

**“We cannot say we are moving faster towards the attainment of complete liberation from the legacy of the past unless the women of our country live without fear in their houses and walk freely through the streets and villages of our land.” – President Thabo Mbeki<sup>2</sup>**

## ▪ INTRODUCTION

- The Joint Committee on the Improvement of the Quality of Life and Status of Women (hereinafter referred to as the Committee) was permanently established in June 1998 to monitor and oversee progress with regard to the improvement of the quality of life and status of women in South Africa, with specific reference to the government's commitments made at the United National Fourth World Conference on Women in Beijing in 1995, and the provisions of the United Nations Convention on the Elimination of all forms of Discrimination Against Women (CEDAW).
- The South African government's signature and ratification of CEDAW created an obligation to introduce measures to protect the basic rights of women and to improve the status of women by eliminating gender-based discrimination. CEDAW requires countries to report to the UN every four years, and South Africa's first progress report was submitted to the UN CEDAW Committee in 1997.
- CEDAW defines violence against women as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”<sup>3</sup> It encompasses “physical, sexual and psychological violence –
  - occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;
  - occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

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<sup>2</sup> Address to the Nation on National Women's Day, 9 August 1999

<sup>3</sup> Article 1 of Annex F to CEDAW

- perpetrated or condoned by the state, wherever it occurs.”<sup>4</sup>
- The Beijing Platform for Action (BPFA) is a comprehensive plan of action to enhance the social, economic and political empowerment of women, and is premised on the need for the sharing of power and responsibility in the home, workplace and in wider society. South African government departments tabled their commitments to the BPFA in February 1996.
- In his opening address to Parliament on 25 June 1999, President Thabo Mbeki’s spoke of the “twilight world of... continuous sexual and physical abuse of women and children”. More light has been shed on this twilight world during the past year than ever before, mainly due to the increased vigilance of the public with the assistance of the media.
- Interpol: SA has highest reported rape ratio in the world Insurance Policy.
- The objectives of the November 1999 hearings on violence against women were the following:-
  - to identify what and where the blockages are which impede women who have been victims of all forms of violence, from having access to justice; and
  - to determine the varied ways in which such obstacles to justice can be addressed and eliminated.
- The hearings were held from 8 to 17 November 1999. A full list of submissions (both written and oral) appears at the end of the report. Copies of all written submissions are available from the Committee clerk. Other documents referred to in this report are also listed at the end hereof.
- This report will deal with the following aspects of violence against women, with special reference to the submissions made at the hearings:
  - criminal justice;
  - law enforcement;
  - welfare services and shelters;
  - health care;

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<sup>4</sup> Article 2 of Annex F to CEDAW

- incarceration of offenders;
- recent research on violence against women;
- public awareness and education;
- allocation of financial resources and the Budget;
- inter-ministerial co-operation and co-operative governance;
- co-operation between government and civil society;
- the need for a statistical database;
- recommendations and queries to government departments.

## ▪ **CRIMINAL JUSTICE**

### **New and proposed legislation and its implementation**

- CEDAW stipulates that government should “develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence; women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered; States should also inform women of their rights in seeking redress through such mechanisms.”<sup>5</sup>
- Significant progress has been made in the amendment of existing legislation and the promulgation of new legislation relating to violence against women and children. The most important of these are:
  - the Domestic Violence Act (DVA)<sup>6</sup>, which comes into operation on 15 December 1999 and replaces the Prevention of Family Violence Act<sup>7</sup>. Difficulties anticipated with the implementation of the DVA are described elsewhere;

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<sup>5</sup> Article 4(d) of Annex F to CEDAW

<sup>6</sup> Act 116 of 1998

<sup>7</sup> Act 133 of 1993

- limiting the granting of bail for persons accused of having committed specified serious offences, which include rape;<sup>8</sup>
- providing for minimum sentences for murder and rape with aggravating circumstances.<sup>9</sup> Certain difficulties in the judicial interpretation of especially the minimum sentence amendment have come to light, and will be detailed below.
- The South African Law Commission (SALC) has also produced a Sexual Offences Discussion Paper incorporating a proposed Sexual Offences Bill. The most important features of the proposed Sexual Offences Bill are the following:-
  - The common law definition of rape (a man having intentional unlawful sexual intercourse with a woman, without her consent) restricts the sexual intercourse to the penetration of the vagina by the penis, and non-consensual anal or oral penetration does not constitute rape or indecent assault in common law. In proposing the repeal of the common law offence of rape, the Commission has put forward a new gender-neutral statutory offence, centring on 'unlawful sexual penetration' under coercive circumstances.

This definition means that the State will not be required to prove absence of consent on the part of the victim. The accused can still raise consent to sexual intercourse as justification for the unlawful conduct, but will in future have to carry the burden of proof in this regard. Furthermore, penetration would include penetration to any extent by a penis, object/part of the body of a person/animal *into* the anus, ear, mouth, nose, vagina/body orifice of an animal; or body orifice of a person in a manner simulating sexual intercourse. This means, *inter alia*, that both men and women can be rape victims and perpetrators.

“Under coercive circumstances” include force, threat, abuse of authority, impaired mental capacity, unlawful detention, mistaken identity,

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<sup>8</sup> Criminal Procedure Amendment Act 75 of 1995

<sup>9</sup> Criminal Procedure Amendment Act 105 of 1997

mistaken act or if the complainant is under 12 years of age.

The proposed legislation also provides that marriage or other relationships does not constitute a defence to rape, and a husband can therefore be convicted of raping his wife. It also provides for retrospective application. Furthermore, rape in other laws will be replaced by the new definition.

- Similarly, the current position defines incest as *sexual intercourse* between persons within prohibited degrees of relationships. The proposed definition is that *sexual penetration* replaces the term sexual intercourse.
- In the proposed legislation, sexual molestation constitutes a sexual act with a child of two years and younger. It includes committing a sexual act with the intention of inviting/persuading/allowing a child of two years and younger to engage in a sexual act. The child's consent does not constitute a defence. A *child* is defined as someone under the age of 16 years.
- Persistent sexual abuse of a child (two or more occasions of a sexual/act/penetration with a child within a period of one year) will constitute an offence in the proposed legislation.
- In the proposed legislation child prostitution constitutes a sexual act with a child (someone under the age of 18 years) for reward, favour and compensation to a child or any other person. It includes inviting, persuading/inducing a child to commit a sexual act for reward, favour/compensation.
- Keeping a brothel for child prostitution: Keeping a brothel constitutes an offence. A brothel is defined as movable/immovable property where commercial exploitation of a child occurs. *Keeping* includes: owning, leasing, renting, managing, occupying or otherwise having control of a brothel.
- Facilitating or allowing commercial sexual exploitation: This covers any person who facilitates commercial sexual exploitation, including a parent,

guardian or caregiver who allows commercial sexual exploitation.

- Provisions not included in the Proposed Bill include cultural and religious practices considered harmful to children<sup>10</sup>, sexual harassment<sup>11</sup>, the criminalisation of harmful behaviour of people with HIV and the HIV testing of sexual offenders.
- The proposed legislation, and in particular the move away from *without consent* to include *coercive circumstances* is considered by many organisations as very progressive. Women's organisations, in particular Rape Crisis, have expressed support for the new definition of rape.<sup>12</sup>
- The SALC is also in the process of producing a discussion paper on the procedural aspects of the prosecution of sexual offences, which will also deal with the evidentiary rules, which operate against the complainant in rape cases. Such evidentiary rules, which are arguably based on common assumptions that women's evidence in rape trials should be treated with caution since women are thought to lie in sexual offence cases out of jealousy, spite and revenge, include:-
  - the cautionary rule, in terms of which certain types of evidences are treated with caution in a criminal trial, such as where the complainant is the only witness;
  - evidence of the previous sexual history of the complainant, which can only be admitted with the consent of the presiding officer on the basis of its relevance. This rule appears to be based thereon that, if a woman has had sexual intercourse

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<sup>10</sup> It was decided that this kind of provision is perhaps better and more suitably located within the revised and comprehensive Child Care Act 74 of 1983.

