerable to sexual violence, we want to work with local communities to understand why this is, what the issues are, and what can be done by central and local government, NGOs, and the communities themselves to offer protection and support.
54. Therefore we hope for full participation in this consultation by Amerindian communities, so that we can develop initiatives and proposals for reforms. With wide differences in the situation from village to village, community-led initiatives may be amongst the most effective actions, with Government support where it is needed.
55. We know that some of the problems include lack of confidence in the police, inadequate access to court and to other services in remote areas, discrimination and prejudice. We know there are particular concerns in mining and logging areas. We want to discuss these and other issues.
56. Some initial suggestions for specific reforms include recruitment of local, female police officers, and independent and representative community bodies to ensure that complaints are properly investigated and to support victims. Education programmes on women's rights and economic opportunities are useful here as well as in tackling domestic violence. We also want to ensure that it is widely known that the State provides free translation and interpretation through the legal process.
57. The general reforms in this Paper, which will benefit all victims of sexual violence,

will of course benefit Amerindian victims. Some that may be particularly helpful include the public education programmes, data gathering and training for police discussed in Chapter 10, mandatory investigation and policy guidelines for police discussed in Chapter 6, and Local Committees and Local Plans for Prevention of Sexual Violence discussed in Chapter 10.

58. We look forward to building strong, community-led proposals for reform through the consultation process.

Chapter 5 Offences

59. The proposals in this Chapter modernise the law on sexual offences. The new offences will increase protection whilst ensuring the rights of the defendant.
60. A table comparing the existing offences with the proposed reforms can be found at Annex 2.

Proposals for sexual offences:

- Extended definition of rape
- Marital rape exemption abolished
- Causing a person to perform a sexual act in coercive circumstances
- Sexual assault
- Child sex offences
 - i. Age of Consent 16 years for males as well as females
 - ii. Sexual abuse of a child aged 15-16, Sexual abuse of a child aged under 15
 - iii. Sexual activity with a child family member
 - iv. Failure to report child abuse - new offence under the Protection of Children Bill
 - v. Obstructing prosecution (preventing a minor from testifying in a sexual offence case)
 - vi. Abuse of position of trust
 - vii. Meeting a child following grooming
- Vulnerable adults
 - i. Sex with adult family member
 - ii. Sexual activity with a person with a learning disability or mental disorder causing them to lack capacity to consent, is rape or sexual assault
 - iii. Where a person has a learning disability or mental disorder but has capacity to consent, offence of obtaining sexual activity by inducement, threat or fraud
 - iv. Breach of position of care or authority: sexual activity between persons responsible

and persons cared for/housed in care homes, hospitals, police stations, prisons, old persons homes etc.

- Other offences
 - i. Indecent exposure
 - ii. Voyeurism
 - iii. Bestiality
- Preparatory offences
 - i. Administering drug with intent to stupefy
 - ii. Trespass with intent to commit a sexual offence
 - iii. Committing criminal offence with intent to commit sexual offence
- Assumption that males under 14 incapable of sexual intercourse abolished
- Prosecution in Guyana of offences committed abroad

Rape

61. Rape is one of the most serious crimes a person can commit. Next to murder, it is the ultimate violation of personal integrity. Currently the offence of rape is restricted to penetration of the vagina by the penis. This means that some of the worst sexual violence against men and women involving other types of penetration can only be prosecuted as indecent assault, which carries a lower penalty.
62. In line with reforms around the world, to maximise protection, the definition of rape will be widened to include penetration of the vagina or anus by any body part (including the penis) or object, including where the victim is not sure what penetrated her/him, and penile penetration of the mouth. The offence of rape will also include a person forcing a man to penetrate her/him with his penis. The maximum penalty will be life imprisonment, and a minimum penalty of seven years will be set (see Chapter 9 for discussion of minimum penalties).
63. The definition is gender-neutral, meaning that rape of both male and female victims, by a male or female offender, is covered.

Consent

64. Currently, the prosecution must prove that the victim did not consent to the sexual act. This has led to the focus in most rape trials being on the behaviour of the victim, instead of on the behaviour of the accused and the facts and circumstances at the time of the incident.
65. In many countries there has been a move to identify “coercive circumstances” in which it is assumed that the victim did not consent - for example, where force or threats were used. Examples of countries which have moved to this approach are South Africa, Namibia, Germany, Canada, Sweden and England.
66. The legislation will include a list of coercive circumstances in which it is presumed that the victim did not consent. In some circumstances the presumption will be conclusive, meaning that if the coercive circumstance is proved there can be no question of whether the victim consented. In some, the presumption will not be conclusive meaning that the defence will be required to show on a balance of probabilities that the victim did consent.
67. Coercive circumstances that will lead to a conclusive presumption of no consent will include:
 - Application of force or threats to the victim or to a third party
 - Where the victim is unable to understand the nature of the act or to communicate choice due to being asleep, unconscious, or intoxicated, or due to physical or mental incapacity
 - Fraudulent misrepresentation of the identity of the perpetrator, so that the victim believed they were committing the sexual act with a different person
68. Coercive circumstances that will lead to a presumption of no consent which the defence can rebut through evidence will include:
 - Unlawful detention of the victim
 - Abuse of power or authority to the extent that the victim is inhibited from indicating his/her resistance to the act (less severe abuse of power is covered by the separate offences of abuse of position of trust and breach of position of care or authority discussed below)
 - Circumstances where the presence of more than one person was used to intimidate the victim
69. Where the victim did not, because of a learning disability or mental disorder at that time, have the capacity to consent, and sexual penetration took place, then the offence of rape is committed. The defence cannot bring evidence to show consent or belief in consent. It may be a defence to show that the accused had reasonable grounds to believe that the victim was not suffering from a mental disorder impeding choice at that time.
70. This aspect of the rape offence will protect those who are so severely disabled, either temporarily or permanently, that they lack the capacity to consent, in other words if they are unable to make a decision for themselves on whether to consent to sexual activity, or are unable to communicate their decision on the matter.
71. There is currently no definition of consent in Guyanese law. Consent will be defined as follows: “a person consents if he or she agrees by choice, and has the freedom and capacity to make that choice.”
72. Currently any “honest” belief that the victim was consenting, however unreasonable, is a complete defence to a charge of rape. It is very difficult for the prosecution to prove beyond a reasonable doubt that the defendant did not have an honest belief. This was recognised as contributing to the low conviction rates in England, so the law was reformed and the defendant’s belief in consent must now be reasonable. This is also the case in Australia, Canada, the USA and New Zealand.
73. As in Canada, the belief will not be reasonable where it was caused by the accused’s self-induced intoxication, or

where the accused did not take reasonable steps, in the circumstances known to him/her at the time, to find out whether the victim was consenting.

74. Consent will not be inferred from silence or lack of resistance on the part of the victim to the sexual violence. Lack of physical resistance is not the same as agreement to engage in the activity, as has been recognised in international, and many national laws. Lack of physical resistance can be caused by fear of increasing the violence being used against the victim.

Procedure for admitting evidence of consent

75. The defence will be required to give advance notice of the evidence on consent that they wish to bring, so that the judge can decide at a hearing in chambers (without the jury being present) whether the evidence is relevant and can be admitted to be used in the trial. The value of the evidence in proving the issues in the case must outweigh the prejudicial effect of allowing the evidence.

Marital rape

76. A general rule was established in English law over 150 years ago that a husband could not be guilty of raping his wife. The reasons were that a wife was a "mere chattel", the property of the husband, and that consent to sex at any time was taken to flow from the fact that they were married. No Guyanese court has ruled on this point since Independence, so this is still the law in Guyana.
77. The exemption has since been completely abolished in more than 50 countries, including England, India, Trinidad and Tobago, Venezuela and Canada, and it is soon to be abolished in South Africa.
78. When the House of Lords abolished the exemption in England, Lord Keith said:

"...marriage is in modern times regarded as a partnership of equals, and no longer one in which the wife must be the subservient chattel of the husband. [The existing law] involves that by marriage a wife gives her

irrevocable consent to sexual intercourse with her husband under all circumstances and irrespective of her state of health or how she happens to be feeling at the time. In modern times any reasonable person must regard that conception as quite unacceptable...On grounds of principle there is now no justification for the marital exemption of rape."

79. Marital rape is not about sex. It is violence intended to degrade and humiliate the victim. Marital rape often includes severe physical violence and threats and even use of weapons. Studies have shown that men who rape their wives are more likely to severely injure their wives and escalate to eventually murdering them.
80. Marital rape is also not as rare as we might think - recent studies in the US estimated that between 10-20% of married women had been raped by their husbands, and in one study in 1998, 18% of women indicated that their children had witnessed an incident of marital rape. Victims of marital rape are very reluctant to come forward, due to shame, fear of the accused and of society's reaction, and lack of faith in the police response.
81. The legislation will therefore include a provision stating that a marital or other relationship, previous or existing, is no defence to a sexual offence.
82. This reform will also help to make clear that proposing marriage to a victim after raping her in no way reduces the crime committed.

Causing a person to perform a sexual act in coercive circumstances

83. The current law does not expressly provide for the prosecution of someone who forces another person to perform a sexual act, either on themselves or on another person, against their will, including where a person is forced to have sex with a third party. Where compulsion is used, this adds to the highly distressing nature of the sexual behaviour itself. It can leave the victim feeling guilty and ashamed, although she/he had no choice but to engage in the

activity. We propose introducing a new offence of causing another person to perform a sexual act without consent. Where penetration occurred, the maximum sentence will be life imprisonment, with a minimum sentence of seven years. Where there was no penetration the maximum sentence will be 10 years.

Sexual assault

84. The existing offence of indecent assault covers a wide range of offending from relatively minor assaults to the most serious violent attacks. There are currently three different offences of indecent assault, one relating to indecent assault by a male on a male, and two relating to indecent assault of a woman by a man. There is no law relating to sexual assault of a man by a woman.
85. The offence of sexual assault will be gender-neutral, and will cover the sexual touching of another person in coercive circumstances, ranging from “groping” to very serious assaults. Where the act in question is also a more serious offence, such as rape, then the more serious offence will be charged. The offence of sexual assault will carry a maximum sentence of 10 years. Less serious assaults will attract lower than the maximum.
86. The coercive circumstances and provisions relating to consent under rape above will also apply to sexual assault.

Child sex offences

87. As the offences of rape and sexual assault will be gender-neutral, an age of consent will be required for boys as well as girls. It will remain at 16. This recognises that sexual violence against males is as serious as sexual violence against females. Many countries use a common age of consent for males and females, including England, Canada, New Zealand, South Africa and Australia.
88. The existing offences of carnal knowledge of a girl between 15 and 16, or of a girl under 15, are well understood. They will be expanded to include sexual activity with

both boys and girls. There will be an offence of **sexual activity with a child between 15 and 16 years**, which will include a defence of reasonable belief that the child was over 16, and will carry a maximum penalty of life imprisonment. Consent is irrelevant to this offence. Non-consensual sexual activity where the victim is 15 should be charged as rape. A further offence of **sexual activity with a child under 15 years of age** will carry a maximum sentence of life imprisonment. Where there was penetration, the minimum sentence will be seven years. No defence as to belief in age will be available, and consent is irrelevant.

89. Where the offender and victim are close in age and there is apparently no exploitation involved, then it may be more appropriate to pursue the matter through child protection rather than the criminal justice process. But even where the offender is a child, she/he may have a history of abusive behaviour towards other children, or criminal law involvement may be justified for another reason. Under the National Policy Guidelines (see Chapter 10), the police will exercise their discretion as to whether it is in the public interest to charge the offender where the offender is under 18 and there is an age gap of less than three years.
90. We will create two new offences relating to sexual activity within the family, to replace the existing gender-specific offences of incest by a man and incest by a woman. The first, sex with an adult family member, is dealt with in the section on vulnerable adults below. The second, **familial sexual abuse of a child**, will capture the sexual abuse and exploitation of children within the family unit. We know that most child abuse happens within the home (80% according to a 1999 study in the UK). Therefore this offence is very important.
91. This offence will protect children up to the age of 18 from any form of sexual activity within the family. It will apply to all individuals of any age who have a “family” relationship with a child, not only through blood-ties, adoption, fostering, marriage or similar relationship, but also by living

within the same household as the child and assuming a position of trust or authority in relation to the child. Where the sexual activity included penetration the maximum penalty will be life imprisonment with a minimum sentence of 7 years. For lesser offences the maximum penalty will be 14 years with a minimum sentence of 2 years.

