

- What is sexual abuse and violence?
  - When and why does violence occur within relationships?
  - Is violence acceptable within relationships?
  - How can potentially violent situations be dealt with?
- It appeared from numerous submissions that the lack of employment and realisable aspirations among especially young men contributed towards abuse of women through displacement of frustrations onto vulnerable partners, as well as through increased drug and alcohol use. The Committee therefore recommends that government prioritises job creation in areas where abuse is most prevalent.<sup>179</sup>

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<sup>179</sup> Recommendation by CERSA in submission N

## ▪ LIST OF WRITTEN SUBMISSIONS

- A. Rape Crisis Cape Town, e-mail to the Committee dated 19 October 1999
- B. Women's Media Watch, e-mail to the Committee dated 19 October 1999
- C. Family & Marriage Society of South Africa (FAMSA) (Durban), telefax to the Committee dated 20 October 1999
- D. WACA Advice Centre, Ga-Rankuwa, telefax to the Committee dated 15 October 1999
- E. Commission on Gender Equality, telefax to the Committee dated 19 October 1999
- F. Commission on Gender Equality: Submission to the Committee dated 8 November 1999
- G. Commission on Gender Equality: "Violence Against Women and the Media" Delivered at the hearings on 8 November 1999
- H. Gender Monitoring and Advocacy Collective (CGE, COSATU, Child Health Unit, HRC, Khululekani Institute for Democracy, Nicro Women's Support Centre): telefax to the Committee dated 22 October 1999
- I. FAMSA (National Office): Telefax to the Committee dated 21 October 1999
- J. Gender Advocacy Programme (GAP): "Barriers to Implementation of the Domestic Violence Act 116 of 1998"
- K. Centre for Rural Legal Studies (Karen Kleinbooi): "Domestic violence: The plight of women farm workers"
- L. Constitutional Court Judge Kate O'Regan: "Address to the [Committee] concerning a Judicial colloquium on the application of international human rights law at the domestic level held in Vienna from 27 – 29 October 1999" Delivered at the hearings on 15 November 1999
- M. Naeemah Abrahams, Medical Research Council's Centre for Epidemiological Research in South Africa (CERSA): Summary of submission Q below Delivered at the hearings on 15 November 1999

- N. Rachel Jewkes et al, CERSA (Women's Health): "Relationship dynamics and adolescent pregnancy in South Africa"
- O. Gender, Law & Development Project, Institute of Criminology, University of Cape Town (Lillian Artz): "Violence Against Women in the Southern Cape: Exploring Access to Justice Within a Feminist Jurisprudence Framework" (1999)
- P. Katherine Wood and Rachel Jewkes, CERSA: "Love is a dangerous thing: Micro-dynamics of violence in sexual relationships of young people in Umtata"
- Q. Rachel Jewkes et al, CERSA: "He must give me money, he mustn't beat me: Violence against women in three South African provinces"
- R. Katherine Wood et al, CERSA: "Sex, violence and constructions of love among Xhosa adolescents: putting violence on the sexuality education agenda"
- S. Naeemah Abrahams et al, CERSA: "I do not believe in democracy in the home: Men's relationship with and abuse of women"
- T. MRC and Department of Health: Preliminary Report on South Africa Demographic and Health Survey 1998
- U. Lu-Anne Swart et al, UNISA Institute for Social and Health Sciences: "Rape surveillance through district surgeon offices in Johannesburg, 1996 – 1998: Evaluation and Prevention Implications"
- V. Ministry for Welfare, Population and Development
- W. UCT (Rob Turrell): "A historical overview of death sentences for rape"
- X. Ministry of Education
- Y. Ministry of Justice and Constitutional Development
- Z. Mr. T D Rudman, DDG: Legislation, Department of Justice "The process of implementing legislation"
- AA. Newspaper article by F Moya
- BB. Submission by Masimanyane Women's Support Centre, East