<sup>11</sup> Though this is comprehensively dealt with in the Labour Relations Act 66 of 1995, it means that people in employment are protected from sexual harassment. It seems clear that there are other areas where this is likely to take place. Thus further investigations and proposals will need to be made in this regard.

<sup>12</sup> The Commission on Gender Equality reported to the Committee that it was in the process of conducting research on judgements on rape, as well as drafting of sexual offences legislation and other legislation which impact on women.

In its June 1998 report on the Violence Against Women Hearings, the Committee described a submission by Rape Crisis and UWC's Community Law Centre regarding the Namibian draft bill on sexual assault. This bill dealt with, inter alia, a redefinition of rape, minimum sentences for rapists, order for payment of compensation to the complainant, mandatory commencement of rape trials within three months of date of arrest, disallowing a negative inference based solely on the length of the delay between the alleged rape and the laying of a complaint, the right of a complainant to be legally represented during criminal proceedings, and the prohibition of evidence relating to the previous sexual history of the complainant.

(whether or not such intercourse was with the accused), she is more likely to have consented to sexual intercourse;

- the rule of first report in rape or sexual offence cases, an exception to the general rule that previous consistent statements are inadmissible, in terms of which the complainant's evidence that she reported the rape to another person soon after the alleged offence is admissible. The application of this rule often leads to the drawing of a negative credibility conclusion if the complainant did not report the alleged offence to another person.
- In its June 1998 report on the Violence Against Women Hearings, the Committee described a submission from the Centre for Violence and Reconciliation detailing the phenomenon of "intimate femicide" - the killing of women by intimate male partners. The submission compared sentences handed out to men and women who killed their spouses and found startling disparities in what appeared to be inappropriately light sentences for men who murdered their partners and inappropriately heavy sentences for women who did the same in the context of continuous domestic violence. Recommendations by the Centre included:-
  - establishing a task team to consider the question of gender bias in sentencing;
  - introducing legislation permitting the introduction of similar fact evidence or evidence of a history of domestic violence;
  - abandoning the complete defence of non-pathological criminal incapacity;
  - early release for women serving sentences for killing their abusers; and
  - training of members of the judiciary.
- Specific impediments to the implementation of the DVA was raised in a written submission to the Committee by the Gender Advocacy Programme (GAP)<sup>13</sup>:
  - Women lack knowledge on their rights to freedom from domestic violence, and their specific remedies in terms of the DVA.

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<sup>13</sup> Submission H

- The DVA gives magistrates discretion to determine whether the respondent is committing or has committed an act of domestic violence, and whether the complainant may suffer undue hardship as a result of the domestic violence. This opens this way for prejudices of magistrates to affect the protection of women, and to lead to great inconsistency in the application of the DVA.
- Allowing legal representation in court will disadvantage women who do not have the financial means to solicit legal assistance. This may also discourage women from applying for a protection order, and make the process a lengthy and costly affair.
- Clerks of the Court are not trained to fulfil the role of the point of entry to the justice system for complainants of domestic violence.
- The DVA places the burden of the costs of service on the complainant; if she cannot pay, she has to furnish the Clerk of the Court with proof that she is not able to pay. The complainant will usually also lose time at work to apply for a protection order, resulting in a loss of income.
- The majority of South African women reside many miles from the nearest police station or magistrate's court, limiting their access to the remedies provided by the DVA.
- Support services such as shelters, financial support, legal assistance, police protection, access to housing, education, training, employment opportunities, psychological services are all required to assist women to transcend the cycle of abuse.
- The DVA provides the SAPS with clear roles and responsibilities in assisting victims of domestic violence. Women are understandably critical of the services provided by the SAPS, especially in view of past attitudes to domestic violence as a "family matter" and not a serious offence.
- The DVA makes provision for the complainant to receive a notice of her rights in her official language and to have the contents thereof explained to her. Most police stations are understaffed and no more than three official languages are spoken. As far as GAP was aware, no additional personnel had been allocated to stations for the implementation of the

DVA, nor had strategies to address this issue been developed.

- The head of the Family Court also raised the following concerns about the implementation of the DVA:
  - The DVA provided for 13 new forms, for which the printing by the Government Printer had not yet commenced at the time of the hearings.
  - The DVA provided that an application for a protection order would be heard after hours only if the complainant would suffer “undue hardship” if the matter was not heard. Concern was raised about how this hardship would be determined if the complainant was not given an after hours hearing.
- The Department of Justice made certain general comments<sup>14</sup> regarding difficulties with implementation of new legislation:
  - The consultation process with all roleplayers (some independent) is time-consuming.
  - The delay in implementing new legislation is caused by a lack of policy statement and implementation strategy for such legislation: an implementation strategy and the funding thereof must be discussed from the outset of development of policy and drafting of new legislation.
  - New policies, legislation and the expectations created thereby increase the existing case load and need for funding, which causes bad service delivery, which means that, as before, victims do not approach courts with gender and gender violence disputes.

### **Functioning of existing courts and establishment of special courts**

- Women reported negative experiences of courts in general, and the rate of conviction of crimes of violence against women remains unacceptably low. Submissions complained about inexperienced, unprofessional and ill-prepared prosecutors, insensitive treatment of traumatised witnesses, lack of facilities at courts and lack of transport to courts, magistrates’ lack of understanding of issues of

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<sup>14</sup> Submission Y

gender violence, clogged-up court rolls<sup>15</sup> and unnecessary postponements of matters<sup>16</sup>, a shortage of regional magistrates and more qualified prosecutors, intermediaries and interpreters.<sup>17</sup>

- The Masimanyane Women's Support Centre reported to the Committee on a study on domestic violence and rape using police dockets<sup>18</sup> and court files.

#### Mdantsane Court: 1997 to April 1999

Total number of rape cases in 1997	624
Postponements	368
Struck off the roll (the files did not provide a reason, though probably due to insufficient evidence)	100
Warrants for arrest issued	30
Cases withdrawn (not specified whether by state or complainant)	60
Trials	40
Entered in error	20
Finalised	6
Unconditional imprisonment	3

<sup>15</sup> The President of the Regional Court for the Western Cape reported that there was currently a backlog of 7000 cases in the Western Cape regional courts. The present delay between complaint and trial was approximately 9 months.

<sup>16</sup> The SAPS's submission on its Family violence, Child Protection and Sexual Offences Units specifically mentions the difficulties caused by numerous postponements of cases involving child witnesses, as well as trauma suffered by a child witness as a result of a postponement.

<sup>17</sup> From the submissions of the Masimanyane Women's Support Centre, UCT's Institute of Criminology's Gender, Law and Development Project, the Tawandarang Legal Advocacy Centre to End Violence Against Women and the Commission on Gender Equality.

<sup>18</sup> Ilitha Labantu reported that, in rural Transkei, police dockets mysteriously disappeared on a regular basis.

Guilty with sentences between 2 to 9 years	3
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East London Court: 1997 to April 1999

Total number of rape cases in 1997	793
Postponements	647
Acquittals	40
Moved to another court	25
Sentenced	20
Suspended sentences of four years or more	9
Fines of R200	3

- Masimanyane reported that the police expected the social workers to inform women of their rights, while social workers expected the police to do it. One woman who went to the district surgeon was sent back to the police (for which she had to find her own transport) because they said no medical examination could take place until she had made a statement (though they could have called the police to come to the hospital).
- Overall, Masimanyane described a lack of communication, lack of training and a lack of transport to hospitals and police stations. They also reported a reluctance on the part of medical examiners to appear in court for fear of witnesses being treated with disrespect. Victims often back out of prosecution due to lack of support. There are reports of women waiting for their court appearance in the same hallway as her assailants. The victims do not know what is going on and they are not given any information at all. Examples were cited of dockets being lost and of victims not being notified of their assailant's bail hearing nor of his release on bail.
- UCT's Institute of Criminology's Gender, Law and Development Project reported that, based on research undertaken in rural areas in the Southern Cape, women had to wait in the same area as the accused, did not have proper consultation with the prosecutor before trial, failure to explain the decision whether to prosecute or not, and inadequate preparation for the trial.