92. Broadening incest beyond blood relations in this way recognises the varied family structures we live in, and the vulnerability of children within the home where there is an imbalance of power and close and trusting relationships. Incest has been expanded in this way in England, Barbados, Trinidad & Tobago and the Bahamas.
93. It is important that the offence includes a broad range of sexual activity, as low level abuse will often progress to more serious abuse of the victim. This is an improvement on the existing incest offences which relate only to sexual intercourse, not other forms of penetration or other abuse.
94. A new offence of **abuse of a position of trust** will be introduced, prohibiting sexual activity between those aged 18 or over and the children (aged under 18) they are responsible for in educational establishments and residential settings such as training schools and care homes. Consent is irrelevant to this offence, and the maximum penalty will be 5 years imprisonment. The offence is intended to protect children aged 16 and 17, as younger children will be protected by offences relating to adult sex abuse of a child, which carry higher penalties (as discussed in paragraph 88 above). Where the victim did not consent (or the abuse of power or authority involved reached the extent that the victim was inhibited from indicating their resistance to the act - see paragraph 68 above), then the more serious offence of rape will have been committed and should be charged.
95. Although sexual abuse of children by strangers is less common, such offenders commonly look for ways of gaining the trust and confidence of children, and some have seen the possibilities of misusing the internet to befriend children for these

purposes, through chatrooms and social networking sites. To tackle this "grooming", both on and off the internet, we will be introducing a new offence of **sexual grooming** with a maximum penalty of 5 years. It will be an offence for a person aged 18 or over to engage in a course of conduct with a child under 16 leading to a meeting where the adult intends to engage in sexual activity with a child. This enables action to be taken before any sexual activity takes place where it is clear that this is what the offender intends. The offence is intended to tackle predatory sexual behaviour.

Obstructing prosecution

96. **Failing to report suspected child abuse** is a new offence under the Protection of Children Bill. The obligation falls on parents, guardians, medical professionals who have examined the child, and persons with permanent or temporary custody over the child, for example, teachers.
97. Prosecutors, police and child welfare workers have raised the issue of parents settling child abuse cases (i.e., making financial arrangements with the offender and then preventing the child from giving evidence in court) when that does not seem to be in the best interests of the child. The legislation will include a new offence of **obstructing prosecution**. It will be an offence to prevent a child (under 18 years) from giving a statement to police or testifying in relation to a sexual offence. The offence will carry a maximum penalty of 10 years imprisonment. This is also an offence in Trinidad & Tobago.
98. Where the offence is committed and a child is prevented from giving evidence, the legislation will contain a procedure to allow written statements by the child (or written on behalf of the child) to be admitted as evidence (see Chapter 6).

Vulnerable adults

99. An offence of **sex with an adult relative** will cover sexual activity between certain adult blood relatives - parent-child, sibling or grandparent-grandchild relationships

where there is evidence to suggest that the sexual activity is the result of long-term grooming by the older family member. The criminal law should protect adults from this continuing abuse. The maximum penalty will be 2 years imprisonment.

100. Where persons have a learning disability or mental disorder impeding choice to the extent that they are unable to make a decision for themselves on whether to consent to sexual activity, or are unable to communicate their decision on the matter, then any sexual activity will constitute rape or sexual assault (because no consent can in fact be given).
101. The legislation will include a further offence of **obtaining sexual activity by inducement, threat or deception with a person who has a learning disability or mental disorder**. This recognises that many people with a learning disability or mental disorder are quite capable of understanding the nature and consequences of sexual activity, and of engaging in mutually consensual sex. However, their capacity to consent may be more easily compromised than that of the average person, and they may be vulnerable to relatively low levels of inducement, threat and deception.
102. For example, case studies show that it is possible for such a person to be induced into sexual activity by offers of gifts, to be seriously distressed by threats of withholding treats and favours or telling tales to friends and family, and to be deceived by claims that the sexual activity is all part of routine healthcare or a game that everyone plays. These persons need special protection to prevent them being manipulated into unwanted or inappropriate sexual activity. The maximum penalty will be life imprisonment.
103. Similar to the abuse of a position of trust offence in relation to children (see paragraph 94 above), a new offence of **breach of relationship of care** will prohibit sexual activity between those in positions of authority in care relationships or in custodial contexts such as hospitals, care homes, police stations and prisons, and the

people they look after. The aim is to protect vulnerable adults from exploitative behaviour caused by their familiarity with the carer and the relationship of trust or power. It will be a defence to prove that the sexual relationship existed prior to the beginning of the care relationship. Consent is irrelevant. Where there was penetration, the maximum sentence will be 14 years imprisonment. In all other circumstances the maximum sentence will be 7 years imprisonment. Where the victim did not consent (or the abuse of power or authority involved reached the extent that the victim was inhibited from indicating her/his resistance to the act - see paragraph 68 above), then the more serious offence of rape will have been committed and should be charged.

Other offences

104. In the worst cases, indecent exposure or “flashing” can be very traumatic, causing fear, shock, disgust and a powerful fear of being raped. Research has shown that many rapists start by committing non-contact behaviour of this kind. The legislation will include a gender-neutral offence of **indecent exposure** relating to the exposure of both male and female genitalia in circumstances where the accused intended to cause or where it was reasonably likely that the behaviour would cause alarm or distress. The maximum penalty will be two years imprisonment.
105. The legislation will include a new offence of **voyeurism**, to cover incidents where a person is secretly observed conducting a private act where he or she had a reasonable expectation of privacy. For example, the offence will cover situations where a victim is observed through a peephole or by a hidden camera. The offence will apply where the voyeurs intended to observe such acts for their own sexual gratification or that of others. The maximum sentence will be two years imprisonment. We want cases where indecent photographs or video are taken without the victim’s consent and posted on the internet or in pornographic magazines to be treated particularly seriously. If the

making of the indecent photographs or video involved offences such as rape or sexual assault then these offences will also be charged.

106. Although already covered under the general offence of buggery, the legislation will include a separate offence of **bestiality**, to make a clear distinction between offending against people and animals. It will be an offence to sexually penetrate an animal or for a person to allow an animal to penetrate them. The maximum penalty will be two years imprisonment.

Preparatory offences

107. The legislation will retain the offence of administration of drugs or other substances with intent to stupefy a victim in order that they can be subjected to a sexual act without their consent. The maximum penalty will be raised to 10 years imprisonment. This offence applies even where no sexual activity takes place, and whether the purpose is for the victim to be subjected to sexual assault by the person who administered the drugs or by someone else.
108. Where a criminal act (for example, breaking into a house) is perpetrated with a clear intention to commit a sexual offence, but the sexual offence was not committed, an accused is charged only with the non-sexual offence that was committed. It is important to recognise any sexual motivation and charge these acts as sexual offences, so that the accused, if convicted, will be managed as a sex offender. Two new offences will be introduced; trespass with intent to commit a sexual offence, and committing a criminal offence with intent to commit a sexual offence, which will cover for example assault and abduction. Both will carry a maximum sentence of 10 years imprisonment.
109. Penalties for attempts, incitement, and conspiracy to commit sexual offences, procuring, and aiding and abetting, will be covered in the legislation.

Males under 14

110. A legal rule was inherited from English law that a male under 14 years of age is incapable of having intercourse. This means that boys of 13 years (or younger) can never be prosecuted for rape.
111. It has been recognised that this blanket rule is not justified, particularly because it is not uncommon for juvenile boys to be the perpetrators in the rape of young children. This has led to the rule being abolished in other countries, including England and South Africa. Instead, the usual minimum age of criminal responsibility applies, which in Guyana is the age of 10 years.
112. Welfare considerations for young offenders can be considered on a case by case basis, but it is important for the possibility to remain open to charge juvenile boys with rape if that is appropriate under the circumstances. **The legislation will therefore abolish the presumption that males under 14 cannot have intercourse.**

Offences outside Guyana

113. In an age of frequent travel, migration, remigration and sex tourism, it is important that the legislation ensures that sexual offences committed outside Guyana can be prosecuted in Guyana, and that it is an offence to conspire in or incite the commission of sexual offences abroad.

Chapter 6 Report, Investigation and Charge

114. The response the victim receives when first reporting the offence is key to whether or not he or she will stay with the legal process. Care and support of the victim at this time can be much improved, as can the ability of the police to build strong cases for prosecution in court. Both are vital to improving conviction rates.

Proposals in this Chapter:

- Integrated services at sexual assault referral centres
- Support for 24hr helpline
- Specialisation and training for police
- Close co-operation between police and prosecutors during investigation
- National Policy Guidelines
- Investigation, Charge and Prosecution
 - i. Mandatory recording and investigation of all allegations of sexual violence
 - ii. Final decision to discontinue investigation to rest with the DPP
 - iii. Support and discussion where the victim wants to retract their statement
 - iv. Mandatory charge for child sex offences
 - v. New offence of preventing child victim from giving statement to police or testifying (see Chapter 5)
 - vi. Where child victim is prevented from testifying, a written statement by the child will be admissible as evidence in court
- Duty of police to ensure safety of victim
- Guidance on applying for protection orders under the Domestic Violence Act and co-operating with social workers on child protection
- Bail
 - i. Presumption that bail will not be granted for a second serious offence, and bail only to be granted for a serious sexual offence in exceptional circumstances
 - ii. Legislation will include factors to be considered when deciding whether to grant bail, and possible bail conditions relating to the victim's safety
 - iii. Right for victim to attend bail hearing

- and Victim Impact Statement to be used
- iv. Police to notify victim when the accused is granted bail or released
- Legal obligation to provide medical care, treatment and counselling to survivors
- New, more comprehensive medical certificate for better care and evidence
- Forensic laboratory to be built under Citizens Security Programme, allowing forensic evidence to be used in sexual offence cases
- Victim to be provided with information on their rights and about the legal proceedings
- Child victims
 - i. Training for police on working with child victims, including taking statements from children
 - ii. Joint Investigative Interviews for child victims, with police and a social worker
- Improved identification procedures in sexual offence cases

Integrated services: sexual assault referral centres

115. Combined sexual assault referral centres located in hospitals have been extremely successful in other jurisdictions. Specialised medical staff provide the best care for the victim and preserve the best medical evidence, police are on call to attend the centre to take a statement, a counsellor is on call to provide an initial session and refer the victim for follow up sessions, and a social worker is on call for any cases of child abuse. The police are specially assigned and trained, and are female where possible.
116. The centres are more approachable for victims than police stations, and improve access to medical treatment and counselling, take the pressure off the police to care for the victim when they first report, and very importantly, ensure that the best possible evidence is gathered to begin building a strong case for prosecution.
117. These sexual assault centres have been extremely successful in South Africa (where they are known as Thutuzela Centres),

England (Sexual Assault Referral Centres) and Malaysia.

“Higher levels of awareness have resulted in an increased number of cases reported at police stations and taken immediately to Thutuzelas. In addition, there has been a dramatic drop in the time spent to investigate, prosecute and convict perpetrators - formerly from approximately 3-5 years, to less than 6 months today.”

- Thoko Majokweni, Director of the Sexual Offences and Community Affairs Unit (SOCA) at the National Prosecuting Authority in South Africa

118. “Thutuzela” is a Xhosa word meaning comfort. Thutuzela Centres are seen as a critical part of South Africa’s anti-rape strategy, reducing secondary trauma to the victim, improving conviction rates and reducing the time taken to finalise cases. They are focused in areas with particular problems with violence and HIV/AIDS, and linked to Sexual Offences Courts (see Chapter 7).

119. Services provided at Thutuzela Centres:

- Comfort from a site co-ordinator or nurse
- An explanation of how the medical examination will be conducted and what clothing might be taken for evidence
- A consent form to sign, that allows the doctor to conduct the medical examination
- A nurse in the examination room
- After the medical examination, the victim can have a bath or shower at the centre
- An investigation officer will interview the victim and take his/her statement
- A social worker or nurse will offer counselling
- A nurse arranges for follow-up visits, treatment and medication for Sexually Transmitted Infections (STIs), HIV and AIDS
- A referral letter or appointment will be made for long-term counselling
- The survivor is offered transportation home by an ambulance or the investigating officer

- Arrangements for the victim to go to a place of safety, if necessary
- Consultations with a specialist prosecutor before the case goes to court
- An explanation of the outcome of the trial process.