London, delivered at the hearings on 10 November 1999

- CC. Department of Correctional Services: "Trends, Safety and Security"
- DD. Department of Correctional Services
- EE. Department of Correctional Services: Table of Contents
- FF. Marion Stevens et al: Women's Health Project: "Sexual and reproductive rights, health policies and programming in South Africa 1994 – 1998"
- GG. C van Riet, Justice College: "Beijing Platform of Action Report: Justice College Training"
- HH. C van Riet, Justice College: Progress Report
- II. Zubeida Dangor, NISAA Institute for Women's Development
- JJ. Lisa Vetten: "Gender, Race and Power Dynamics in the Face of Social Change: An Attempt to Understand Violence Against Women in South Africa"
- KK. Department of Correctional Services: Statistics
- LL. Professor Jacklyn Cock, Department of Sociology, University of the Witwatersrand
- MM. Information Note on Family Violence, Child Protection & Sexual Offences Units Prepared by the SAPS
- NN. South African Police Services: "Family Violence, Child Protection and Sexual Offences Unit"
- OO. UWC's Community Law Centre's Gender Project:
- PP. P C Willis, Rondebosch: Written submission on DNA identification technology

## ▪ **ORAL SUBMISSIONS**

- (i) Asiganang Domestic Abuse Prevention and Training (ADAPT)
- (ii) Western Cape Regional Magistrate's Commission

- (iii) Tswanarang Legal Advocacy Centre
- (iv) National Network Violence Against Women
- (v) Ilitha Labantu

▪ **OTHER DOCUMENTS**

- 16.1 Convention on the Elimination of Discrimination Against Women (CEDAW)
- 16.2 Beijing Platform for Action
- 16.3 Committee's Report on Government's Implementation of CEDAW and the Beijing Platform for Action – November 1998
- 16.4 Committee's Second Annual Report – January 1998 – March 1999
- 16.5 South African Law Commission: Discussion Paper 85 and Executive Summary and Draft Bill Of Discussion Paper 85 On "Sexual Offences: The Substantive Law" – 12 August 1999
- 16.6 Department of Welfare: National Crime Prevention Strategy Victim Empowerment Programme – May 1998
- 16.7 White Paper on Safety and Security "In Service of Safety" 1999 – 2004 – September 1998
- 16.8 White Paper on National Transport Policy - August 1996
- 16.9 White Paper on Social Welfare – August 1997

The Joint Monitoring Committee on the  
Improvement of Quality of Life and Status of  
Women's: Additions to the Report on the Violence  
Against Women Hearings – February 2001

The Joint Monitoring Committee on the Quality of Life and Status of Women held public hearings on Violence Against Women in November 1999. The report (of February 2000) does not include recommendations by the Committee on the issues covered below. The Committee recommends the following inclusions:

### **13.8 The budget and allocation of resources**

The committee recommends that:

13.8.1 Government prioritise resources, both financial and human, to projects such as those in the NCPS Victim Empowerment Programme especially where it relates to violence against women and children.

13.8.2 Separate budgetary allocations be made for violence against women in departments such as Safety and Security.

13.8.3 The Department of Finance ensures that the gender analysis of the different department's programmes be reintroduced in the National Budget.

### **13.9 Inter-ministerial co-operation and co-operative governance**

The committee recommends that:

13.9.1 The Department of Foreign Affairs makes a written submission on:-

13.9.1.1 The development of a gender desk in the department.

13.9.1.2 The department's programmes and efforts, which aim to curtail the international and cross-border trafficking of women and children from South Africa and into South Africa.

13.9.1.3 What the department's role is together with the Department of Justice in considering legislation in this regard?

13.9.2 The Departments of Housing, Agriculture and Land Affairs provide the Committee with a report on the progress and achievements of the Women For Housing Group in the Department of Housing, efforts in ensuring that women are

not discriminated against in the granting of housing subsidies, access to rural housing and rural land allocation.

### **13.10 Co-operation between government and civil society**

13.10.1 Government departments to issue progress reports to the Committee on their involvement with NGO's and in particular, what funding has been provided to the NGO sector in giving effect to CEDAW.