- The Commission on Gender Equality reported the failure of Sheriffs to serve interdicts in informal settlements, demanding service fees to be paid prior to service, requiring applicants to deliver interdicts themselves, and even the complete absence of sheriff services in rural areas. The Commission also complained of a lack of follow-up in domestic violence cases, especially breaches of existing orders, decision by particular court to issue peace orders instead of interdicts to lack of sheriff services in rural areas, handing interdicts to applicants for service when applicants do not have enough money to pay sheriff's fees.
- The Department of Justice told the Committee that they were finalising a Customer Service Charter for Court Users, a Service Delivery Improvement Plan and Victims Rights Charter, and were engaged in various information campaigns for court users, including the Sixteen Days of Activism against Violence Against Women.
- In the Department of Justice's 1997 report, it described the development of a monitoring system for the Guidelines on Sexual Offences developed by a national task team. This issue was again mentioned in the Department's 1998 report. The Committee still needs to know from the Department whether a method of enforcing the Guidelines have been further investigated and implemented.<sup>19</sup>
- In the Department's 1998 report, it reported back on a Canadian study tour dealing with violence against women. Lessons from the tour included an inter-sectoral approach, the economic empowerment of women, survivor counselling and offender rehabilitation, and the establishment of shelters and safe houses for victims. The Department further stated that the Department would present a report on the study tour to the NCPS inter-ministerial meeting and that the Department envisaged the appointment of an inter-sectoral task team to facilitate the implementation of the recommendations.<sup>20</sup> The Committee requests the Department of Justice to furnish it with a progress report in this regard.
- The Committee also intends establishing from the Department of Justice whether the necessary forms prescribed by the DVA have been printed and distributed to magistrate's courts across the country.

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<sup>19</sup> As appears from the Committee's Second Annual Report (January 1998 - March 1999), page 15, initially only 200 copies of the Guidelines were distributed. When the Committee raised concerns, the Department raised donor funding to ensure the printing of sufficient numbers of copies of the Guidelines.

<sup>20</sup> As reported in the Committee's June 1998 report on the Violence Against Women Hearings.

- The Department of Justice reported to the Committee<sup>21</sup> on two programmes for implementation of specialised courts.
  - Specialised family courts, already operating as pilot courts in CT, PE, Durban, JHB and LebowaKgomo, handled *inter alia* domestic violence matters, with the Family Advocate, Department of Welfare and various NGO's working at these centres to provide counselling, mediation and investigation. The Department of Justice indicated that it was intended that new Family Courts would be established in Mafikeng, Nelspruit, Umtata, George, Bloemfontein and Kimberley, with satellite centres at Magistrate's Courts around the main centres.
  - However, the head of Family Courts reported<sup>22</sup> to the Committee that there was little infrastructure and support services available for the Family Courts, even though they had been in existence for six years. The courts were badly underfunded (for example, stationery and photocopiers were not available), which causes unnecessary delays, for example in the granting of interdicts. There were also no waiting rooms for women.
  - A serious security problem was also experienced at the Family Courts and there were instances of assault on the premises. Often women were too scared to leave the offices since they knew that the alleged perpetrator would be waiting outside.
  - There are presently four sexual offences courts, which are better placed to deliver higher quality service to the victims of violence against women and children. The Department of Justice told the Committee that it planned to roll out 20 new Sexual Offences Courts in the next two years.
  - The four existing Sexual Offences Courts are all situated in urban areas, which means that complainants from rural areas have to travel long distances to attend the trial. Due to lack of transport, such a complainant may even find herself in the same vehicle as the accused.<sup>23</sup> The Department of Justice reported that 20 new Sexual Offences Courts would be established within the next two years. The pilot project for Family Courts would also be expanded to other centres.

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<sup>21</sup> Submission X

<sup>22</sup> Submission BB

<sup>23</sup> Reported by the President of the Regional Court for the Western Cape

- The Regional Magistrate's Commission<sup>24</sup> presented the Committee with statistics for the Sexual Offences Court in Wynberg:

	<u>Cases finalised</u>	<u>Guilty</u>	<u>Not guilty</u>
April 1999	15	8	7
May 1999	22	15	7
June 1999	21	12	9

- Two of the permanent magistrates in the Sexual Offences Court in Wynberg raised the following concerns<sup>25</sup> with the Committee:
  - There is a need to reconsider the adversarial system in sexual offence cases. Such a system assumes that both parties were equal, while such equality had to be questioned where the one party is a little girl, and the other an elderly man with a senior advocate. Much of the outcome of a case depended on the ability, wit, energy, ruthlessness and even permissible rudeness, which a cross-examiner might display. The selfish and partial manner with which parties are allowed to present evidence results often in procedural and formal truth being promoted at the expense of material truth.
  - There was also a need to re-examine the strict rules of evidence applicable in sexual offence cases, and in particular the cautionary rules of evidence.
  - There should be a general rule that children should testify through an intermediary, and only in exceptional circumstances should there be deviated from this rule. Consideration should be given to an amendment to Section 170A of the Criminal Procedure Act to include mentally impaired persons with a mental age of less than eighteen. It was also difficult for magistrates to determine when a witness would suffer "undue mental stress" as is required by Section 170A.
  - Difficulties have arisen in the interpretation of Section 51(3) of the Criminal Procedure Amendment Act<sup>26</sup> regarding

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<sup>24</sup> Submission BB

<sup>25</sup> Submission BB

imposing minimum sentences, as well as the restrictive interpretation of Section 158 of the CPA, which deals with the circumstances in which a court may depart from the general principle that a witness should give his or evidence in the presence of the accused.

- The Director of Public Prosecutions reported that, from 1 December 1999, a special High Court would be convened in Mndantsane in the Eastern Cape to hear only rape cases, which had built up during the last three years.

### **Court clerks, interpreters and prosecutors**

- Two important functions of clerks of the court were emphasised during the hearings: their role as organisers and facilitators of case rolls at courts, and their role as primary assistants to applicants for protection orders in terms of the DVA.
  - The President of the Regional Court for the Western Cape<sup>27</sup> told the Committee that the organisation of court rolls was one of the major difficulties faced by Magistrates. A system of “court nags” has recently been introduced, with the court nag’s task to ensure that cases set to run will in fact run, mainly by phoning witnesses and other role players two weeks prior to the trial date to ensure that all will be available on that day.
  - The Tswaranang Legal Advocacy Centre to End Violence Against Women<sup>28</sup> told the Committee that, since clerks were the first entry point for a woman at court, they need to give better technical assistance and support. GAP<sup>29</sup> also emphasised the need for proper training of clerks of the court, since the treatment women receive from clerks often result in women not returning with application forms for interdicts.
- The lack of experienced prosecutors trained in dealing with crimes of violence against women emerged as a major impediment to criminal justice. Often prosecutors are the survivor’s only ally in the criminal justice system, and these prosecutors are not equipped to

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<sup>26</sup> Act 105 of 1997

<sup>27</sup> Submission BB

<sup>28</sup> Submission CC

<sup>29</sup> Submission H

deal sensitively<sup>30</sup> with the traumatised complainant or to provide an equal opponent to experienced defence attorneys.