120. Similar services are available at Sexual Assault Referral Centres (SARCs) at hospitals in the UK and in Malaysia. In both countries the programmes are being expanded. Malaysia opened its first combined centre at a hospital in 1986. By 1997, 90% of hospitals in Malaysia had them. In the UK research found the centres to have the benefits discussed above, plus the cost efficiency of integrating services in one location, and longer-term benefits of increased confidence in the criminal justice system.

121. An important aspect of SARCs in the UK is that there is no obligation on the victim to make a formal complaint to the police. The medical evidence is stored; this means that if the victim later becomes able to make a formal complaint the evidence can still be used. In addition, the evidence can be used anonymously to build up a picture of serial rapists (offenders who have committed several offences against different victims).

122. We propose establishing a pilot sexual assault referral centre, with the ultimate aim of creating a network of centres in every area. The centre will be located in a hospital, and staffed by a female doctor and nurse. Specially assigned female police officers will be on call to attend the centre when a victim reports, as will a social worker and counsellor. All will be specially trained in their roles and responsibilities. We expect the centre to lead to better evidence gathering, better care and support for the victim, and thus, more and stronger cases being prosecuted. We also expect that providing a less intimidating environment will encourage more victims to report. Confidentiality at the centre will be very important and all staff will receive training on this.

123. Domestic Violence Units that are being established at police stations will also benefit sexual offence survivors, either as a

place to report and then be transferred to a sexual assault centre, or as a more appropriate setting where there is no sexual referral centre in the area. Special units in police stations are widespread in Brazil, Bangladesh, India, Thailand and Namibia, amongst others.

124. Coordination and training will be very important so that the different professionals understand their responsibilities and powers.

Helpline

125. Telephone helplines can provide an important first step to finding help, especially for child victims. This is an area in which NGOs are ideally placed to help, and we support Help & Shelter's 24 hour helpline. We will support the publishing of the helpline number in schools and children's homes.

Specialisation and training

126. As discussed, the police on call at sexual assault referral centres will be specially selected and trained. In general, specialisation of police to work on sexual violence will be encouraged. It has been found to be invaluable in other countries in improving police investigation. The officers develop expertise and can receive special training. Dedicated sexual offence investigators and special police units have been established in many countries, including Barbados, Jamaica, Trinidad & Tobago, St Kitts/ Nevis, India, South Africa, Uganda, the Philippines and the UK.
127. Training is vital not only to improving the investigation of sexual offences but also to tackling attitudes to sexual violence. For example, police training programmes in the USA focus on "debunking" myths of widespread fabrication in rape, because it is one of the underlying causes of why police officers treat women reporting rapes with suspicion. Training is discussed in Chapter 10.

Co-operation between police and prosecutors during investigation

128. Early cooperation between police investigators and prosecutors has been found to greatly improve the standard of sexual offence investigations in other countries, therefore this will be incorporated into the National Policy Guidelines (see Chapter 10). The system of communication and file referral between the DPP and police prosecutors is to be improved under the Justice Sector Reform Strategy.

National Policy Guidelines

129. National Policy Guidelines for police investigation of sexual offences will be produced. As well as procedures they will include useful tools such as a standard list of questions that the investigating rank should ensure are covered in the victim's statement. See Chapter 10.

Investigation, charge and prosecution

130. The police charged the offender in only half of the rape cases reported in 2000-2004. Whilst good work is being done by some police officers, widespread belief in high levels of false allegations, and rejection of domestic violence cases as "private matters", are still serious problems. Training will help. We also propose including in the legislation an obligation on the police to record and investigate every allegation of sexual violence.
131. The final decision to discontinue an investigation will rest with the Director of Public Prosecutions (DPP), as is proposed in South Africa. We believe this will greatly improve the investigation and conviction rate, shifting the focus from testing the credibility of victims or sending them home to "work it out", to evidence gathering and case building.
132. Some countries are experimenting with mandatory charge policies, meaning that the police must charge the offender even if the victim withdraws the complaint. The

intention is to prevent cases being lost because the offender puts pressure on the victim.

133. However, we believe that mandatory charge policies can have serious negative side effects, such as discouraging reporting of sexual offences, taking control away from the survivor, adding to the trauma of the process, retaliatory violence from the offender, and the threat of being charged with contempt of court if the victim refuses to testify.
134. We therefore believe that until more support is available to victims, a mandatory charge policy in the case of adult victims could do more harm than good. Further, the evidence from Ottawa in Canada, for example, is that judges are reluctant to accept the evidence of an adult victim without that victim appearing in court even under the mandatory charge procedure.
135. Instead we propose that the National Policy Guidelines (see Chapter 10) will include a requirement that where the victim wishes to retract his or her statement, the police offer support and discuss the reasons for retraction, and record them in the file for data purposes.
136. It is not uncommon now for victims to accept a money settlement from the accused to withdraw from the case. This causes allegations of sexual offences to be viewed with greater suspicion by the police, who sometimes feel that allegations might be made to make money. The National Policy Guidelines and police training will cover the reasons victims may accept an offer of a settlement, which are similar to the reasons that the victim might withdraw from the case whether payment is offered or not: fear of the offender, fear of going to court or of the community discovering what happened, lack of support, or lack of hope that the case will succeed in the criminal justice system. Through improving these underlying problems we hope that victim withdrawal from the legal process, through "settlement" or otherwise, will be reduced. Provision will be made in the legislation for a person to be charged with

perverting the course of justice if that person attempts to so do by offering a reward to the alleged victim in exchange for the victim not offering evidence against him or her.

137. Concerns have been raised by police and social workers about families withdrawing from cases of child sex abuse. We believe that in the case of child victims, a mandatory charge policy is necessary to make sure that children are protected, and this will be included in the National Policy Guidelines.
138. However, the welfare of the child is the first priority, so the Guidelines will also include a requirement to seek the written opinion of the social worker on the case as to whether the prosecution is in the child's best interests, and guidance on how a case can be built if the social worker advises that the child should not have to testify in court.
139. This will be supported by a new offence of preventing a minor from giving a statement to police or testifying in relation to a sexual offence (see Chapter 5). **The legislation will allow a written statement by the child victim (or written on behalf of the child victim) to be used as evidence in court where the child has been prevented from testifying, as is done in Trinidad and Tobago.**
140. Written statements (signed/marked and dated) made before the criminal investigation was underway will be automatically admissible. This would include, for example, statements taken by social services, or by a carer or teacher, when the abuse was first suspected. To protect the rights of the defendant, where the statement was made after the investigation had begun, there will be a stricter procedure for admitting the written evidence. The statement will be given to the defence 10 days before it will be admitted, and if the defence challenges its admissibility, the judge will determine whether or not it is in the interests of justice for the statement to be admitted. This is also the procedure followed in Trinidad & Tobago.

141. Particularly in domestic violence cases, ensuring the safety of the victim from the moment she/he reports a sexual offence to the police is very important.
142. The legislation will include an obligation on the police to ensure the safety of any person reporting sexual violence and to make a safety plan, as included in the Domestic Violence Act and Combating of Trafficking in Persons Act. The introduction of “safe spaces” in police stations around the country will help the police to make this possible. The safety plan will include transport to a shelter if necessary and consideration of whether to apply for an order under the Domestic Violence Act.
143. Continued work on implementation and use of the Domestic Violence Act will help in the large number of cases where the accused has been or is in a relationship with the victim, or is a family member. Protection orders, occupation orders and tenancy orders under the Act can help to protect a victim’s safety. The National Policy Guidelines for police will include guidance on using the Domestic Violence Act.
144. In the case of child victims, the police must work closely with social services to ensure the safety of the child. Social workers will be able to use new powers under the Protection of Children Bill to remove and re-house children who are at risk in their home.
145. Victim Impact Statements are used in other countries, including England and South Africa, to ensure the victim’s views and concerns (relating to safety and other factors) are heard during bail and sentencing decisions. The victim can write the statement before the bail hearing, and it can be updated before sentencing. It includes details of the emotional, physical and other impacts of the offence on the victim, and whether the victim is still in fear of the accused for any reason. The statement is not used as direct evidence in proving the offence, but is used by the magistrate or judge when considering the bail application and before sentencing.

146. The legislation will include an obligation on the police to assist the victim in making a Victim Impact Statement.

Bail

147. Once the suspect has been charged a first hearing is quickly held where a magistrate decides whether bail should be granted and if so on what conditions.
148. In many jurisdictions there are special rules on bail for rape and other serious offences. These make bail decisions more consistent from case to case, and place emphasis on securing the safety of the victim and others. At the same time the principle that bail should be granted where possible must be respected, because the accused has not yet been found guilty.
149. For example, in South Africa, where the charge is rape or another serious offence such as murder or manslaughter, the burden is shifted so that the accused has to satisfy the court that it is in the interests of justice for him or her to be released. This is instead of the usual position that the accused will be released unless the prosecution satisfies the court that he or she will abscond or re-offend. In the UK, where the accused has a previous conviction for rape, attempted rape or another serious offence, exceptional circumstances must exist for bail to be granted.
150. The legislation will include rules on bail in sexual offences. Where the charge is a serious sexual offence such as rape or attempted rape then bail will only be granted in exceptional circumstances.
151. As in the Domestic Violence Act, the legislation will include factors that the court must consider when determining the bail application, and bail conditions that the court may impose in any sexual offences case. Factors will include the need to secure the health and safety of the victim, and the accused’s record in regard to offending and other violent behaviour. Possible conditions will include that the accused does not contact the victim

directly or indirectly, does not go to certain places (e.g., the victim's home and place of work), moves out of a shared home, and any other conditions that the magistrate considers relevant to the safety of the victim, to prevent interference with witnesses or to prevent the accused from absconding.

152. The National Policy Guidelines for prosecutors (see Chapter 10) will include instructions to oppose bail for all serious sexual offences, and if bail is granted, to request relevant conditions.
153. **The legislation will include a right for the victim to attend the bail hearing** and to request the prosecutor to present information on her/his behalf, including the Victim Impact Statement (see paragraph 145 above).
154. As in South Africa, **the legislation will include an obligation on the police to notify the victim when the accused is released on bail** (and on what conditions), and also when he/she is released from prison at the end of the custodial sentence. The police will also be obliged to provide the victim with information on what to do if the accused breaches the bail conditions. The notification must be in writing, or where that is not an appropriate mode of communication, by direct contact or telephone.

Medical care, treatment and counselling

155. The legislation will include an obligation to provide medical care, treatment and counselling to sexual offence survivors. The National Policy Guidelines relating to health services (see Chapter 10) will include detail on the standards of care to be provided. Once sexual assault referral centres are in place, the specialised staff can be trained and will quickly develop expertise.
156. A recent study found that condoms were used in only 3% of reported sexual violence cases in Guyana. Sexual violence carries not only a risk of pregnancy but a particularly high risk of transmission of

HIV/AIDS, because of the increased risk of injury and bleeding. Access to post-exposure prophylaxis treatment to reduce the risk of infection is therefore very important.

157. The legislation will oblige the police to ensure that the victim receives medical treatment as quickly as possible. As integrated services become available in sexual assault referral centres, immediate medical treatment will become the norm.

New medical certificate

158. Medical evidence can be critical to a sexual violence case, as there are rarely other witnesses or any other items of evidence apart from the victim's testimony.
159. The standard medical certificate will be replaced by a much more comprehensive form, similar to the J88 form used in all sexual offence cases in South Africa. This form is over 10 pages long, and includes detailed questions for the doctor to go through, to make sure both that the victim receives all the necessary care and treatment, and that as much evidence as possible is gathered.

Forensic laboratory

160. Although swabs are sometimes taken during medical examinations, forensic evidence has never been used in a sexual offence prosecution in Guyana. DNA evidence can make a vast difference in establishing a strong case against an offender, especially as in most cases the only other evidence will be the victim's word. Under the Citizen Security Programme, a forensic laboratory will be built and training provided for its staff.
161. Training will be provided for medical staff in how to take forensic evidence during the medical examination, and for police on the procedures for transporting and storing the evidence.
162. Where the evidence is gathered during a medical examination at a sexual assault referral centre, but the victim does not want to carry on with a legal case, the forensic evidence can still be used

anonymously to assist the police in building pictures of serial rapists.