### **13.11 The need for a statistical database**

13.11.1 The Department of Safety and Security should be asked to ensure that their information on violence against women be disaggregated in a more effective manner, which clearly indicates and records data on domestic violence and femicide.

The Joint Monitoring Committee on the  
Improvement of the Quality of Life and Status of  
Women

**Summary Report On Violence Against Women**

**JULY 2001**

## Introduction

The Joint Monitoring 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. The Committee's specific brief is to monitor government's commitments made at the United Nations 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 signed and ratified CEDAW and government departments tabled their commitments to the Beijing Platform for Action (BPFA) in February 1996. Both CEDAW and the BPFA detail a state's obligation to introduce measures to protect the rights of women and mechanisms to eliminate gender-based violence.

The Committee's hearings on violence against women were held from 8<sup>th</sup> to 17<sup>th</sup> November 1999. **Copies off all written submissions are available from the Committee clerk.** The objectives of the hearings were the following: -

- To identify what and where the blockages are which impede women who have been victims of all forms of violence, from access to justice; and
- To determine the varied ways in which such obstacles to justice can be addressed and eliminated.

This summary report will detail the following:

- An overview of the critical points raised in the submissions at the hearings, November 1999.
- To track the changes after the November 1999 hearings within various sectors dealing with aspects of violence against women.

### An Overview – Violence against Women Hearings, November 1999

**The detailed report discussed violence against women, with special reference to the submissions made at the hearings, under the headings:**

- Criminal Justice
- Law Enforcement
- Welfare Services and Shelter
- Health Care
- Incarceration of Offenders
- Recent Research on Violence against Women
- Public Awareness and Education
- Allocation of Financial Resources and the Budget
- Inter-Ministerial Co-Operative Governance
- Co-Operation between Government and Civil Society

- The Need for a Statistical Database
- Recommendations and Queries to Government Departments

**A comprehensive assessment and analysis of the above is beyond the scope of this summary report. The detailed report is attached to this summary report so that readers can use it as a cross- reference if more information is required around certain aspects.**

### **Achievements of South Africa in Working Toward the Elimination of Violence against Women**

Criminal Justice

#### **New and Proposed Legislation and its Implementation**

##### **New Legislation**

- The Domestic Violence Act (DVA) (Act No. 116 of 1998) which repeales some sections of the Prevention of Family Violence Act (Act No. 133 of 1993).
- The Criminal Procedure Act, which limits the granting of bail for persons accused of committing serious offences, which include rape and which also makes provision for minimum sentences for murder and rape with aggravating circumstances.

##### **Proposed Legislation**

The South African Law Commission's (SALC) Sexual Offences Discussion Paper incorporates a proposed Sexual Offences Bill which extends the common law definition of rape to include 'unlawful sexual penetration' under coercive circumstances. The proposed legislation provides that marriage do not constitute a defence to rape. Also, consent does not constitute a defence in:

- Sexual molestation.
- Sexual offences against mentally impaired persons.
- Child prostitution.

The move away from 'without consent' to 'coercive circumstances' is considered by many as progressive.

SALC has also produced a discussion paper on procedural aspects of the prosecution of sexual offences, which include the cautionary rule, evidence of previous sexual reconciliation history of complainant.

## Specific Impediments to the Implementation of the Domestic Violence Act (DVA) and Issues Pertaining to Sexual Offences - Submissions<sup>180</sup>

The following crucial points were raised at the Hearings of the Committee, in written and oral form. It must be pointed out that the hearings were held before the implementation of the DVA (December 1999) and that these submissions highlight the perceived problems that could be encountered.