- The Tswaranang Legal Advocacy Centre to End Violence Against Women described prosecutors as insensitive to gender violence, and complained of a lack of consultation with the complainant.<sup>31</sup>
- The Masimanyane Women's Support Centre reported on difficulties caused by the high turnover in prosecutors, with prosecutors going on leave, study leave, or transfer to other courts.<sup>32</sup>
- In its submission to the Committee, the UWC's Community Law Centre reported that prosecutors are ill-prepared because of large workloads and blamed a lack of resources.
- The Director of Public Prosecutions reported to the Committee that public prosecutors have been told that violence against women is a priority area: the number of convictions needs to increase and instructions have been given to ensure that investigations are completed quickly to so that victims do not forget parts of evidence and defendants are advantaged by the lapsed period of time. In addition, prosecutions may only be withdrawn on the authority of the Provincial Director of Public Prosecutions.
- The Head of the Sexual Offences Unit and Community Affairs in the Office of the Director of Public Prosecutions told the Committee that, since the bulk of sexual offenders appear before Regional Courts, the regional court prosecutors require urgent training in the presentation of evidence, in particular scientific evidence, in sexual offence cases. Two training courses had already been held involving 60 prosecutors, which courses dealt with the collection of evidence, presentation of DNA evidence, cross-examination skills and sensitivity in dealing with witnesses (including the framing of age-appropriate questions).
- In this regard, the Sexual Offences Unit had met the Child Protection Units in all provinces to get them to co-operate with prosecutors, and also found that the training of prosecutors and investigators together was very beneficial. It was also proposed that a coalition should be formed

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<sup>30</sup> Reported by Ilitha Labantu in the context of rural Transkei

<sup>31</sup> Submission CC

<sup>32</sup> Submission Z

between NGO's and the police and prosecutors to provide counsellors and intermediaries for traumatised witnesses.

- The Department of Justice reported to the Committee that they were in the process of establishing pre-trial services to alert prosecutors and magistrates to previous convictions and arrests of offenders.
- The President of the Regional Court in the Western Cape also reported a real need for more qualified prosecutors, intermediaries and interpreters.

### **Magistrates**

- During the course of the hearings it became apparent that the Regional Courts, which heard 95% of all rape cases as the court of first instance, should be the focus of emergency reform.
- The President of the Regional Court in the Western Cape reported the following difficulties in her submission to the Committee:
  - There was currently a backlog of 7 000 cases in the regional courts in the Western Cape. The present delay between complaint and trial was approximately 9 months.
  - There were only ten permanent seats of the regional court in the Western Cape, with satellite courts in the rural areas such as Malmesbury, Springbok, Calvinia, Vredenburg, Vredendal.
  - The four sexual offences courts were all situated in urban areas, which often means that very young complainants have to travel long distances to give evidence. Due to lack of transport, such a complainant may even find herself in the same vehicle as the accused.
  - There is severe shortage of regional magistrates, and it was recommended that provision should be made for acting magistrates to be employed. It was also mentioned that it was a serious psychological health hazard for prosecutors and magistrates to adjudicate in sexual offences courts for lengthy, uninterrupted periods of time.
- The National Network on Violence Against Women complained that many judicial officials have little or no understanding of gender violence, the rape trauma syndrome or the battered wife syndrome, which is evidenced by their negative attitudes directed at survivors

of these crimes. Various submissions, including that of the Tswaranang Legal Advocacy Centre to end Violence Against Women and Ilitha Labantu argued that both magistrates and judges require training on the non-legal aspects of rape.

- The Chief Director of Justice College reported to the Committee on the training of regional and district court magistrates, as well as prosecutors on sexual offences, child law, domestic violence, violence against women (a pilot training project), basic human rights and social context training. The Justice College receives a significant amount in donor funding in addition to its own budget.

## **The judiciary**

- The Committee has on various occasions expressed concern about inappropriate statements made by High Court judges and what appears to be inappropriately light sentences handed down in judgements in cases of rape and other violence against women<sup>33</sup>. To date, the Committee's efforts to engage in discussion with the judiciary on issues of violence against women has been hampered by incorrect and sensationalist media reporting. However, the Committee remains of the view that such discussion could be beneficial to both the Committee and the judiciary.
- Many of the submissions expressed concern about statements made in recent judgements of High Court judges in cases of rape, especially in the context of the minimum sentence amendment to the Criminal Procedure Act<sup>34</sup>. Numerous calls were made for the education of judges on issues relating to discrimination and violence against women. For example, concern was expressed about views on women taken by the judiciary which reveal a reliance on stereotypes and which suggest that women collaborate in crimes against them.<sup>35</sup>
- This issue came to the fore in the interpretation of the recent amendment to the Criminal Procedure Act dealing with the imposition of a minimum sentence of life imprisonment where the victim is under the age of 16, is raped more than once, is raped by more than one person where such person is acting with a common

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<sup>33</sup> Submissions by Carol Bower, Rape Crisis Cape Town (A), Beauty Ntuli, WACA Advice Centre (D).

<sup>34</sup> Criminal Procedure Amendment Act 105 of 1977.

<sup>35</sup> This view was expressed in the written submission of, *inter alia*, the Commission on Gender Equality.

purpose, or where the rape involves the infliction of grievous bodily harm, save where the court is satisfied that "substantial and compelling circumstances" exist which would justify a less severe sentence. It is the judicial interpretation of this exception, which has come under scrutiny by women's organisations and the media.

- The Committee was furnished with a submission by the UWC's Community Law Centre's Gender Project<sup>36</sup> which examines disparities in recent cases.
  - In the case of *S v Zitha*<sup>37</sup>, a six-year-old girl was raped in her home by three men who had entered the house (armed with a panga) for purposes of robbery. Despite the girl's pleas that they take whatever they want but just leave her alone, the three men raped her in turn on her own bed, one of them raping her twice. All three men were convicted of rape.

During sentence proceedings, it was argued on behalf of the accused that the youth of the three men (they were 20, 19 and 18 at the time of the commission of the offence) constituted a substantial and compelling circumstance, along with the fact that none had any previous convictions and all three had come from unfortunate backgrounds. More astonishingly, it was advanced on behalf of the accused that the little girl had not suffered any serious injury apart from the rape and that the rape had not been premeditated since the men had gone into the house in order to commit a robbery.

Goldstein J held that even if the rape had not been planned in advance, it was no simple act - it "*constituted a series of horrific invasions of the sanctity of the complainant's body*". He also rejected the argument that the accused's youth and clean record could be seen as a substantial and compelling circumstance, and held that it was the duty of the court to impose a sentence of life imprisonment for the offence of rape.

- In the case of *S v Segole*<sup>38</sup>, a 24-year-old woman was abducted at gunpoint by two men. She was driven to a deserted farm, robbed of her jewellery and valuables and

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<sup>36</sup> Prepared by Nicolette Naylor, a researcher for UWC's Community Law Centre's Gender Project.

<sup>37</sup> 1999 JDR 0410 (W) dated 10 June 1999  
<sup>38</sup> 1999 JDR 0336 (W) dated 6 May 1999

then ordered into a the deserted ruin of a house, where both men raped her. Afterwards, she was tied up and left there. She managed to escape from the house, and reached safety by stumbling through mud and swamps to a factory nearby.

It was advanced on behalf of the accused that the complainant had not suffered any serious physical injury nor had she to be treated in hospital. It was even argued that she exaggerated the severity of the injuries and that the psychological trauma was not severe. It was further argued that both accused were from a deprived background.

Jordaan AJ quite correctly took the evidence of the psychological trauma experienced by the survivor into consideration and stated that he could not “*disregard these factors*”. He also stated that no weight could be attached to the fact that the accused were from disadvantaged backgrounds as they had not gained anything by raping the woman. They could simply have robbed her and taken her vehicle - yet they chose to humiliate and degrade her. In conclusion it was stated that “the circumstances of this case do not create compelling circumstances envisaged by Parliament.”