Information for victims

163. There is currently no standard procedure for giving the victim information about the legal process, or providing updates on how the case is progressing. This lack of information and control significantly increases stress to victims. For example, in a study on the same problem in England, police officers reported one victim who felt she could not leave the house after the defendant was charged, in case she might receive a phone call to attend court.
164. The legislation will include an obligation on the police to provide information to the victim on her/his legal rights and proceedings, similar to that in the Domestic Violence Act and Trafficking in Persons Act.
165. The obligation to update and inform the victim will be passed to the prosecutor once he/she is appointed, as is done in the UK, Australia and South Africa.

Child victims

166. Children often disclose what has happened to them in fragments and will not always include all events in the order they happened in the first report. The defence often challenges this as meaning that the child's story is made up or inconsistent. Training for police officers will include working with child victims, including how to take statements from child witnesses.
167. Having to repeat their story several times causes children to lose motivation to tell the story in full. Better integration of services will allow Joint Investigative Interviews to be held in cases of child abuse, as conducted by the Child Protection Unit in the UK. A joint interview is held, with both a social worker and a specially trained police officer, rather than making the child go through the process of questioning twice. The police then decide on criminal charges (in consultation with the social worker), and the social worker makes decisions relating to the child's

welfare, for example, whether to take any protective action. Protective action could include a protection order under the Domestic Violence Act, or exercising the power under the Protection of Children Bill to remove the child from the home.

Identification procedures

168. The way in which the victim must identify the offender varies from station to station. In some, victims are able to view the offender from a separate room, but in other cases, "confrontations" are held at the station, where the victim and offender are brought together before a police officer and the victim must repeat her/his allegations, even when the offender was already well known to her or him. This is extremely traumatic for the victim.
169. The GPF is already moving towards using two-way screens or mirrors for identification, in cases where identification is needed (i.e. where the offender was not known to the victim). We fully support this move. The National Policy Guidelines will state that confrontations shall not be held in any sexual offence case.

Chapter 7 Procedure at Court

170. As cited in Chapter 2, of 341 charges of rape in the years 2000-2004, only 9 resulted in conviction. Problems within the court process are the major barriers to more convictions. The proposals in this Chapter deal with these issues.

Proposals in this Chapter:

- Paper committals
- Sexual offences Court
- Hearings closed to the public
- Special measures to assist victims give evidence in court:
 - i. Live video-link (with an intermediary for children)
 - ii. Screens in court
 - iii. Aids to communication
 - iv. Presence of support person
 - v. Adjournment for child witness to be prepared for court
- Specialisation and training for judges and prosecutors, including training on regulating cross-examination of the victim
- Ban on cross-examination of the victim by the accused in person
- Better information and support for the victim
- Increased victim participation in the trial:
 - i. Legal obligation to allow the victims views and concerns to be heard at appropriate time
 - ii. Possibility of giving narrative evidence
- Ensuring anonymity for the victim
- Abolishing male-only juries

Paper committals

171. The preliminary inquiry is one of the main causes of the low conviction rate for sexual offences. Once the accused has been charged, the preliminary inquiry is supposed to be a short initial hearing before a magistrate to decide whether there is a "sufficient case" to go to the High Court for trial. The threshold is

supposed to be very low; if a reasonable jury could possibly convict on the evidence, the case must go to trial. The magistrate cannot make any decisions about the facts of the case, so the credibility of witnesses cannot be judged.

172. This means that in other countries the vast majority of cases would get past the preliminary inquiry stage. For example, in the UK, before oral preliminary inquiries (i.e. preliminary inquiries as they are currently conducted in Guyana) were abolished, 90% of cases went to High Court trial.

173. Despite this, in Guyana, the oral preliminary inquiry stage frequently lasts for several years and is usually conducted like a full trial, with all witnesses called and intensively cross-examined by the defence. The whole trial is then played out again in the High Court. In 2000-2004, more than three-quarters of sexual offences cases did not make it through the preliminary inquiry process to even begin the High Court trial.

174. The purpose of the oral preliminary inquiry was thought to be to let the defendant know the case against him/her, and to weed out weak cases. However, oral preliminary inquiries are not necessary to achieve either of these aims, and have never existed, or have been abolished, in many countries. As the English judge Lord Devlin said: *"What emerges at the end of the [PI] ceremony is a bundle of statements, which could just as easily have been handed over to the defence at the beginning. In the rare cases where it is contended that there is no case fit for trial the point could be determined by a judge or magistrate on this written material."*

175. A Chief Justice in Australia has described oral preliminary inquiries as *"a complete waste of time"*. The same information can be provided to the defendant in written form, and the police and prosecutors, with limited resources, are already weeding out any weak cases that do not have much hope of conviction.

176. Cases are not falling away at the preliminary inquiry stage in Guyana because they are weak. Strong prosecution cases disintegrate due to the long delays, as witnesses move away or lose touch, memories fade, and the victim, repeatedly called to court only for the case to be adjourned, or intensively cross-examined knowing that the whole process will be repeated at the High Court, may decide that she/he cannot continue with the case. Where the victim is a child, the trauma of the process is even greater.
177. Moving to paper committals instead of oral preliminary inquiries will address these issues, and free up much Magistrates Court time which is badly needed to deal with other matters and reduce the backlog of cases. These cost and efficiency savings have led to reforms in other countries. It is also recognised in the Justice Sector Reform Strategy that the procedure must be streamlined.
178. The legislation will introduce a system of paper committals for sexual offences cases.
179. Paper committals have now replaced oral preliminary inquiries in England, and most of the Commonwealth Caribbean has moved to paper committals, including Antigua, Barbados, Dominica, Grenada, Jamaica and Trinidad and Tobago.
180. The prosecution will give a bundle of written evidence to the defence seven days before the hearing is to be held before a magistrate. At the hearing, only the prosecutor and the defendant and/or the defendant's lawyer need attend. The magistrate will check that the defendant is legally represented, and that no "no case" submission has been made. In the vast majority of cases both of these questions should be satisfied, and the magistrate will simply stamp the file to go up to the High Court for trial.
181. In this case the magistrate will not read or assess the evidence at all, because in the vast majority of cases, the prosecution and defence should be able to agree that there is a sufficient case to go to trial. It is only in a small percentage of cases that the defence could reasonably argue that the prosecution has not made out a sufficient case, as it is such a low threshold.
182. If the defendant has no lawyer, or if the defence does make a no case submission, then the magistrate will hold a limited hearing. The prosecution evidence will be read out and arguments will be heard from the prosecution and defence, but no witnesses will be called to give oral evidence, and no defence evidence is heard.
183. The magistrate will be required to give reasons for his/her decision that will be entered on the record of proceedings.
184. The magistrate will continue to hear the bail application in the usual way (see Chapter 6).
185. Training for magistrates, prosecutors and criminal practitioners will be important to ensure that the new procedure is well understood and properly implemented.

Sexual Offences Court

186. Special courts adapted to hear sexual offences and domestic violence offences have been introduced in many countries, including the UK, USA, Germany, Jamaica, Belize, Grenada, St Vincent and the Grenadines, St Lucia, Brazil, Ecuador, Nicaragua, Peru, Uruguay, Spain, New Zealand, Namibia, Zimbabwe and Singapore, and a particularly successful programme of sex offences courts has been developed in South Africa.
187. Sexual offences courts incorporate all of the reforms discussed in this Chapter in one facility, designed to increase conviction rates and reduce secondary trauma to the victim, especially to child victims. Although the main aim of the sexual offences courts in South Africa was to reduce trauma, they have also had a staggering effect on conviction rates. One study found that the average conviction rate in the sexual offences courts was over 60%, whilst the conviction rate in normal courts was 14%.

188. We believe that similar benefits to victims and increased conviction rates are achievable in Guyana, and that a sexual offences court is a simple and cost-effective way of focusing our efforts for the best results. We will therefore establish a Sexual Offences Court.

189. The Sexual Offences Court will be a modified court room which incorporates all of the reforms in this Chapter in one facility, including:

- Dedicated High Court Judge assigned to the Court (trial will be by jury in the usual way)
- Two specially assigned prosecutors
- Both the prosecutors and judge will develop expertise and receive special training
- Prosecutors will work two weeks on advocacy in court, one week off, so that during the week they are not in court they can prepare cases and interview witnesses
- The Court will have a closed-circuit television link with a nearby room adapted to be a child-friendly environment, so that victims can give live video-link evidence
- Separate entrances to the building for the victim and the accused, and separate waiting areas so that they and their families do not meet in or outside court on the day of the hearing
- Victims and Witnesses Unit to assist victims through the process, with scope for NGO involvement

Hearings in camera

190. It is a basic principle that the judicial process should be conducted as openly as possible. That is why members of the public are allowed to be present during most criminal trials. However, it is widely understood that because of the nature of sexual offences, the public should be excluded. Victims do not give their best evidence in open court, because of embarrassment or intimidation, and the ordeal can cause them to drop the case entirely.

191. Under the current law in Guyana, amended in 1992, judges have a discretion to exclude the public from sexual offence hearings. However, witnesses and prosecutors report that hearings are often held in public, with no reasons for the decision being given by the judge.

192. The legislation will make *in camera* hearings mandatory for sexual offences. This means that the public will be excluded, but a support person will be allowed at the request of the victim. This is the position in India and is recommended by the CARICOM model legislation on sexual offences. Defendants may of course have their legal representative in court with them, and, if they are children, a parent or guardian, or other support person of their choice.

Special measures to assist victims give evidence

"The extreme distress of a complainant giving evidence in a rape case and reliving the trauma of the ordeal can be seen in the courtroom at any time...there can be no justice in a practice which brutalises the victim of a crime in a way which is repugnant to all civilised persons."
- New Zealand High Court Judge

193. The stress of testifying in court causes vulnerable witnesses to recall events incorrectly, to confuse details, and to forget essential information, which means they lose credibility. In South Africa, all victims of sexual offences are considered to be vulnerable and to require some assistance to give evidence, due to the nature of the offences. The problems are particularly severe for child witnesses.

194. Studies have shown that the trauma is worse if the child believes that his/her testimony will be a large influence on whether or not the accused is convicted, where the child is the only witness or when the defence lawyer attacks the child's testimony in cross-examination. The defendant's presence in court adds to the trauma. As a result, a child witness can become numb or silent, fidget and refuse to continue.

195. Fear of giving evidence in court under the current conditions causes victims to withdraw from the legal process, leaving the offender free to commit further sexual offences. We intend to introduce measures to assist victims in sexual offences cases give their best evidence and reduce the trauma of testifying in court.
196. This is linked to our commitment under the Combating of Trafficking in Persons Act 2005 to develop programmes to accommodate child witnesses, including testimony outside court or by video. Thus, the measures discussed here will also be available in trafficking and domestic violence cases.
197. After special measures to help victims give evidence were introduced in the UK, research found that one-third of witnesses giving evidence using the special measures would not have been willing or able to give evidence without them. This suggests that these measures have the potential to make a big difference in the number of convictions in Guyana.
198. The legislation will introduce special measures to assist victims give evidence in sexual offences cases. Judges will be obliged to order the use of one or more of the measures in all sexual offences cases, unless the victim requests to give evidence unassisted in court. This is the position under the South Africa sex offences bill.
199. Live Video-link (with an intermediary for children) is available for vulnerable witnesses in many countries, including the UK, USA, Zimbabwe and New Zealand, and is used for all child witnesses in South Africa. The witness sits in a separate room (often in the same building as the courtroom, but with a separate entrance), and closed-circuit television is used to enable her/him to be seen on a screen in the courtroom whilst they answer questions. For children, an intermediary sits with them in a child-friendly environment, and communicates the questions to them so that they can more easily understand. Intermediaries are also used to question child witnesses in Germany.
200. The possibility of giving evidence by live video-link will be included in the legislation. Social workers will act as intermediaries where needed, subject to a competence and suitability test, and full training.
201. The sexual offences court will be equipped with facilities to allow evidence to be given by live video-link. As in South Africa, mobile CCTV units will be made available as a temporary measure.
202. The facility in court must be a large screen not a small monitor, and of a sufficient quality to assess the evidence. If not, research has shown there can be an air of unreality and less impact on the jury.
203. Screens to shield the victim from the accused in the courtroom are widely used, including in Trinidad and Tobago. This is a basic measure which also requires careful managing of the victim's entry and exit from the courtroom to make sure she or he does not encounter the accused. However, they will provide good temporary assistance until live video-link is available in all cases, and this measure will be included in the legislation.
204. Video-recorded evidence-in-chief (the initial evidence the witness gives before being cross-examined) is widely used in sexual violence cases, for example in the UK, USA, Germany, and Trinidad and Tobago. Some jurisdictions require the judge to be satisfied that the witness would not be able to give his/her best evidence in court, or that there would be a likelihood of causing moderate emotional or mental harm. Ultimately, it would be a useful step to ensure that witnesses, particularly children, give their best evidence. However, as was noted by the South Africa Law Commission, more groundwork is needed with the police on specialist interview procedures and general interviewing skills before video-recorded evidence-in-chief can be implemented.
205. Aids to communication such as anatomically correct dolls will be made

available for taking evidence from child witnesses.