These were:

- Women's inability to access their rights due to lack of knowledge around the DVA.
- Discretion of magistrates in sentencing procedures.
- Legal representation is too costly and so disadvantages many poor women.
- Education for the judiciary, for example, clerks of the court is inadequate.
- Inaccessibility to police stations and courts due to transport problems make it difficult for women to report and follow-up and thus recourse to the DVA would not fully be utilised.
- Whilst the legal aspects of the DVA are technically correct, activists argue that support mechanisms to ensure the eradication of domestic violence is lacking.
- Misconception around domestic violence even amongst victims as it is still viewed as a "private family matter".
- Language barriers and staff shortages further exacerbate the full implementation of the DVA.
- Confusion around whether social workers or police officers inform victims of their rights.
- The 13 forms required to implement the DVA were still not printed.
- Producing proof for exemption to pay for protection orders is cumbersome.
- Infrastructure to break the cycle of violence is lacking.
- **Department of Justice:** consulting all role players is time consuming; lack of policy statements and implementation strategy will delay the implementation of the DVA, increase in workload may result in bad service delivery and will have detrimental effects on gender violence. Infrastructure, support structures and security is still lacking.
- **Functioning of Existing Courts and Establishment of Special Courts:**
  - Negative experiences of courts in general which is a direct consequence of a lack of adequate facilities and human resources to handle victims of gender violence, massive backlogs of cases which causes delays of 9 months between date of complaint and trial.
  - Communication breakdown.
  - Inadequate transport to hospitals, courts and police stations.

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<sup>180</sup> A list of stakeholders that provided written and oral inputs if listed at the back of the main report, February 2000.

- Reluctance of medical examiners to appear in court.
- Victims waiting in the same hallways as assailants.
- Dockets being lost.
- Victims not notified of assailant's bail hearing.
- Failure of Sheriffs to serve interdicts in informal and rural areas.
- **Two permanent magistrates in the Sexual Offences Court** raised the following concerns:
  - A reconsideration of the adversarial system in sexual offences cases.
  - A re-examination of strict rules of evidence in sexual offences cases, and cautionary rules.
  - Children should testify through an intermediary.
  - Section 170A should be amended to include mentally impaired persons under 18 years.
  - 'Undue mental stress' is difficult to determine.
  - Section 51(3) of the Criminal Procedure Amendment Act regarding minimum sentences as well as Section 158 of the CPA which allows witnesses not to give evidence in the presence of the accused, is difficult to interpret.

In response to the concerns raised above, the **Department of Justice** provided the following input for more efficient service provisions.

- They were finalising a Customer Service Charter for court users.
- A service delivery plan was underway.
- A Victims Rights Charter was developed.
- Various information campaigns for court users, including the 16 Days of Activism Campaign, which incorporates the issue of Violence against Women, were initiated.
- Using the information from the Canadian Study Tour to focus on lessons learnt there, such as an inter-sectoral approach, economic empowerment of women, survivor counselling and offender rehabilitation, and shelters and safe houses for victims.
- Specialised Family Courts are already operating as pilot courts in Cape Town, Port Elizabeth, Durban, Johannesburg and Lebowakgomo and these handle domestic violence cases.
- The Department plans to establish 20 additional Sexual Offences Courts within 2 years.

On the 1 December 1999, the **Director of Public Prosecutions** reported that a Special High Court concentrating only on rape cases will be established in Mdantsane.

▪ **Court Clerks, Interpreters, Prosecutors and Magistrates**

Functions of Court Clerks – **organisers and facilitators of case rolls at courts are the primary assistants to applicants for protection orders in terms of the DVA.**

The concerns raised with regard to the above were:

- Prosecutors needed to give better technical assistance and support to women.
- High turnovers of prosecutors that were on leave and/or transferred to other courts impact negatively on gender violence.
- Prosecutors are ill-prepared because of workloads and lack of resources.
- No hearings for violations of interdicts.
- Magistrates and prosecutors need training on non-legal aspects of rape.

In response to the above concerns, various departments commented on how the process was being addressed. The **President of the Regional Court for the Western Cape** reported a system of “court nags” has been introduced to ensure court cases run on time and to telephone witnesses and role-players two weeks prior to trial dates. The **Department of Justice** reported that they are in the process of establishing pre-trial services to alert prosecutors and magistrates of previous convictions and arrests of offenders. The **Head of Sexual Offences and Community Affairs** in the **Office of the Director of Public Prosecutions** reported that 60 prosecutors were undergoing training which includes:

- Collection of evidence.
- Presentation of DNA evidence.
- Cross-examination skills and sensitivity in dealing with witnesses.
- Framing of age appropriate questions.
- Also proposed that a coalition between NGOs, police and prosecutors should be formed to provide counsellors and intermediaries for traumatised witnesses.