- In the case of *S v Shongwe*<sup>39</sup>, a nine-year-old girl was raped in her home by the father of her mother’s boyfriend. He was interrupted when someone entered the house. The district surgeon who examined the girl stated that her injuries were slight in that there were two slight vaginal tears, which appeared superficial.

Cillie J felt that any person with practical experience in criminal cases and sentencing would regard a sentence of life imprisonment on the accused in this case as “shocking”. He interpreted the section of the Act to mean that wherever a judicial officer is of the view that the sentence which would have been imposed prior to the Act and the one required in terms of the new Act are so different that it leads to an injustice, then a departure from the Act would be justified. The court held that the non-serious nature of the offence and the lack of real harm to the child were sufficient grounds for departing from the mandatory sentence requirement.

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<sup>39</sup> 1999 JDR 0473 (O) dated 11 August 1999

This decision needs to be compared with the decision of *S v Mofokeng*<sup>40</sup> the court comes to exactly the opposite conclusion. Here it was held by Stegmann J that for substantial and compelling circumstances to be present the facts of the particular case must present some circumstance that is so exceptional in its nature and that so obviously exposes the injustice of the statutorily prescribed sentence that it can rightly be described as “compelling”.

The decision in *Shongwe* is patently wrong, and results in an emasculation of the new legislation. It in no way takes into account the purpose of the legislation or the ordinary grammatical meaning of the words “*substantial and compelling circumstances*” as opposed to the words “*any other circumstance which in the opinion of the court should be considered.*”

- In *S v Mahamotsa*<sup>41</sup>, two women under the age of 16 were raped on separate occasions by a 23-year-old man. Both were raped more than once by the accused, who had apparently taken them to his house by means of a weapon or something resembling a weapon (the sentencing judgment is not very clear in this regard). The second rape was committed after the accused had been arrested for the first incident and released in the care of his guardian.

Kotze J firstly listed a number of mitigating factors, which included the fact that the complainants did not lose their virginity as a result of the incidents. They had already been sexually active, and “one of them, although only at school, had sexual intercourse with another person two days before the incident” (our translation from the Afrikaans original). In addition, the complainants had not sustained any physical injuries or psychological harm.

The court then held that the following constituted a “substantial and compelling circumstance”:

“Although there was intercourse with each complainant more than once, this was the result of the virility of a young man still at school who had intercourse with other school pupils against their wishes, and, note, school

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<sup>40</sup> 1999 (1) SACR 502 (W)

<sup>41</sup> Unreported judgement dated 28 July 1999, Case No 29/99, Free State

pupils who had previously been sexually active... Where one is dealing with school pupils, and where, in addition, it appears that the two girls concerned had already had intercourse before, one really shouldn't lose perspective, especially not in relation to the first count, which dealt with a complainant who had in any event been naughty a few days earlier and had intercourse with someone else. The injustice which she suffered in this case does not demand an unusually severe sentence." [*Translation from Afrikaans original.*]

This judgment has a chilling effect, both in terms of its general approach and its conclusion regarding "substantial and compelling circumstances". In his interpretation of the Act and the phrase "substantial and compelling circumstances", Kotze J perpetuates the very myths surrounding rape that one would have hoped to see our courts discarding, i.e. that rape isn't traumatic for a woman unless there are physical scars and injury to show for it, that there are no psychological consequences where a woman has been sexually active prior to the rape and that so-called "rape" is often merely a matter of misunderstood male virility.

- In its submission to the Committee, the Community Law Centre expressed the view that, in the consideration by judges of what is "substantial and compelling circumstances", the following factors should not be taken into account:-
  - whether the complainant has been sexually active;
  - whether the complainant and accused know each other or are related; and
  - whether any real physical injury was sustained by the complainant.

#### Appeals from the Regional Court and the Sexual Offences Courts

- The President of the Regional Court in the Western Cape reported to the Committee that, from 11 February 1997 till the present, about 850 matters were finalised in the Sexual Offences courts in Wynberg. There were only about 40-45 appeals against convictions of which only 14 were successful.

- Concern was expressed about a recent increase in the setting aside of convictions and the reduction of sentences on appeal, especially in view of the fact that magistrates had the best opportunity to assess a witness's performance, an advantage a presiding judge on appeal does not have. The President of the Regional Court in the Western Cape indicated that they were particularly concerned about such appeals being granted by acting judges.
- The Director of Public Prosecutions also expressed concern about lenient sentences being handed down in matters where minimum sentences were applicable, and indicated that his office were in the process of taking various of these judgements on appeal.

Appointment of judges and disciplinary proceedings

- The chairperson of the Parliamentary Justice Committee and member of the Judicial Service Commission (JSC), Advocate Johnny de Lange, made a submission to the Committee regarding the JSC's approach to the appointment of judges. The submission dealt, *inter alia*, with:-
  - The JSC, as the body charged with advising the President on the appointment of judges, constituted in terms of Section 178 of the Constitution: the Chief Justice, the President of the Constitutional Court, a designated Judge President, the Cabinet member responsible for the administration of justice, two practising advocates and two practising attorneys nominated from their respective professions appointed by the President, one designated university teacher of law, six members of the National Assembly, of which three must be from opposition parties, four permanent delegates to the National Council of Provinces and four persons designated by the President.
  - The South African judiciary is composed as follows (as in November 1999):

Number of permanent judges in 13 divisions (including Land Claims Courts, but excluding Labour Courts)	194
Women judges	10
Black judges (29 have been appointed since 1994)	30

Black judges who are heads of divisions (Chief Justice of Supreme Court of Appeal, Judge President of High Court in Transkei and President of the Land Claims Court)	3
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- UWC's Community Law Centre pointed out in their submission that a demographically representative judiciary does not guarantee race and gender sensitivity. The ideal is that every person on the bench must be sensitive to race and gender issues, irrespective of their own race and gender.
- The Chief Justice has formulated the criteria for the appointment of judges as follows<sup>42</sup>:
  - Is the applicant an appropriately qualified person?
  - Is she or he a fit and proper person?
  - Would her or his appointment help to reflect the racial and gender composition of South Africa?
  - Is the proposed appointee a person of integrity?
  - Is the proposed appointee a person with the necessary energy and motivation?
  - Is the proposed appointee both technically competent and able to give expression to the values of the Constitution?
  - Has the proposed appointee the appropriate potential?
  - What message is given to the community at large by a particular appointment?
- It is apparent from the aforesaid that there is no specific requirement for knowledge on and sensitivity to issues relating to women and violence against women.
- The President of the Regional Court in the Western Cape expressed the view to the Committee that judges were mostly drawn from a pool of senior advocates, usually men, whose

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<sup>42</sup> Summarised

experience was mainly in commercial matters, and if they do have criminal experience, it was as an accused-orientated defence counsel. They were therefore not necessarily well-equipped to hear criminal trials and appeals.

- The Commission on Gender Equality reported to the Committee that it was investigating the possibility of incorporating CGE into the JSC to ensure the appointment of a more gender-sensitive judiciary.
- The Minister of Justice advised the Committee that draft legislation on disciplinary and grievance proceedings for judges had been finalised and is presently being circulated among the judiciary.