206. Surrogate witnesses are used in child sexual offence cases in Israel. The surrogate witness interviews the child and then gives the child's evidence in court and is cross-examined by the defence instead of the child. However, an accused cannot be convicted on the evidence of the surrogate witness alone; independent supporting evidence (corroboration) is required.
207. We do not propose to include this measure in the legislation. Other proposals in this Paper, including to allow children to give evidence by video-link through an intermediary, allow written evidence where the child is prevented from testifying, and allow hearsay evidence to build a circumstantial case where the child cannot testify (see paragraph 285), will address these issues.
208. The right of the victim to have a support person present in court is well understood. As has been done in New Zealand, we will include this right in the legislation to ensure that it is upheld.
209. The legislation will include an obligation on the judge to inform victims of their entitlement to special measures, as is proposed in South Africa.
210. Special measures are important but they are not a substitute for good support and preparation of the witness for trial, and regulation by the prosecutor and judge of improper cross-examination by the defence.
211. Preparation of the child witness is particularly important. Guidelines for working with child witnesses will be included in the National Policy Guidelines (see Chapter 10). In South Africa, if the child is not ready, the case is adjourned so that the child can be referred to the organisation Safeline for court readiness preparation. The legislation will include a right for the prosecution to adjourn the case so that the child witness can be prepared for giving evidence in court.

212. Acceptance and validation of the child's evidence is crucial to her/his credibility. Studies have shown that where support workers prepared the child for what to expect in court, the child was more accurate, complete, and truthful, and was perceived as a credible witness. The child suffered reduced stress levels, and the preparation helped him/her understand the nature of the hearing and the seriousness of proceedings, and otherwise reduced negative court-related consequences. Therefore we believe that allowing the prosecution to adjourn the case to prepare the child witness will improve conviction rates.

Specialisation and training for judges and prosecutors

213. Specialist judges will be assigned to the sexual offences court, so that they can develop expertise and receive special training on the complicated issues and procedures in sexual offences cases.
214. In 1996 the Supreme Court of India held that it was desirable for women judges to hear rape cases, and this has since been made compulsory. Studies have shown that both male and female victims of sexual violence prefer female professionals at all stages of the legal process. This will be included in the National Policy Guidelines (see Chapter 10).
215. The ability of the prosecutor to present the case in court is key to conviction. Many countries have found that allowing prosecutors to specialise in sexual offences has had a great impact. For example, specialist sexual offences prosecutors in the USA achieve conviction rates of over 80%, and put this entirely down to their specialist training and expertise. This expertise can then be passed on to train new specialist prosecutors.
216. In South Africa, the Sexual Offences and Community Affairs (SOCA) unit was created within the prosecutions department to improve the handling of sexual offences cases against women and children. In the UK, all sexual violence cases should be prosecuted by specialist prosecutors, who

are trained and then mentored for three cases before they are allowed to prosecute themselves. We believe that allowing prosecutors to specialise in sexual offences will greatly improve conviction rates in Guyana.

217. The specialist prosecutors can then receive relevant training on prosecuting sexual offences cases, as discussed in Chapter 10.
218. Police prosecutors are already supported by advice and guidance from the DPP's chambers. To ensure consistency in decision-making, the legislation will state that the final decision whether to discontinue a prosecution rests with the Director of Public Prosecutions.
219. An important aspect of training for both judges and prosecutors will be awareness of, and for prosecutors, strategies to overcome, jury misconceptions about the way rape victims might or should behave. As the South Africa Law Commission noted, the emotional and psychological consequences of sexual abuse are areas outside the knowledge and expertise of most courts. This is particularly important because emotional responses and consequences of sexual offences often turn "conventional wisdom" on its head and the "normal" response is in fact the most unlikely.
220. Thus, as noted earlier, juries expect evidence of physical injury from resisting the assault, and for the victim to be tearful and emotional when giving evidence. In fact, rape victims often make a rational decision not to continue physically resisting the attack, because of the risk that it will increase the violence being used against them. Whilst some rape victims do become emotional when giving evidence, it is equally "normal" to hide those feelings and appear calm and composed.
221. Juries view the victim's evidence, if it does not conform to their ideas, with unjustified extra scepticism. Therefore it is very important to ensure, through training, that judges and prosecutors are aware of the wide range of possible responses to rape and sexual violence, and are able to

anticipate and correct misconceptions the jury may have.

222. In an adversarial legal system like Guyana's, it is the nature of cross-examination to challenge the witness and try to discredit him/her. However, laws already exist that are meant to keep the cross-examination within the bounds of fairness.
223. Under the existing laws in Guyana the judge may forbid questions which are indecent or scandalous, and must forbid questions that appear to be intended to insult or annoy the witness, or that are needlessly offensive in form, or are not relevant. Much cross-examination on, for example, the victim's sexual history could be challenged under these rules.
224. However, the rules are not consistently enforced by prosecutors, magistrates and judges, and the ordeal of cross-examination causes many victims to withdraw from the legal process or not report at all.
225. The National Policy Guidelines (see Chapter 10) will include clear instructions to prosecutors, magistrates and judges that offensive and irrelevant questions will be challenged, and the rules of fair cross-examination will be upheld. This subject will also be covered in training for prosecutors, magistrates and judges.

Ban on cross-examination of the victim by the accused in person

226. Where accused persons do not have a lawyer representing them, they conduct their own defence in court. They will question their own witnesses, and cross-examine the prosecution witnesses themselves, including the victim. Clearly, being questioned in court by the person who allegedly committed the sexual violence can be particularly traumatic and causes victims to withdraw from the legal process.
227. This practice is no longer acceptable, and the legislation will include a ban on cross-examination of sexual violence victims by

the accused in person, as has been done in India and England.

228. The legislation will include a procedure under which the judge will invite the accused to arrange for a legal representative to cross-examine the victim on behalf of the accused. If the accused does not do so, the judge must consider whether it is necessary in the interests of justice for the witness to be cross-examined by a court-appointed qualified legal representative.

229. The State will fund the lawyer appointed by the court on a fixed fee basis.

Better information and support for the victim

230. Under the National Policy Guidelines the prosecutor will be obliged to act as a point of contact for the victim, and provide information before the hearing and when key decisions or events happen in the case. This will significantly reduce the stress and lack of control that the victim feels, and we believe it will significantly increase the number of victims who are able to continue with the legal process.

Increased victim participation in the legal process

231. The victim of any criminal offence is traditionally seen as just a witness. In sexual offences cases, this lack of control causes further emotional and psychological damage to the victim. The challenge is to strike a balance between encouraging victim participation where possible, and preserving the impartiality (fairness to both the victim and the accused) of the criminal trial.

232. Improving communication with the victim will go a long way towards improving the experience for victims, but there are some further steps that have been successful in other countries. The aim is to reduce avoidable trauma to the victim, and thus encourage him/her to continue with the legal process, enabling more convictions.

233. The importance of representing the views of the victim during the legal process is recognised in the Combating of Trafficking in Persons Act 2005.

234. This will be implemented through Victim Impact Statements, discussed in Chapter 6, and improved communications between the prosecutor and the victim to ensure the victim is aware of and understands what is happening in the case and can make her/his views known to the prosecutor.

Ensuring anonymity for the victim

235. Anonymity for the victim is already protected by legislation and is usually well respected by the media, with only some mistakes such as identifying the victim indirectly, for example, by naming one of her/his relatives. Indirect identification like this is also prohibited and the media must be vigilant to make sure that anonymity is respected, particularly whilst the stigma of rape remains so severe in our country.

236. The legislation will include a simplified and modernised anonymity provision to ensure that all forms of communication to the public are covered, including the internet. There will be no exceptions to the rule that the anonymity of the victim must be preserved, and breach of the rules will remain a criminal offence.

Abolishing male-only juries

237. A law dating from the 1800s which allowed a judge to order that a jury be composed of men only is still on the statute books, although it is not known when the power was last used. This law is no longer relevant or appropriate and will be repealed by the legislation.

Chapter 8 Evidence

238. In any criminal case there is a complicated set of rules that exclude or allow certain evidence to be used at the trial. Detailed legal arguments about the admissibility of evidence can cause lengthy extensions to the trial. In sexual offences cases, some of the rules are based in discrimination against women. Our aim is to create clear, concise, and fair rules on evidence in sexual offence cases.

Proposals in this Chapter:

Competence:

- Simplified test for competence to give evidence
- Where competence is in doubt, court to request assessment by social worker (for children), or duly qualified medical practitioner (where the person has a mental disability)

Corroboration:

- Abolishing the corroboration rule for victims of sexual offences
- Abolishing the corroboration rule for children, including for unsworn evidence

Sexual history evidence:

- Complete ban on evidence of sexual reputation or predisposition, and any sexual history evidence for victims under 16 at the time of the offence
- Tightly regulated judicial discretion to allow sexual history evidence for adult victims in certain circumstances, with strict procedures for admitting such evidence

Recent complaint:

- Judge required to warn jury that no inference can be drawn from absence or delay in making complaint
- Guidance on factors to consider in deciding whether a complaint was made within a reasonable time and so can be admitted
- Recent complaint evidence can be used to prove the facts complained of, not just to support the credibility of the victim
- All previous consistent statements of child victims to be admissible
- Hearsay evidence (previous consistent statements) of child victims to be admissible where the child does not testify

Competence to give evidence

239. Where a witness is under 14, or his/her competence to give evidence is in question for any other reason, for example mental disability, the magistrate or judge will assess whether the witness is competent to take an oath, and if not, if he/she is still competent to give unsworn evidence (which means giving evidence in the same way, but without first swearing on one of the holy books).

240. Under the current legislation and case law, the test of competence is whether the witness can recollect the events, understand the questions asked, give rational answers and understand the duty of speaking the truth. The legislation already makes clear that people who cannot speak or hear are competent, and can give evidence through signs or writing in open court.

241. As noted by the South Africa Law Commission, much sexual abuse of children and of people living with various physical and mental disabilities goes unpunished because the victim is found to be an incompetent witness. Because they cannot explain the abstract concepts of truth and lies, they will be found incompetent, despite the fact that they may be able to tell the court what happened accurately, understand the questions asked and answer clearly and honestly. In fact, persons who can explain the concepts of truth and lies are not necessarily the most truthful and reliable.

242. Studies have shown that children's memories are accurate, that they do not lie more than adults, and that they are capable of discerning fact from fiction.

243. The existing test does not support the aim of hearing all the relevant evidence in the case, and ignores the ability of the court or jury to decide on the weight and credibility of each witness's evidence.

244. The legislation will include a simplified definition of competence, to ensure that

as many child witnesses and witnesses with mental disabilities as possible, who are capable of giving evidence, are allowed to do so. The test will be the same as that used in England and proposed in South Africa. The test is simply whether the witness can understand the questions asked and give answers that the court can understand. The jury will then be able to assess the credibility and reliability of their evidence in the same way as for any other witness.

245. As recommended in South Africa, if the judge is in doubt about the competence of the witness, the legislation will require the judge to request an assessment and report from a social worker (for a child witness) or psychologist, psychiatrist or doctor (for a person with a mental disability). These professionals are better placed to assess the cognitive ability of a child or person with a disability.
246. The judge will not be *bound* to follow the recommendation made in the report, but will be informed by it in making the decision.