The **Chief Director of the Justice College** reported that magistrates and prosecutors are undergoing training in sexual offences, child law, domestic violence, violence against women, basic human rights and social context training.

### **The Judiciary**

**The Committee expressed concern about inappropriate sentences handed down by High Court Judges and implications of statements in rape cases and violence against women. Concern was expressed about views of judiciary which reflect stereotypes and suggestion of women collaborating**

**in crimes against them. Further concern was raised around the interpretation of recent amendments to the Criminal Procedure Act which deals with the imposition of a minimum life sentence where the victim is:**

- Under 16 years old, is raped by more than one person acting with common purpose, or where grievous bodily harm is inflicted, save where “substantial and compelling circumstances” exist which would justify a less severe sentence. The judicial interpretation of this exception has come under scrutiny by women’s organisations and the media.

The University of the Western Cape’s Law Centre’s Gender Project examined disparities in recent cases and argued that judges should consider the following factors in ‘substantial and compelling circumstances’:

- Whether the complainant has been sexually active is irrelevant.
- Whether the complainant and accused are acquainted or related is irrelevant.
- Whether the complainant sustained any physical injury is irrelevant.

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

**2 concerns were raised:**

- Increase in the setting aside of convictions and the reduction of sentences on appeal.
- The Director of Public Prosecutions expressed concern about lenient sentences being handed down where minimum sentences were applicable.

### **Appointments of Judges and Disciplinary Proceedings**

**The Chief Justice formulated the criteria for the appointment of judges and it became apparent that there is no specific requirement for knowledge on and sensitivity to issues relating to women and violence against women. The Minister of Justice reported that he was canvassing the views of judiciary on new legislation on training, disciplinary and grievance proceedings of judges.**

### **Education of Judges**

**Constitutional Court Judge Kate O’Reagan presented a report on her attendance at a judicial colloquium on the application of human rights law at domestic level. Issues raised were:**

- Countries should seek ways to ensure access of women to the justice system.
- Lawyers, legislators, judges and citizens to recognise the importance of and be familiar with international and regional human rights.

- Judicial education for all stakeholders and to integrate CEDAW and other human rights instruments into domestic law and decision making to enhance the social, political and economic lives of women and children.
- Establishment of an international judicial education centre to “assist countries in 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 all stakeholders”.

## **LAW ENFORCEMENT**

### Previous Commitments and Recommendations

**The 1998 White Paper on Safety and Security places emphasis on service delivery for women who faced secondary victimisation from the SAPS in the past. Specific guidelines for use at station level have been devised. The White Paper adheres closely to the initiatives of the Victim Empowerment Programme (VEP) under the National Crime Prevention Strategy (NCPS).**

The 1998 report of the Independent Complaints Directorate (ICD) on the conduct of members of the SAPS provided the following recommendations:

- Extensive training programmes for the SAPS to gain an understanding of the context and nature of violence against women.
- A list of organisations that deal with violence against women should be placed at police stations.
- The releasing of information to the media should be reviewed.

### Present Experience of the SAPS

The submissions to the Committee regarding the SAPS highlighted the difficulties confronted by women in accessing police stations. The most common categories that emerged strongly in submissions from the NGOs and the SAPS were problems of attitude and abuse and operational problems. **(For a full list of these problems, please refer to the more detailed report).**

The following issues still remain 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.
- The Department’s participation in trauma centres for rape survivors.

## **Welfare Services and Shelters** **Counselling and Shelters**

**In the White Paper on Social Welfare of 1997, guidelines 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.**

Participants in the Hearings reported the following:

- An absence of proper counselling for women who are survivors of violence.
- Severe lack of temporary safe housing for women as a means of escaping situations of violence.
- Lack of government funding of shelters.
- 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 violence.
- The Institute of Criminology's Gender, Law and Development Project, UCT, presented their research findings of rural areas in the Southern Cape. These include:
  - 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.
  - Participants reported little or no assistance from social workers and local welfare agencies.