### Education of judges

- Both the Department of Justice and the Chief Director of Justice College reported that High Court judges resisted efforts to participate in training on the basis that it may compromise judicial independence. However, the Department has in the past reported on its Canadian Justice Linkage Project, a five-year judicial training programme that includes higher court judicial officers.<sup>43</sup>
- Constitutional Court Judge Kate O'Regan presented a report to the Committee on her attendance at a judicial colloquium on the application of international human rights law at the domestic level. The communiqué adopted by the colloquium raised the following issues:
  - the need for countries to seek ways to ensure access for women to the justice system;
  - the need for lawyers, legislators, judges & citizens to recognize the importance of and be familiar with international and regional human rights law;
  - judicial education: calling “for all judges to engage in an on-going process of comprehensive, in-depth and credible judicial education to integrate CEDAW, CRC and other international human rights instruments into domestic law and decision-making to enhance the social, political and economic lives of women & children and to eradicate violence against them”, and “for Governments to support the judiciary in these efforts, including through the provision of adequate resources”;

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<sup>43</sup> Draft Position Paper “Framework for Transformation of the Judiciary” prepared by the Department of Justice and revised in March 1999

- education for lawyers and citizens on human rights;
- the establishment of an international judicial education centre “to assist countries in the design, development and delivery of judicial education programmes on international human rights instruments and jurisprudence”, as well as “an international resource centre to advise and assist law-makers, judicial officers, prosecutors and lawyers in developing specific practices and processes required to implement and integrate international human rights instruments into their domestic legal systems”.

## ▪ LAW ENFORCEMENT

### Previous commitments and recommendations

- In its White Paper on Safety and Security in 1998, the Department of Safety and Security stated that service delivery is a key aspect for women who have often faced secondary victimisation from the SAPS in the past. To give effect to various victim's rights (including the right to be treated with respect and dignity, the right to legal advice and the right to protection), “specific guidelines for use at station level should be developed to ensure that in cases in which women have been victims of sexual offences, rape or domestic violence they are treated with extra dignity, compassion and care”. The White Paper further stated that these aspects would be developed in line with the existing initiatives of the Victim Empowerment Programme (VEP) under the National Crime Prevention Strategy (NCPS).<sup>44</sup>
- In its November 1998 report on Government's Implementation of CEDAW and the BPA, the Committee recorded that it had received no response from either the Minister of Safety and Security or the Independent Complaints Directorate (ICD) to its May 1998 letters requesting an update on programmes to combat violence against women, details of budgetary allocations for implementation of such programmes and the implementation by the SAPS of certain recommendations made by the ICD.

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<sup>44</sup> As reported in the Committee's November 1998 Report on Government's Implementation of CEDAW and the BPA, page 81.

- In the 1998 report of the ICD<sup>45</sup> on the conduct of members of the SAPS made, *inter alia*, the following recommendations<sup>46</sup>:
  - The SAPS should embark on an extensive training programme, aimed at improving the member's understanding of the nature and consequences of violence against women, the context within which such violence occurs and is aimed at enhancing the member's capacity to respond appropriately to such complaints.
  - Suitably trained officers should be attached to each police station. Complainants should be offered a choice of a male or female member to assist in the initial stages of the investigation.
  - Each police station should have a list of organisations that deal with violence against women.
  - The SAPS should review its mechanisms regarding the release of information to the media so as not to discriminate against women and not to invade their privacy.
- The Committee urgently requires a response from the SAPS and the ICD as to whether any of the above recommendations have been implemented.

### **Present experiences of the SAPS**

- Numerous submissions to the Committee indicated that the SAPS remains inaccessible, insensitive<sup>47</sup> and ineffective<sup>48</sup> in preventing violence against women and assisting victims of violence, thereby decreasing the reporting of the crime and prosecution of attackers. The difficulties can roughly be categorised as problems of attitude and abuse and operational problems.

### **Attitudes and abuse**

- Submissions described police as accusatory (Why did you go with him"; "You should not walk in that area alone"; "You know what happens at the shebeens, you shouldn't have been there"), hostile ("you're wasting my time... come back when you get your story straight"; "what do you want us to do about it?"; "why did you wash

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<sup>45</sup> This report is based on an investigation of the conduct of the SAPS members responsible for the investigation of the rape of Nomboniso Gasa on Robben Island.

<sup>46</sup> As reported in the Committee's June 1998 report on the Violence Against Women Hearings.

<sup>47</sup> Reported by National Network on Violence against Women

<sup>48</sup> Reported by Ilitha Labantu

yourself?") and uncooperative ("find him and then come back to us"; "sit there until a female officer arrives to help you")<sup>49</sup>.

- Police were accused of trying to dissuade women from laying charges against perpetrators by stressing negative outcomes/consequences for women if they insist on the arrest of the offender.<sup>50</sup>
- Women also complained of poor police service in cases of domestic violence, and two thirds of those who had gone to the police had difficulty in convincing the police that they were in need of protection or were not treated seriously: in 80% of cases, police arrived hours later or the next day when called to the scene; 34% of women were told to "stop wasting police time", 26% were accused of provoking the violence, 39% were accused of lying; 74% were expected to give statements in not their first language; 43% were told that charges could not be laid due to lack of evidence; police also failed to inform women on procedure, to update them, or to investigate the complaint properly; 55% of complainants were told to "find their attacker" before the police would arrest him.<sup>51</sup>
- The Commission on Gender Equality complained of the SAPS's failure to take complainants seriously, even ridiculing complainants, failure to provide sanctuary to complainants, failure to attempt to apprehend abusers where warrants have been issued, and demanding that survivors accompany police to point out perpetrators.
- Police, on the other hand, complained of women withdrawing charges, lack of resources & transport, non-cooperation of victims in investigations, "false complaints", and laws which limit police's right to enter the respondent's home.
- Various allegations were also made about sexual advances by police officers.<sup>52</sup> It was also reported to the Committee that many policemen are vulnerable to bribery by offenders<sup>53</sup>, resulting in case

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<sup>49</sup> Recorded by UCT's Institute of Criminology's Gender, Law and Development from women about the SAPS during their research amongst rural Southern Cape women. These experiences were confirmed by, inter alia, Nisaa.

<sup>50</sup> Reported by the National Network on Violence against Women

<sup>51</sup> Findings of research conducted by UCT's Institute of Criminology's Gender, Law and Development Project amongst rural women in the Southern Cape

<sup>52</sup> Reported by the Commission on Gender Equality and the National Network on Violence Against Women

<sup>53</sup> Reported by Nisaa

files going missing, thus hampering the investigation and ultimately justice.<sup>54</sup>

- It is a requirement of CEDAW that government should take measures to ensure that law enforcement officers receive training to sensitise them to the needs of women.<sup>55</sup>
- The National Network on Violence Against Women reported that, while it is recognised that training will facilitate the development of more humane treatment of women by police and other officials, gender-sensitive training has in the past not resulted in gender-sensitive practices in the police workplace. There is thus a need to evaluate the outcome of training, and its application in the workplace.
- Tswaranang Legal Advocacy Centre to End Violence Against Women made the point that the mainly military training of police does not equip them to deal sensitively with issues of violence against women.
- In a written submission, the National Police Commissioner advised the Committee that a training programme had been developed to equip members with basic knowledge and skills in this area and all SAPS members would be trained in this over the next two years.
- The Department of Safety and Security reported<sup>56</sup> to the Committee the following efforts to address crimes against women and children:-
  - the SAPS has declared crimes against women and children a policing priority for the third consecutive year;
  - a "national instruction" has been issued with regard to the support of sexual offences and crucial aspects of the investigation thereof. A video-recording of this national instruction was made and distribute countrywide;
  - basic training, detective training and specialised training courses (on, for example, the investigation of sexual offences, family violence and child protection) are in place for members of the SAPS, with special attention to dealing with women survivors;

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<sup>54</sup> Reported by National Network on Violence Against Women

<sup>55</sup> Article 4(i) of Annex F to CEDAW

<sup>56</sup> An "information note" prepared for Director Heunis

- the SAPS is represented at Interpol's Standing Working Party on Offences Against Minors.