Corroboration in sexual offences cases

247. The corroboration rule is an old English common law rule that applied in a few instances where witnesses were thought to be very likely to lie or to be unreliable. These witnesses were accomplices to the crime, children, and victims in sexual offences cases. The rule is still applied in Guyana, which means that the judge is required to warn the jury that it might be "dangerous" to convict the accused on the evidence of a victim in a sexual violence case unless it is "corroborated" (supported) by some other independent evidence. If the judge fails to give this warning, or does not give it in the right way, then, if the accused is convicted, the conviction can be overturned.
248. The rules on what can and can not be corroboration and how the judge should direct the jury have become very complicated. Corroboration is hard to find. There are rarely any independent witnesses to sexual offences. A report of the offence

made to a third party ("recent complaint") cannot be corroboration. Even medical evidence is not always sufficient corroboration.

249. It has been widely recognised that the corroboration rule in relation to sexual offences victims is discriminatory, and is based on the assumption that there is a high level of false allegations of rape. As mentioned earlier, although high levels of false allegations are still widely assumed by the public, studies have shown that there is no higher rate of false allegations for rape than for any other crime. In fact, the rate of false allegations has been found to be only 3% of reports.
250. The corroboration rule has also been recognised as a serious barrier to the prosecution of sexual offences. The victims' evidence is seen as suspect, simply because they are victims of a sexual offence. By contrast, the accused's evidence is viewed with an open mind.
251. For these reasons the corroboration rule has been abolished in many Commonwealth jurisdictions, including the UK, Barbados, India, New Zealand, Australia, Canada, Namibia and is soon to be abolished in South Africa.
252. We propose that the legislation abolish the corroboration rule for the evidence of victims in sexual offences cases. The legislation will make clear that evidence is not to be treated as less credible or reliable on the basis that the witness is a victim in a sexual offences case.
253. If in an individual case there are special reasons to suggest that the witness might not be credible or reliable, the judge will still be free to direct the jury on this as she/he would be in any other type of case and for any witness.

Corroboration of the evidence of children

254. Child victims of sexual offences are doubly disadvantaged. The *sworn* evidence of children is also subject to the corroboration rule. Where a child gives *unsworn*

evidence, the position is more extreme. Rather than the judge giving a warning, there is a strict rule that the child's evidence **must** be corroborated by some independent evidence or there can be no conviction.

255. The corroboration rule and oath test combined have been found to be particularly problematic in the prosecution of sexual offences against children.
256. As noted by the South Africa Law Commission, psychiatric and psychological studies have shown that children's memories are accurate, that they do not lie more than adults, that they are capable of discerning fact from fiction.
257. The corroboration rule has been abolished for children in many of the countries listed above, including England. Canada and Trinidad and Tobago have also eliminated the requirement for corroboration with respect to a child's *unsworn* evidence in child sexual violence cases.
258. We therefore propose that **the legislation also abolish the corroboration rule for the sworn and unsworn evidence of children.** Again, the judge will be free to direct the jury if there are particular reasons to doubt the credibility or reliability of the evidence, and the jurors are free to judge the credibility of each witness themselves.

Sexual history evidence

259. Under the existing law in Guyana, where a man is prosecuted for rape, he can bring evidence to show that the victim "was of a generally immoral character" and the victim can be questioned about "connections" with the accused and other men. In sexual offence cases, the defence commonly brings as much evidence as possible about the victim's sexual history, even in cases where the victim is a young girl under 16 years of age.
260. The current rules allow evidence which is not relevant to the issues in the case, is unfairly prejudicial to the prosecution case and causes trauma to the victim. Sexual history evidence plays on the prejudices of the judge and jury. For example, Canadian research found that jurors who heard evidence of the victim's sexual history were less likely to believe the defendant to be guilty. The more evidence on sexual history they heard, the less they believed the victim, even if she denied it all.
261. Attention is diverted from the behaviour of the accused at the time of the alleged offence, to the behaviour of the victim on earlier, unrelated occasions. In effect, the victim is put on trial, instead of the accused. This is a major cause of victims withdrawing from the legal process or not reporting at all.
262. Strict limits on sexual history evidence have been introduced in many countries, including England, the USA, Canada, New Zealand, Australia, India, South Africa and Namibia, including complete bans on evidence or questioning to show a sexual reputation or predisposition of the victim.
263. The legislation will include a complete ban on evidence or questioning to show sexual reputation or predisposition of the victim. It will also include a complete ban on sexual history evidence in cases where the victim was under 16 years of age at the time of the offence. The remainder of this section deals with the admissibility of sexual history evidence apart from in these two circumstances.
264. Legislation was passed in Canada banning any sexual history evidence at all in sexual offences cases (i.e., going further than the bans discussed above). It was challenged in court, and, whilst the complete ban on evidence to show a sexual reputation or predisposition of the victim (as discussed above) was upheld, the court found that a complete ban on all evidence of sexual activity was not justified, because specific instances could possibly be relevant to the defence.
265. Therefore, in Canada and the other countries listed above, attempts have been made to regulate the use of sexual history evidence. The challenge is to successfully limit the use of the evidence to where it is genuinely relevant to issues in the case,

thus upholding the right of the defendant to a fair trial.

266. We aim to develop through consultation a list of specific instances in which sexual history evidence could be directly relevant to the defence and so should be admissible, for inclusion in the legislation.
267. For example, in the USA and Namibia, a specific exception to the ban is allowed where the evidence is needed to show that someone other than the accused was responsible for semen, injuries, pregnancy or disease relevant to the case (where this cannot be shown using forensic evidence), and in Namibia, a specific exception is included to rebut evidence put in by the prosecution.
268. We are also consulting on whether, in addition to specific exceptions, it is necessary to include a general discretion for the judge to admit specific sexual history evidence. This discretion would be to allow evidence so fundamental to the defence that to exclude it would cause a violation of the defendant's constitutional rights.
269. In all other jurisdictions this type of discretion has been included in the legislation. However, research in South Africa, England, the USA and New Zealand has found that judges apply the rules too generously to the defence, meaning that sexual history evidence is still admitted where it is not directly relevant to the issues in the case. We look forward to hearing views on this issue during consultation.
270. The legislation will also include a strict procedure for admitting sexual history evidence under the exceptions (and general discretion if included), modelled on the procedure in England, New Zealand, Canada and Australia. The defence will need to make an application in advance, in writing, containing details of the date, time and circumstances of the instances sought to be brought in evidence or to be the subject of questioning. The application must set out why the evidence is relevant to the defence, and if the victim is to be

questioned, must set out the first questions to be asked and the intended lines of questioning that will follow. A copy of the application must be sent to the prosecutor and to the Director of Public Prosecutions.

271. The judge will hear the application to admit sexual history evidence in private, without the jury. The prosecution and defence will make submissions, and the victim has a right to be heard, but cannot be compelled to attend. As in Canada, the legislation will set out a list of factors that the judge must consider when deciding whether the evidence should be admitted, including the interests of justice; these interests include the right of the accused to make a full answer and defence, society's interest in the reporting of sexual violence cases, the need to remove discrimination or bias from the fact-finding process, the risk that the evidence will arouse prejudice, sympathy or hostility, and the potential prejudice to the victim's right of privacy.
272. The judge must then give a decision in writing, with details of the factors considered in making the decision, the way in which the evidence is expected to be relevant to the defendant's case and the reason why excluding the evidence would breach the defendant's constitutional rights.
273. **The restrictions on introducing sexual history evidence will apply to both the prosecution and defence.** This protects the defendant, and also the victim, as research in the UK found that a common means of unjustly evading the bans was for the defence to lead the victim to make claims during cross-examination which could then be challenged by bringing sexual history evidence, although neither the claims nor the rebuttal were relevant.

Recent complaint

274. The starting point in criminal trials in Guyana is that a witness cannot give evidence about what a third party said to him/her. Evidence that includes the details of what another person said is "hearsay" and not allowed. The person who made the statement must give evidence him/herself.

275. An exception to this rule has developed in sexual offences cases. The prosecution can bring evidence of the first complaint made by the victim about the offence, if it was made spontaneously and at the first reasonable opportunity. Once the victim gives evidence in court, the person the complaint was made to can also give evidence about the complaint.
276. Prosecutors in Guyana say that this “recent complaint” evidence can be very important, particularly in prosecutions of sexual offences against young children. However, it also allows the defence to argue that if no complaint was made, or if the victim delayed making the complaint, then this must mean that the victim is lying.
277. Studies have shown that sexual offences victims often do not tell anyone about what happened, or may take some time to disclose what happened for good reasons. However, jury members are often not aware of this and so the defence argument succeeds, unfairly damaging the prosecution case.
278. Because of this, a total ban on recent complaint evidence has been adopted in Trinidad and Tobago, Canada and parts of Australia. Whilst this means that the defence cannot raise arguments about lack of a complaint, or delay in making a complaint, it also means that evidence of complaints that the victim made cannot usually be heard in court. Because prosecutors in Guyana tell us that this evidence is sometimes very important, we do not propose a complete ban.
279. Instead, the legislation will require the judge to warn the jury that there can be good reasons why a victim makes no complaint or why there is a long delay in making the complaint, and warn that no inference can be drawn that the victim is less reliable. This is the position in many countries, including Namibia, England, New Zealand, South Australia, India, and Barbados, and proposed in South Africa.
280. Case law in many common law jurisdictions makes clear that complaints do not have to be made immediately to be admissible. Depending on the circumstances a considerable amount of time may have passed. The legislation will also include guidance on factors to consider as to whether the complaint was made within a reasonable time, including the circumstances, the relationship of the victim and accused, the relationship of the victim and the person to whom the complaint was made and the character of the victim.
281. For example, if a person is abused by a step-father as a child, then discloses this to a trusted friend years later when he/she has left the family home, then this would be within a reasonable time and the complaint should be allowed in evidence.
282. The legislation will make clear that recent complaint evidence can be evidence of the incidents complained of, not just evidence to support the credibility of the victim. This change was made in the UK in 2003 because the old distinction (that the evidence could only support the credibility of the victim’s evidence) was not meaningful and was confusing to juries.
283. In Namibia, *all* previous consistent statements of the victim are allowed, not just the first, and there is no time limit on when the statements were made. This means that if the victim complains to other people or makes the complaint after a long period of time, the person who the complaint was made to can still give evidence about it in court. The UK Government recently proposed extending recent complaint to allow all previous consistent statements to be admissible, on the basis that all relevant evidence should be available to the court. It was felt that if the prosecution tries to bring evidence of many complaints which are not relevant, the judge already has powers to disallow irrelevant evidence.
284. The legislation will allow *all* previous consistent statements of the victim to be admissible in child sex offence cases. We believe this will greatly assist prosecution of child sexual offences cases, because disclosure by children is often fragmented

so that the first complaint might not include the fullest evidence. We do not currently propose extending this to adult victims, but welcome views on this during consultation.

285. In South Africa and other common law jurisdictions the hearsay evidence (i.e. recent complaint evidence) of children can be admitted where the child does not testify. It can also be admitted where adult victims are found not competent to testify through mental incapacity. We believe that this reform will greatly assist the prosecution of sexual abuse of children and the mentally disabled, without damaging the rights of the defendant, so we propose to include it in the legislation. It is unlikely that a conviction would be based on only one or two pieces of hearsay evidence without direct testimony, but this evidence will be an important support to the prosecution case.

Chapter 9 Sentencing

286. The sentences awarded in sexual violence cases have varied and this has caused concern. Our aim is to increase consistency in sentencing, through establishing a framework of sentencing options and guidelines. These should reflect the very serious nature of these offences, as well as the need to prevent future offences and should also consider the needs of the victim.
287. Different sentencing options are needed where the offender is a juvenile. In addition to child welfare concerns it is recognised that there is a higher success rate for rehabilitation and treatment programmes for young sex offenders. These issues will be dealt with in the forthcoming Juvenile Offenders Bill.