The Welfare Ministry reported on the following achievements and proposed projects:-

- A service delivery for police and other professionals has been developed.
- "One-stop service" shelters were being planned.
- Training of the SAPS and the Department of Justice officials on the provisions of the DVA. The training of social workers and volunteers would take place in January/February 2000.
- Planning of education and awareness campaigns of the DVA.
- The Victim Empowerment Programmes (VEP), a key programme of the inter-ministerial National Crime Prevention Strategy (NCPS) has been launched.

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 providers.
- 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;
- Though 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, with reference to its White Paper on National Transport Policy of 1996. These are:
  - 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.

### **Health Care**

#### Medico-Legal Examinations

#### **Various submissions 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.
- A concomitant lack of access, mainly transport, especially for rural women.
- Lengthy waiting periods 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 proceedings with criminal charges.
- 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. This is often due to linguistic problems.
- 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.
- The President of the Regional Court in the Western Cape told the Committee that district surgeons often lack expertise and equipment.

There have also been cases where district surgeons have refused to examine drunk and drugged victims.

- Reluctance on the part of district surgeons to appear in court;
- Suggestions that district surgeons deliberately completed the J88 forms in an inadequate manner to avoid being called as a witness.

### **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.
- District surgeons and hospitals were only concerned about rape victims when the survivor showed physical injuries.
- It also appeared that health workers were perfectly positioned to assist women who are victims of violence, with a majority of women informing the health care worker who treats them of the identity of their abuser.
- Many health workers, however, are not trained to deal with issues of violence and an education and counselling opportunity is therefore missed.
- In the **Department of Health's 1998 Progress Report** to the Committee, the Department stated that it had joined other countries to discuss a resolution on the prevention of violence as a public health priority, that it participates in the National Network on Violence against Women and that it assisted in developing guidelines for survivors of sexual offences.

The following issues remain to be addressed by the Department of Health:

- The necessity of shifting the focus of health care services for women from childbearing to reproductive health, including counselling and education on and treatment for reproductive health, especially infertility, sexually transmitted diseases and especially violence against women.
- Training and education of health care workers in domestic violence as a mainstream health issue.

### **HIV/AIDS and Violence against Women**

- Women and children who have been the victims of sexual abuse and violence face special risks of contracting sexually transmitted diseases (STDs) and in particular HIV/AIDS.

- The violence and coercion involved in the sexual relationships of so many men and women in South Africa limit especially young women's capacities to protect themselves against HIV/AIDS.
- Various perverse myths have arisen during the last decade connecting sex with certain types of women with a cure for AIDS, thereby adding a new dimension to sexual violence against women.
- Government funding of the controversial drug AZT. In an address to the National Assembly on 16 November 1999, the National Minister of Health, Dr ME Tshabalala-Msimang stated that the government has declined to supply AZT to people infected with HIV/AIDS and people who may have been infected through needle-pricks or through rape, on two grounds – affordability and the absence of proper research on the possible harmful side-effects of AZT, in particular its toxic profile.

### **Incarceration of Offenders**

- The Department of Correctional Services presented a submission to the Committee describing their extensive education and rehabilitative counselling programmes for inmates, and in particular perpetrators of sexual violence.
- The department reported on their education programmes for women inmates (such as programmes on adult basic education and training, reproductive health, including HIV/AIDS, parenting skills, stress and anger management, alcohol and drug abuse).
- The department's policy stipulates that mothers with infants and young children must be kept in a separate Mother and Child Unit;
- It was also reported that the Department now had a programme by which all reasonable efforts were made to notify victims of the parole hearings, and the release or escape of prisoners.
- The Department's submission points out that a victim or relative is responsible to inform the Commissioner of Correctional Services in writing of her contact details, change of address and costs incurred to attend the parole board hearings.
- The Department also attempts to assist prisoners about to be released by way of counselling, accommodation and transport arrangements and community integration programmes to assist prisoners to obtain employment on release.