### Operational problems

- There still appears to be a gross discrepancy in the distribution of police stations in historically disadvantaged areas, and in particular, in rural areas. It was reported to the Committee that permanent police stations feature in only 14% of historically black areas and in 86% of historically white areas. The main service providers in black areas are satellite stations and contact points.<sup>57</sup> The majority of South African women reside many miles from the nearest police station or magistrate's court, limiting their access to justice.
- It was reported that policemen refuse to respond to calls by women by saying that they do not have vehicles to come to the complainant.<sup>58</sup>
- The National Network on Violence Against Women submitted that there are too few female police officers to counsel survivors of violence, and that they received repeated requests by women for counselling by female officers.
- Women described such difficult experiences as waiting for hours at the police station, having to repeat their story to various different police officers, not having statements taken in their first language, and poor follow-up about arrests, detention or bail hearings of the accused.<sup>59</sup>
- The Office of the DPP emphasised that police need to be trained on the techniques of collecting DNA evidence and its preservation.<sup>60</sup> They need training on how to deal with traumatised victims and children when asking questions particularly as most rapes are not committed by strangers but by those close to the victims, such as relatives.
- The Police Commissioner also told the Committee that police stations are in the process of becoming more victim-friendly and

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<sup>57</sup> UCT's Institute of Criminology's Gender, Law and Development Project's research report entitled "Violence Against Women in the Southern Cape: Exploring Access to Justice Within a Feminist Jurisprudence Framework"

<sup>58</sup> Reported by National Network on Violence Against Women

<sup>59</sup> Recorded by UCT's Institute of Criminology's Gender, Law and Development from women about the SAPS during their research amongst rural Southern Cape women

<sup>60</sup> The Committee received a written submission from P C Willis arguing for the incorporation of fingerprinting and DNA identification coding on the new national identity "smart card". The Committee has not investigated this issue, nor were any questions put to the relevant government departments in this regard.

that R1 million had been allocated for rape victim care packages containing basic toiletries.

- Concern was also expressed about the SAPS's compliance with the Domestic Violence Act, which comes into operation on 15 December 1999.<sup>61</sup> By way of example, the DVA makes provision for the complainant to receive a notice of her rights in her official language and to have the contents thereof explained to her. Most police stations are understaffed and no more than three official languages are spoken. It did not appear as if additional personnel had been allocated to stations for the implementation of the DVA, nor had strategies to address this issue been developed.
- The National Police Commissioner advised the Committee that SAPS national instructions have been compiled in preparation for the implementation of the DVA and that all SAPS members must be trained in terms of these instructions.
- The Department of Safety and Security also reported to the Committee the efforts of the SAPS to transform its existing Child Protection Units into specialised Family Violence, Child Protection and Sexual Offences Units.
  - These FCS units are responsible for policing the crimes of assault with the intention to do grievous bodily harm and attempted murder of a victim older than 18 years where the crime is committed in the context of a family. The units also have jurisdiction over sexual offences (where the victim is 18 and older) including rape, indecent assault, incest and violation of the Sexual Offences Act<sup>62</sup> with regard to the sexual exploitation of adults. The FCS units are also responsible to police the following crimes where the victim is under the age of 18: rape, indecent assault, sodomy, incest, attempted murder, assault with the intention to do grievous bodily harm, common assault (where three or more incidents occur in the context of a family), kidnapping, abduction, violation of the Sexual Offences Act with regard to the sexual exploitation of children, the Child Care Act<sup>63</sup> and the Films and Publication Act<sup>64</sup> relating to child pornography.
  - Fourteen of these FCS units are already operational. There are 27 Child Protection Units and four Indecent Crime Units situated in the main centres, while specialised SAPS

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<sup>61</sup> Expressed by, *inter alia*, the Gender Advocacy Programme

<sup>62</sup> Act 23 of 1957 (as amended)

<sup>63</sup> Act 74 of 1983 (as amended)

<sup>64</sup> Act 65 of 1996 (as amended)

members attached to the Detective Service operate in 156 smaller centres across the country. Where no such special unit or individual is operational, members at the local detective service or police station police the crimes.

- Members of the FCS units receive a three week training course presented by experts including psychologists, criminologists, advocates, medical practitioners and senior police officers.
- The following issues still has to be addressed by the Department of Safety and Security:-
  - the development of a profile of rape survivors and perpetrators;
  - disciplinary action against members of the SAPS who are themselves perpetrators of violence against women;
  - the technical aptitude of investigating officers in the investigation of charges of violence against women, especially rape;
  - the establishment of specialised units for rape and other violence against women and children; and
  - the Department's participation in trauma centres for rape survivors.

## ▪ **WELFARE SERVICES AND SHELTERS**

- The February 1996 Beijing Cabinet commitments relating to violence against women include:-
  - the provision of shelters and relief support to women and girls<sup>65</sup>;
  - increasing the understanding of policymakers and implementers of the impact of violence on women and girls; and
  - encouraging the media to present positive images of women.

### **Counselling and shelters**

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<sup>65</sup> In its 1998 report, the Department of Justice reported back on a Canadian study tour on dealing with violence against women, and the lessons drawn from the tour listed the need for counselling for victims, as well as the necessity of establishing shelters and safe houses for survivors.

- Participants in the hearings reported an absence of proper counselling for women who are survivors of violence. It appeared that officials and professionals were not adequately trained to give meaningful assistance to survivors of violence. It was also reported to the Committee that young women face additional difficulties, since schools are reluctant to deal with sexual assault and see rape as a “police issue” while families tend to “hide” the problem.<sup>66</sup>
- NGO’s and CBO’s also reported a severe lack of temporary safe housing for women as a means of escaping situations of violence.<sup>67</sup> This Commission for Gender Equality called for the urgent establishment of shelters in especially rural areas.
- Nisaa reported to the Committee that, at present, most shelters are funded by overseas donor agencies. They submitted that it is imperative that South African shelters begin to find local funding in the interest of sustainability. Since many NGO’s have developed considerable expertise in running shelters, Nisaa is of the view that NGO’s should run the services with government funding, and NGO’s thus being accountable to government.
- The University of Cape Town’s Institute of Criminology’s Gender, Law and Development Project presented a submission on research undertaken in rural areas in the Southern Cape, and drew the following findings to the committee’s attention:
  - Participants reported fear of retaliation, public humiliation, ostracism by family and friends and little faith in the police and courts.
  - Women reported little or no support from family or the community; women were often too scared of retaliation to help other women, family members blamed the victim for not being obedient enough, with further retaliation from the abuser who has now been humiliated before his family.
  - Participants reported little or no assistance from social workers from local welfare agencies, namely the Department of Welfare and the Christelike Maatskaplike Raad (both of which prioritised child abuse): women expressed a strong

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<sup>66</sup> UCT’s Institute of Criminology’s Gender, Law and Development Project’s research report entitled “Violence Against Women in the Southern Cape: Exploring Access to Justice Within a Feminist Jurisprudence Framework”

<sup>67</sup> In its submission, the Gender Advocacy Programme stated that support services such as shelters, financial support, legal assistance, police protection, access to housing, education, training, employment opportunities, psychological services are all required to assist women to transcend the cycle of abuse.

need for more and better domestic violence counselling and shelters.

- The Gender Advocacy Project (GAP) stated in their written submission to the Committee that support services such as shelters, financial support, legal assistance, police protection, access to housing, education, training, employment opportunities, psychological services were essential to assist women to transcend the cycle of abuse.
- The Welfare Ministry reported to the Committee on the following achievements and proposed projects:-
  - A service directory for police and other professionals has been developed.
  - “One-stop service” shelters were being planned. The Department intends piloting these shelters in under-resourced provinces.
  - The Department had embarked on training of SAPS and Department of Justice officials on the provisions of the DVA. Training of social workers and volunteers would take place in January/February 2000.
  - The Department was planning public education and awareness campaigns on the DVA, and was also in the process of informing provincial Welfare Departments.
  - The Victim Empowerment Programme (VEP), a key programme of the inter-ministerial National Crime Prevention Strategy (NCPS), has been launched and R6 million allocated to the VEP. Provinces and projects responsive to needs of women and girls receive priority in the allocation of funds. 42 service centres for victims of violence were already operational and had been allocated funding of R2,25 million. The funding of nine outreach centres in the provinces is detailed below.
- In the White Paper on Social Welfare of 1997 guidelines for strategy include strategies to counteract all forms of abuse and violence against women, support services for women who have been battered, raped and sexually abused, the training of police officers, magistrates and criminal justice personnel in the management of violence against women, gender sensitive welfare services and taking into account women's needs as care givers.