Proposals in this Chapter:

- New sentencing options:
 - i. Compensation order
 - ii. Drug treatment and testing order
 - iii. Rehabilitation order
 - iv. Protection and safety order
- Sentencing Guidelines
- Long-term sentencing for prevention:
 - i. Long-term supervision order
 - ii. Disqualification order

Sentencing options

288. A term of imprisonment will always be the appropriate sentence for rape and serious sexual violence. The legislation will include a range of additional sentencing options aimed at safety and support for the victim and prevention of re-offending, which are used in other jurisdictions including South Africa, England, Trinidad and Tobago, Australia and Canada.
289. In line with the Combating of Trafficking in Persons Act, and legislation in Trinidad and Tobago, the new legislation will include a specific provision enabling the court to order that the accused pay **compensation** to the victim, with no limit on the amount

and to include medical and legal expenses. The court will be able to secure payment of the compensation order by creating a charge on the accused's property, and the order will not prevent the victim from receiving compensation from any other source.

290. The legislation will include a power for the court to make a **drug treatment and testing order** requiring the accused to stop using drugs or alcohol and undergo treatment for substance abuse for a period of up to 12 months. For very minor offences the accused may not be sentenced to imprisonment so this order would run straight away. In most cases the sentence will also include a term of imprisonment, so the order will run after the accused is released.
291. The legislation will also include a power for the court to make a **rehabilitation order** that the accused undergo a programme of counselling or treatment, and/or other training, where she/he demonstrates the potential to benefit. Where the accused has also been sentenced to a term of imprisonment, the rehabilitation programme should be offered in prison.
292. It will also be possible for the court to make a **protection and safety order** including any conditions necessary to protect the victim for a duration of up to 12 months. These could include that the accused does not contact the victim, or does not visit certain specified places, or moves out of a shared residence. This is similar to a protection order under the Domestic Violence Act, but can be made by the judge on sentencing in any sexual violence case, without any separate application being made.

Sentencing guidelines

293. To establish consistency in sentencing, the legislation will include a simple set of sentencing guidelines, similar to those included in the Combating of Trafficking in Persons Act, and in sexual offences legislation in other countries, for example Namibia.

294. For serious sexual offences, as well as stating the maximum sentence, **the legislation will include the minimum sentence**. The maximum and minimum sentences are discussed in Chapter 5.

295. As in Namibia, the legislation will allow the judge to award a lower sentence than the minimum where this is justified by substantial and compelling circumstances (for example, mental illness or disability of the offender, that the offender played only a minor role in the offence, or that he/she made an early admission of guilt to the police and pleaded guilty-. If the judge awards a lower sentence he/she will be required to enter the circumstances on the record of the proceedings.

296. The legislation will also include a list of **aggravating factors** which require the sentence to be longer. We invite comments on the following initial list for rape:

Aggravating factor	Addition to sentence
Use of a firearm or other weapon	Add 2 years
Victim under 18 years	Add 2 years
Offence committed whilst on bail for another offence	Add 3 years
Abduction	Add 4 years
Abuse of position of trust, power or authority	Add 4 years
Serious physical or psychological injury to the victim	Add 5 years (10 years if life threatening)
Gang rape	Add 10 years

297. Other aggravating factors that should be considered in the sentencing include additional humiliation or degradation, for example taking photographs of the offence, racial or religious motivation, deliberate targeting of vulnerable victims, attempts to conceal or dispose of evidence, and the presence of others (for example children or the victim's partner).

298. Where more than one aggravating factor is present, it is not necessarily the case that the additional sentence for each factor is added; the judge will determine what

length is appropriate bearing in mind all the factors.

299. The judge will be required to consider the Victim Impact Statement where one has been submitted (see Chapter 6); this will give an indication of the harm done to the victim for the purposes of deciding how long the sentence should be.

300. For a second conviction of rape or any child sex offence, there will be a mandatory life sentence, as is the case in Trinidad and Tobago and South Africa.

301. The guidance will make clear that there should be no reduction in sentence because the accused was known to the victim or that they had been in a relationship. In some countries, an existing relationship is an aggravating factor because the breach of trust involved causes further trauma to the victim.

302. As is required in all criminal sentencing in the UK, the legislation will oblige the judge to give reasons for the sentence awarded.

Long-term sentencing for prevention

303. Several long-term sentencing options aimed at preventing further offending have been introduced in England and South Africa. We believe that these could help to reduce sexual offending in Guyana, but their success will depend on the capacity of the police and probation service to monitor and enforce the orders. Therefore, we have aimed to keep these measures simple.

304. The legislation will include **long-term supervision orders**, which can be made for offenders who are assessed to be at high risk of offending again in future. The order is in effect an indeterminate (no fixed end date) community sentence. After release from prison, the probation service monitors the offender for a period of five years. The order is reviewed every three years, and can be extended if the court is persuaded that it is necessary (therefore the period of supervision can continue indefinitely, so long as it is reviewed every three years). The supervision includes an obligation on the offender to attend treatment,

counselling or other rehabilitation programme.

305. The legislation will also include **disqualification orders**, under which the offender can be banned from working with children. In England, this order must be imposed when a judge is sentencing for a child sex offence, unless the court is satisfied that the offender is unlikely to commit further offences against children. These orders will be useful because they put the responsibility on the offender not to seek employment working with children - breach of the order is a criminal offence with a penalty of 12 months imprisonment. This measure complements the new register of persons unfit to work with children which will be introduced in the Children's Bills.

Chapter 10 Prevention

306. All of the reforms discussed in this Paper contribute to prevention of sexual violence, increasing reporting of offences, removing barriers to convictions and improving confidence in the criminal justice system. At the end of this Chapter some of the key prevention measures discussed elsewhere in this Paper are listed.

307. This Chapter sets out a framework for a national strategy to eradicate sexual violence. In considering prevention it is important to bear in mind that most sexual violence is committed by a person known to the victim, that the violence often takes place at the home of the victim or the accused, that most victims are female, and that children, young women, and women in poor and/or rural areas are particularly vulnerable. An important feature will be locally-led, community-based initiatives.

308. There are also strong links with programmes for prevention of domestic violence and trafficking in persons, already included in the Domestic Violence Act and Combating of Trafficking in Persons Act.

Proposals in this Chapter:

- National Task Force and National Plan for Prevention of Sexual Violence
- National Policy Guidelines for Victims of Sexual Violence
- Better integration and coordination of services
- Data collection, analysis and publication
- Training
- Public awareness and education
- Local Action

National Task Force and National Plan for Prevention of Sexual Violence

309. The legislation will require the establishment of a National Task Force for Prevention of Sexual Violence. The members of the Task Force will include the Ministers of Home Affairs, Health, Human Services, Legal Affairs and Amerindian

Affairs, the Commissioner of Police, the Director of Public Prosecutions, the Chief Probation Officer, other high level government officials and appropriate non-governmental organisations.

310. The Task Force will take on a coordination and guidance role, particularly to assist implementation of the following responsibilities, which will be allocated to the Director of Human Services in the legislation:

- developing a National Plan for the Prevention of Sexual Violence
- drawing together National Policy Guidelines for Victims of Sexual Offences
- monitoring and coordinating implementation of the new Sexual Offences Act, the Plan and the Policy Guidelines
- collection and dissemination of data on sexual violence
- improving coordination and integration of relevant services in sexual offences cases
- developing initiatives for prevention of sexual violence
- coordinating national education and awareness programmes
- reviewing the availability of support for victim such as shelters, safe spaces and counselling
- in general, ensuring acceptable and uniform treatment of all sexual offence matters
- producing an Annual Report updating data and statistics, reporting on the implementation of the Sexual Offences Act, the Plan and Guidelines, and reporting on other prevention activities.

311. In order to perform these functions the Director of Human Services will be supported by a Sexual Violence Unit, modelled on the existing Trafficking in Persons Unit.

National Policy Guidelines

312. The legislation will oblige the relevant Ministries (in conjunction with relevant agencies and civil society) to develop National Policy Guidelines on Sexual Violence which will be implemented as regulations under the new Act. These have proved extremely helpful in South Africa, with each sector producing its own Guidelines which are then compiled to form a complete policy approach to Sexual Violence. Guidelines have also been successful in the UK; the Metropolitan Police found that more suspects were charged after the introduction of their policy on sexual offence cases.
313. Guidelines will be developed for the police, prosecutors, magistrates and judges, health workers, social workers, the probation service and the prison service.

Better integration and coordination of services

314. The Task Force will act as a focal point for better integration and coordination between services in tackling sexual violence. Some existing examples are sexual assault referral centres, and police and social worker cooperation on child abuse cases. We expect more integration and cooperation initiatives to be developed.

Data collection, analysis and publication

315. Up-to-date and accurate data on sexual offences in Guyana is very important, as it will enable us to understand the problem we are dealing with. Prevention efforts can then be targeted and intelligence-led policing increased. We will also be able to monitor the impact of the reforms on reporting and conviction rates.
316. Methods for compiling data are already being developed under the Domestic Violence Act and Trafficking in Persons Act. For sexual offences, a standard form will be developed, to be completed by the police for every report of a sexual offence,

and to be submitted to the Criminal Investigations Department after the bail hearing.

317. In addition, whenever a case is discontinued for any reason up to acquittal, or when there is a conviction, the prosecutor (or police rank if the case was discontinued before charge) will be required to complete a short standard form recording their assessment of the reasons for success or failure of the case. This form will be sent to the Director of Public Prosecutions for central collation.
318. The National Policy Guidelines will include an obligation for police and prosecutors to complete these two short forms for every sexual offence case. This is not an unreasonable burden, and the data gathered will be invaluable in fighting sexual violence. The Director of Human Services will have access to both sets of data. The data will be recorded in a way which preserves the anonymity of the victim.
319. The data will include the number of reports, arrests, charges, prosecutions and convictions for sexual offences, statistics on victims, offenders and their relationship to each other (for example the age of the victim, if the accused is known to the victim, etc), and modes of offending. Statistics on bail in sexual offence cases will also be included.

Training

320. Research has found that at each stage of the legal process, stereotypes and prejudices play a part in decision-making by police, prosecutors, magistrates and judges. Whilst some excellent and dedicated work is being done within all these sectors, these problems are still widespread in Guyana.
321. Training for law enforcement officials should therefore address these issues, as well as building capacity to investigate and prosecute sexual offence cases. It should also cover care and support for victims.

322. Training will also be provided on implementation of the new Act and Guidelines.
323. The relevant Ministries will be charged with ensuring that training programmes on sexual violence are developed and delivered to police, prosecutors, magistrates and judges, health workers, probation officers, social workers and the prison service, whether directly or through working with other agencies and NGOs.

Public awareness and education

324. Awareness of sexual violence and education for vulnerable sectors will be vital to reducing sexual violence in Guyana.
325. Stigma and lack of support in the community deters victims from reporting sexual offences. Studies in 2005 in the US and UK showed that the responses of families, friends and community influenced whether the victim would make a formal report to the police. Where victims felt encouraged, they were far more likely to report and, where they received a negative initial response, were deterred from reporting.
326. Members of the public also make up juries, and bring with them their attitudes and awareness. "Rape myths", widely held misconceptions about rape, have been shown to affect the outcome of trials more than any of the evidence in the case (see Chapter 2 for more information on rape myths). Tackling these misconceptions through education is therefore very important.
327. Education of vulnerable sectors can also have a big impact. Programmes will be designed to educate children and parents on how to recognise sexual abuse and where to seek help. Education of women, especially young women and girls of school age, is very important, as is ensuring that the programmes reach women in poor and remote communities.

328. We envisage a strong partnership role for NGOs and community organisations in developing innovative education

techniques. For example, in Jamaica and South Africa, travelling programmes of street drama have been used as forms of education in deprived areas, and in Pakistan, an NGO developed a text book on sexual violence that is now widely used in schools.

329. The Director of Human Services, with input from the Task Force and other relevant agencies and NGOs, will be responsible for developing and delivering public awareness campaigns on sexual violence, and education campaigns for vulnerable sectors.
330. The legislation will include an obligation on the Director of Human Services to evaluate the effectiveness of the education campaigns.

Local action

331. We believe that the most effective way of tackling sexual violence in communities is to involve the local community itself.
332. Therefore, the legislation will require all Regional Democratic Councils to set up a local Committee for the Prevention of Sexual Violence, which will be charged with involving the local community in developing a Local Plan for the Prevention of Sexual Violence in the local community, and coordinating local prevention initiatives. A representative from each Local Committee will attend meetings of the National Task Force.
333. In addition to Government action, we must all take responsibility, and we hope that every community will take on the challenge of eradicating sexual violence. We will support and encourage individuals and community-based organisations in taking on this important work.