### **RECENT RESEARCH ON VIOLENCE AGAINST WOMEN**

Research reports on violence against women were submitted to the Committee. However the limitations of the research, such as, specific geographic areas, and generalizations should be guarded against when studying the findings. These difficulties highlight the necessity for a statistical data base on issues relating to violence against women and children and gender attitudes. **A selection of**

**research reports have been placed in this summary report. For more details of all research findings, please consult the complete report.**

## **SUMMARY OF RESEARCH**

**UNISA's Institute for Social and Health Sciences** presented a research report on rape surveillance based on district surgeons' offices in Johannesburg from January 1996 to December 1998. It includes Hillbrow, Lenasia South and Chris Hani Baragwanath medico-legal clinics:

- 51% survivors were between ages 15 and 25.
- 88.3% of rapes were perpetrated by a person of the same race group.
- 58.2% of rapes occurred over the weekends, and 43.7% took place between 18h01 and 0h00.
- 44.7% survivors were acquainted with their perpetrators.
- Younger victims were more likely to know their perpetrators.
- 31% of rapes were committed in open fields, 29.1% in rapists home, and 14.2% in victim's home.
- 73% of rapes were committed by single perpetrator and 27% involved multiple attackers.
- Weapons were used in 54.9% of attacks: mostly knives (50.9%) and firearms (35.3%) In 85.5% of cases weapons were used only to threaten.

**UCT's Institute of Criminology's Gender, Law and Development Project** research submission undertaken in rural areas in Southern Cape found that statistics and dynamics for rape are similar in rural and urban areas, but access to justice and support differ enormously. The study revealed that:

- Rural women experienced and witnessed injuries ranging from burns from boiling water to severe head injuries. Participants stated that, in their community, men were "professionals" in domestic violence, hitting a woman on her body and not on her face, so that the injuries are not too identifiable, but when she has been accused of infidelity, women sustain head and facial injuries "to make her ugly to other men".
- Participants listed domestic violence, alcoholism, under- and unemployment, the rape of women and property crime as major problems in their communities.
- Rape and sexual molestation of children were seen as the biggest threats to women and girl children in the communities.
- Economic abuse was a notable feature of the research.
- Women listed the following causes of domestic violence: Lack of respect for women, problems with children, unemployment and alcohol abuse, suspicion or jealousy and culture.
- The report also lists the following reasons for the limited access to justice for rural women:
  - Economic disempowerment was mentioned as being the single factor which prevented women from removing themselves from the domestic violence.

- Women in rural areas lack nearby services and the cost of transport decreases a woman's ability to leave violent situations or even seek information or assistance to deal with the problem.
- Limited access to state and private health, welfare and justice services results in systemic discrimination by the state in almost every area of rural women's lives.
- No accessible houses or shelters for women in rural areas.
- Fears of community gossip or alienation from their communities if they seek assistance.
- Very few development services exist in rural communities.

The combined effects of poverty and violence for rural women in the Southern Cape create formidable barriers to women's equality, mental and physical health, and their full participation in civil society. Current laws contain systemic inequalities, state legal structures are inherently discriminatory against women and do not meet the needs of rural women.

**The Medical Research Council's Centre for Epidemiological Research in South Africa (CERSA)** presented three research reports at the hearings. CERSA presented a research report on domestic violence based on the first major community-based prevalence study conducted among women in the Eastern Cape, Mpumalanga and the Northern Province. Its main findings were the following:

- Emotional, financial and physical abuse are common features of relationships and that many women have been raped.
- Physical violence often continues during pregnancy and constitutes an important cause of reproductive morbidity.
- Many women are injured by their partners and considerable health sector resources are expended providing treatment for these injuries.
- Injuries result in costs being incurred in other sectors, notable to the family and the women's community and to employers in the national economy.
- Considerable mental distress is associated with abuse.
- There was considerable agreement with patriarchal gender relations but women also indicated that the prevailing gender attitudes in their culture was much more patriarchal than their personal views.
- The report also mentions that there was considerable disagreement amongst the women about the meaning attached to their culture to customs like lobola, indicating the possibility of popular discussion and examination of these traditions.
- Research conducted amongst pregnant Xhosa-speaking adolescents in Khayalitsha initially intended to focus on contraception, bodily knowledge and pregnancy, found that male violence dominated the sexual relationships of these women.