- The Department of Welfare indicated to the Committee in its 1998 progress report that it was encouraging the media to present positive images of women through a "white ribbon campaign" and the "taxi-net campaign".<sup>68</sup>
- The Department of Justice reported to the Committee that it has established a 24 hour helpline for abused women.
- The following issues remain to be addressed by the Department of Welfare:
  - the Department's efforts to ensure that women are not discriminated against with regard to welfare grants and properly regarded as main care provider, in particular in situations where the husband is alive but absent or unemployed;
  - the Department's efforts to ensure the allocation of more funds to care dependency grants for seriously impaired children.

## **Transport**

- Various submissions described the difficulties experienced by especially rural women in accessing health care and legal services due to inaccessibility of transport.
- UCT's Institute of Criminology's Gender, Law & Development Project reported<sup>69</sup> to the Committee that, in a study conducted among rural women in the Southern Cape, almost 35% of women travel to or from work in the dark in rural areas. It was also found that 54% of historically disadvantaged groups walk to and from work on foot.
- The Department of Transport was not requested by the Committee to participate in the hearings. The Committee intends requesting the Department to furnish it with its formal response to the following issues<sup>70</sup>, with reference to its White Paper on National Transport Policy of 1996:-

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<sup>68</sup> Reported in the Committee's November 1998 Report on Government's Implementation of CEDAW and the BPA, page 34

<sup>69</sup> "Violence Against Women in the Southern Cape: Exploring Access to Justice Within a Feminist Jurisprudence Framework"

<sup>70</sup> These questions were raised by the Committee with the Parliamentary Transport Committee in August 1997.

- the Department's efforts to make public transport more accessible and affordable to women, who rely on these services for access to justice and health care services;
  - the Department's efforts to improve transport within villages and towns, as well as transport to and from rural areas;
  - the Department's efforts to ensure the safety of women on the public transport system, with particular reference to more conductors and alarm cords on trains, safe waiting places at train stations and special measures for transport services after standard commuter times.
- **HEALTH CARE**

### **Medico-legal examinations**

- Various submissions to the Committee reported on practical difficulties experienced with the required medico-legal examination of the victims of sexual assault and rape:
  - Health care services are disproportionately concentrated in historically white and urban centres. Most district surgeons in the rural areas work part-time, combining their official duties with private practice.<sup>71</sup>
  - A concomitant lack of access, mainly transport, especially for rural women. UCT's Institute of Criminology's Gender, Law and Development Project reported that rural women were severely affected by the lack of operational telephones, long distances to travel to police stations (which are often inaccessible and poorly resourced) and to clinics and hospitals.<sup>72</sup> Police are supposed to transport women to district surgeons, but seldom do so, partly as a result of shortage of police vehicles.<sup>73</sup>
  - Lengthy waiting periods<sup>74</sup> between reporting the crime to the police and the medical examination, which not only compounds the victim's trauma, but is also a deterrent to proceeding with criminal charges. One research report

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<sup>71</sup> Reported by UCT's Institute of Criminology's Gender, Law & Development Project

<sup>72</sup> "Violence Against Women in the Southern Cape: Exploring Access to Justice Within a Feminist Jurisprudence Framework"

<sup>73</sup> Reported by both the Women's Health Project and UCT's Institute of Criminology's Gender, Law and Development Project

<sup>74</sup> Also reported by UCT's Institute of Criminology's Gender, Law and Development Project

showed that only 54,8% of survivors were examined within 3 hours of reporting to the police.<sup>75</sup>

- A lack of privacy during the medical examination and a failure on the part of district surgeons to explain the reasons for and nature of the examination, often due to linguistic problems;<sup>76</sup>
  - Inadequate treatment for conditions such as HIV/AIDS, STD's and pregnancy, or treatment without even the most basic of explanations of the health risks faced by rape survivors. Often the necessary treatment, such as post-exposure prophylaxis, is not available. The absence of pre- and post - HIV test counselling was also reported.<sup>77</sup>
  - The President of the Regional Court in the Western Cape further told the Committee that district surgeons often lack expertise and equipment; there have also been cases where district surgeons have refused to examine drunk & drugged victims. The Masimanyane report admitted reluctance on the part of district surgeons to appear in court, and there was even the suggestion that district surgeons deliberately completed the J88 form in an inadequate manner to avoid being called as a witness.
  - A specific request was tabled by the President of the Regional Court to remove question 11(e) ("date of last intercourse with consent") from Form J88 on the basis that it is an unnecessary invasion of the privacy of the survivor.
- Traditionally, forensic evidence collected by the health workers has not been adequate for the prosecution of alleged offenders. The Head of the Sexual Offences and Community Affairs Unit in the Office of the Director of Public Prosecutions reported to the Committee on a successful pilot project in Kimberley, which provided training for forensic nurses to collect evidence and give expert evidence in rape and sexual assault trials. The Office of the DPP indicated that their view was that forensic training had to be extended to nurses and where possible they should be able to give

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<sup>75</sup> Research report by UNISA's Institute for Social and Health Sciences on rape surveillance at the Hillbrow, Lenasia South and Chris Hani Baragwanath medico-legal clinics during 1996 to 1998. 23,6% of rape survivors waited between 3 and 5 hours, 10,7% waited between 5 and 7 hours, and 10,9% waited for longer than 7 hours.

<sup>76</sup> The Women's Health Project. Tswaranang Legal Advocacy Centre to End Violence Against Women mentioned that there is often a callous, unsympathetic and even biased treatment of women who are abused or rape victims.

<sup>77</sup> Reported by Women's Health Project

expert evidence, especially in rural areas, where there is a shortage of medical facilities.

### **Physical and psychological aspects of treatment of victims of violence**

- It further appeared that few health care workers were properly equipped to deal with both the physical and psychological aspects of the treatment of women and children who were victims of violence, especially sexual violence.
- The Women's Health Project reported that most of the general practitioners surveyed by them felt inadequate in coping with issues surrounding domestic violence. Thirty-three percent of the GPs who attended the course reported that they saw women in violent situations almost on a daily basis and a further 13 % saw them at least once a week. Sixty two percent of the doctors saw women who had been raped more than once a month. Where the GPs could deal with the physical aspects such as rape and injury, they were wary and felt ill-equipped to deal with "private" aspects of the problem such as offering counselling and referring the survivor to social structures that could offer assistance (such as legal institutions and shelters).
- Ilitha Labantu reported that district surgeons and hospitals were only concerned about rape victims when the survivor showed physical injuries.
- The Office of the Director of Public Prosecutions (DPP) raised the issue that medical students must be trained properly on how to examine sexually assaulted victims.
- It also appeared that health workers were perfectly positioned to assist women who are victims of violence, with a significant majority of women informing the health care worker who treats them of the identity of their abuser.<sup>78</sup>
- Many health workers, however, are not trained to deal with issues of violence and an education and counselling opportunity is therefore missed.<sup>79</sup> Women's Health Project reported to the Committee that, while the Department of Health recognises the

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<sup>78</sup> In CERSA's report on their research among women in the Eastern Cape, Mpumalanga and the Northern Province, it emerged that 71,4% (Eastern Cape), 93,3% (Mpumalanga) and 90% (Northern Province) of women who received health care told the health care worker who had injured them.

<sup>79</sup> Based on research reports by the Women's Health Project and the Centre for Epidemiological Research of South Africa at the Medical Research Council.