Register of sex offenders

334. Registers of sex offenders have been found to be of limited use in preventing further sexual violence. Only a very small percentage of abusers have previous convictions and so would be on the register.

335. The police can keep a central register of convicted sex offenders for police use without any special legislation. Legislation is not required to ensure that when a sex offender is released from prison, the local police are notified that he or she is returning to the area. These areas will be covered in the National Policy Guidelines for police.

336. If the offender has been assessed as at risk of offending again, he or she will also be subject to a long-term supervision order (see Chapter 9).

337. In the UK and in Trinidad and Tobago, convicted sex offenders are obliged to register themselves with the local police station, and re-register each time they move home. However, it is questionable how useful this is in light of the small percentage of offenders who have previous convictions. It is also a very complicated and costly system to set up, and in Jamaica, was recently set aside to be investigated as a separate exercise to general sexual offences reform.

338. We believe that a greater impact will be achieved by focussing our efforts on raising the conviction rate for sexual offences in Guyana as a first stage.

Other prevention measures

339. In addition to the overarching prevention measures set out in this Chapter, all of the proposals in the Paper will contribute to prevention, through increasing reporting, prosecution and conviction rates. Proposals directed specifically at prevention or safety are listed in the table below.

Highlighted prevention measures:

In this Paper:

- Support for 24hr helpline (Chapter 6)
- Mandatory record and investigation of allegations of sexual violence (Chapter 6)
- Mandatory charge for child sex offences (Chapter 6)
- New offence of preventing child victim from giving statement or testifying (Chapter 5)
- Stricter bail decisions (Chapter 6)
- Forensic evidence to help in individual cases and in identifying serial rapists (Chapter 6)
- New sentencing options: drug treatment and testing orders, rehabilitation orders, protection and safety orders, long term supervision orders, disqualification orders (Chapter 9)

Other Bills:

- Protection of Children Bill:
 - i. Powers for social workers to take action to protect children at risk in their homes
 - ii. Obligation to report suspected child abuse
 - iv. Register of people unfit to work with children
- Child Care and Development Services Bill:
 - i. Stronger regulation of residential child care
- Juvenile Offenders Bill
 - i. Stronger regulation of training institutions
- Ongoing work to increase use of the Domestic Violence Act to protect children

Annex 1 Summary of Proposals

Chapter 5 Offences

- Extended definition of rape
- Marital rape exemption abolished
- Causing a person to perform a sexual act in coercive circumstances
- Sexual assault
- Child sex offences
 - i. Age of Consent 16 years for males as well as females
 - ii. Sexual abuse of a child aged 15-16, Sexual abuse of a child aged under 15
 - iii. Sexual activity with a child family member
 - iv. Failure to report child abuse - new offence under the Protection of Children Bill
 - v. Obstructing prosecution (preventing a minor from testifying in a sexual offence case)
 - vi. Abuse of position of trust
 - vii. Meeting a child following grooming
- Vulnerable adults
 - i. Sex with adult family member
 - ii. Sexual activity with a person with a learning disability or mental disorder causing them to lack capacity to consent, is rape or sexual assault
 - iii. Where a person has a learning disability or mental disorder but has capacity to consent, offence of obtaining sexual activity by inducement, threat or fraud
 - iv. Breach of position of care or authority: sexual activity between persons responsible and persons cared for/housed in care homes, hospitals, police stations, prisons, old persons homes etc.
- Other offences
 - i. Indecent exposure
 - ii. Voyeurism
 - iii. Bestiality
- Preparatory offences
 - i. Administering drug with intent to stupefy
 - ii. Trespass with intent to commit a sexual offence

- iii. Committing criminal offence with intent to commit sexual offence

- Assumption that males under 14 incapable of sexual intercourse abolished
- Prosecution in Guyana of offences committed abroad

Chapter 6 Report, investigation and charge

- Integrated services at sexual assault referral centres
- Support for 24hr helpline
- Specialisation and training for police
- Close co-operation between police and prosecutors during investigation
- National Policy Guidelines
- Investigation, Charge and Prosecution
 - i. Mandatory recording and investigation of all allegations of sexual violence
 - ii. Final decision to discontinue investigation to rest with the DPP
 - iii. Support and discussion where the victim wants to retract their statement
 - iv. Mandatory charge for child sex offences
 - v. Where child victim is prevented from testifying, a written statement by the child will be admissible as evidence in court
- Duty of police to ensure safety of victim
- Guidance on applying for protection orders under the Domestic Violence Act and co-operating with social workers on child protection
- Bail
 - i. Presumption that bail will not be granted for a second serious offence, and bail only to be granted for a serious sexual offence in exceptional circumstances
 - ii. Legislation will include factors to be considered when deciding whether to grant bail, and possible bail conditions relating to the victim's safety
 - iii. Right for victim to attend bail hearing and Victim Impact Statement to be used
 - iv. Police to notify victim when the accused is granted bail or released
- Legal obligation to provide medical care, treatment and counselling to survivors
- New, more comprehensive medical certificate for better care and evidence
- Forensic laboratory to be built under Citizens Security Programme, allowing

- forensic evidence to be used in sexual offence cases
- Victim to be provided with information on their rights and about the legal proceedings
- Child victims
 - i. Training for police on working with child victims, including taking statements from children
 - ii. Joint Investigative Interviews for child victims, with police and a social worker
- Improved identification procedures in sexual offence cases

Chapter 7 Procedure at Court

- Paper committals
- Sex Offences Court
- Hearings closed to the public
- Special measures to assist victims give evidence in court:
 - i. Live video-link (with an intermediary for children)
 - ii. Screens in court
 - iii. Aids to communication
 - iv. Presence of support person
 - v. Adjournment for child witness to be prepared for court
- Specialisation and training for judges and prosecutors, including training on regulating cross-examination of the victim
- Ban on cross-examination of the victim by the accused in person
- Better information and support for the victim
- Increased victim participation in the trial:
 - i. Legal obligation to allow the victims views and concerns to be heard at appropriate time
 - ii. Possibility of giving narrative evidence
- Ensuring anonymity for the victim
- Male-only juries abolished

Chapter 8 Evidence

Competence:

- Simplified test for competence to give evidence
- Where competence is in doubt, court to request assessment by social worker (for children), or duly qualified medical practitioner (where the person has a mental disability)

Corroboration:

- Abolish the corroboration rule for victims of sexual offences
- Abolish the corroboration rule for children, including for unsworn evidence

Sexual history evidence:

- Complete ban on evidence of sexual reputation or predisposition, and any sexual history evidence for victims under 16 at the time of the offence
- Tightly regulated judicial discretion to allow sexual history evidence for adult victims in certain circumstances, with strict procedure for admitting such evidence

"Recent complaint":

- Judge required to warn jury that no inference can be drawn from absence or delay in making complaint
- Guidance on factors to consider in deciding whether a complaint was made within a reasonable time and so can be admitted
- Recent complaint evidence can be used to prove the facts complained of, not just to support the credibility of the victim
- All previous consistent statements of child victims to be admissible
- Hearsay evidence (previous consistent statements) of child victims to be admissible where the child does not testify

Chapter 9 Sentencing

- New sentencing options:
 - i. Compensation order
 - ii. Drug treatment and testing order
 - iii. Rehabilitation order
 - iv. Protection and safety order
- Sentencing Guidelines
- Long term sentencing for prevention:
 - i. Long-term supervision order
 - ii. Disqualification order

Chapter 10 Prevention

- National Task Force and National Plan for Prevention of Sexual Violence
- National Policy Guidelines for Victims of Sexual Violence
- Better integration and coordination of services
- Data collection, analysis and publication
- Training
- Public awareness and education
- Local action

Annex 2 Comparison of existing and proposed offences

References to sections are to the Criminal Law (Offences) Act Cap 8:01 unless otherwise stated.

Existing offence	Maximum penalty	Proposed action	Proposed offence	Proposed maximum penalty
Rape S76	Life	Extend to further forms of penetration and apply to males	Rape: penetration of the vagina or anus by any body part or object, or penetration of the mouth by the penis, in coercive circumstances	Life
Rape by personation of husband S77	Life	Incorporate in new definition of rape	Rape	Life
		New	Causing person to perform sexual act in coercive circumstances	Life
Attempted rape S75	10 years	Retain	Attempted Rape	Life
Carnal knowledge of a girl between 15 and 16 years S69	10 years	Extend to protect boys, and to cover forms of penetration now included in rape	Sexual abuse of a child between 15 and 16	Life (Where there is no consent, charge as rape)
Carnal knowledge of a girl under 15 years S70	Life	Extend to protect boys, and to cover forms of penetration now included in rape	Sexual abuse of a child under 15	Life
Incest by a male S66	7 years	Split into two offences, both applying to male and female abusers. First, to cover child abuse, including family relationships other than blood-ties, and more forms of sexual activity. Second, to cover sex between adult relations, limited to blood-ties.	Sexual activity with a child family member Sex between adult relatives	Penetration: Life, other activity: 14 years 2 years
Attempted incest by a male S66	2 years	Incorporated in attempt to commit sexual activity with a child family member	Attempted sexual activity with a child family member	10 years
Incest by a female over	10 years	Split into two offences, both	Sexual activity with a child family member	Penetration: Life, other

Existing offence	Maximum penalty	Proposed action	Proposed offence	Proposed maximum penalty
16		applying to male and female abusers. First, to cover child abuse, including family relationships other than blood-ties, and more forms of sexual activity. Second, to cover sex between adult relations, limited to blood-ties.	Sex between adult relatives	activity: 14 years 2 years
		New	Abuse of Position of Trust: 16 and 17 year olds - below that age would be charged as sexual abuse of a child aged 15 to 16 or under 15, and where the victim did not consent, should be charged as rape	5 years
		New	Obstructing prosecution: preventing child victim from giving statement or testifying in relation to sexual offence	10 years
		New	Meeting child following grooming	5 years
Carnally knowing a female idiot S71	5 years	Protection for persons with a learning disability or mental disorder impeding choice incorporated in offence of rape	Rape	Life
		New	Obtaining sexual activity by inducement, threat or deception with a person who has a learning disability or mental disorder	14 years
		New	Breach of relationship of care If the victim did not consent, charge as rape	Penetration: 14 years Other: 7 years
Buggery S353	Life	Non-consensual anal penetration to be covered by rape Penetration between human and animal to be covered by	Rape Bestiality	Life 2 years

Existing offence	Maximum penalty	Proposed action	Proposed offence	Proposed maximum penalty
		bestiality S353 will be retained, and will continue to cover consensual activity		
Attempted buggery S352(a)	10 years	Split as for buggery above	Attempted rape Attempted bestiality	Life 6 months
Gross indecency by male with male S351	2 years	Non-consensual sexual violence covered by rape and sexual assault S351 retained, and will continue to cover consensual activity	Rape Sexual assault	Life 10 years
Indecent assault of a female S45	5 years	Merged in new offence of sexual assault to cover abuse by males and females, of males and females	Sexual assault	10 years
Indecent assault of a female S24 Summary Jurisdiction (Offences) Act		As above	As above	As above
Indecent assault of a male by a male S352(c)	10 years	As above	As above	As above
Assault with intent to commit buggery S352(b)		Covered by new offence	Committing a criminal offence with the intent to commit a sexual offence	10 years
Indecent exposure S162(a) Summary Jurisdiction (Offences) Act	Fine only	Retain	Indecent exposure by male or female, intended or likely to cause alarm or distress	2 years
		New	Voyeurism	2 years
Procuring offences S72 and s73	10 years	Retained as simplified offences	Administration of drugs or other substances with intent to stupefy a victim in order that they can be subjected to a sexual act without their consent	10 years

Existing offence	Maximum penalty	Proposed action	Proposed offence	Proposed maximum penalty
			Procuring offences	
Conspiracy to defile female S74	5 years	Retained, but extended to rape	Conspiracy to commit rape	Life
Forcible abduction of female for carnal knowledge S84		Covered by new offence	Committing a criminal offence with the intent to commit a sexual offence	10 years
Abduction of girl under 18 for carnal knowledge S85		As above	As above	As above
Detention of female with intent to have carnal knowledge S86		As above	As above	As above
Abduction of unmarried girl under 16 years S89		As above	As above	As above