CERSA also reported on research conducted among young people in Umtata. Some of their key findings were the following:

- Physical assault and rape or coercive sex was reported by many participants.
- Violence was used by boys as a way of imposing the rules of relationships and was particularly associated with girls' rejection of "proposals of love", attempts to end relationships, refusals of sex and their actual or suspected infidelity.
- Physical violence was a way of life for not only the teenagers, but in all community relationships.
- The gender identities of the participants were substantially constructed in terms of their success in sexual relationships, and pursuits of gaining and keeping boy- and girlfriend were overwhelming the preoccupation for those young people.
- Neither teachers nor parents made any effort to promote safe dating or to interfere in the violent activities.

The **1998 South African Demographic and Health Survey** reported statistics on violence against women that were significantly lower than those reported by other studies. The survey mentions that the under-reporting of gender violence is well recognised and should be taken into account in interpreting its results. The Survey also records that one in five currently married women reported economic maltreatment, indicated by the regular non-provision of money for food, rent or bills, whilst having money for other things.

### **Public Awareness and Education**

- It emerged strongly from the hearings that rape, sexual assault and domestic violence are more prevalent in South African society than ever recognised and that fear and expectations of violence is a way of life for many South African women.
- The hearings also shattered the common myth that the rapist is a stranger who lurks in dark alleys.
- Submissions reportedly mentioned our history of oppression and disregard for human rights as the context in which violence against women flourished, and emphasised the importance of addressing violence against women by placing it both within a historical and political perspective and to recognise the influence of apartheid in the present mindset of individuals, communities and society as a whole.
- It was also argued that the division of the people of this country according to race contributed to the prevalence of violence against women.
- The Centre for the Study of Violence and Reconciliation explored the imbedded patriarchy which contribute to violence against women in South Africa. Imbedded Patriarchy refers to the ideology of granting men power and privilege over women can be seen as the one factor unifying South Africa's various cultural and ethnic groups. Patriarchy also has severe economic consequences for women, who are much more likely to be unemployed and without access to any income of their own, while men

control the allocation of household finances and even hamper women's efforts to obtain and keep employment, leaving women totally financially dependent.

- CERSA also reported deep-rooted patriarchy and a concomitant lack of respect for women, who are often seen as the property of their husbands or father, or communities, as a factor in the scourge of violence against women.
- Submissions also mentioned deepening levels of poverty and inequality in post-apartheid South Africa, which affects women more as the major component of the unemployed in South Africa.
- Gendered constructions of male and female sexuality have created the idea that men should be sexually active and women passive and without sexual desire. This implies to some men that women need to be forced to have sex in a context where it is not acceptable for women to indicate her consent.
- Research has shown a vast discrepancy in attitudes to the fidelity required from men and women. It is acceptable for men to have many sexual partners, but women are required to be faithful to one partner.
- A submission also indicated that government inaction is a factor, which contributes to the high level of gender violence in societies.
- Submissions also pointed out that, despite its wide-ranging powers to educate the public, the media was irresponsible in its reporting of violence against women, perpetuating stereotypes and relying on sensationalism.
- Both government submissions and those of NGOs reported an enormous lack of understanding of violence against women by the public.
- It was also apparent from the submissions that both men and women are uninformed about sex and sexual health and women are therefore unable to protect themselves and to provide information and support to other young women.
- Various submissions stressed the importance of involving men in programmes on eradicating violence against women.
- Although COSATU did not participate in the hearings, the Committee Chair has addressed shop stewards in the COSATU violence against women and HIV/AIDS campaigns. COSATU has produced a guide for shop stewards on these issues and is in the process of holding training workshops for its shop stewards.
- **Department of Education's Initiatives to Address the Issue:**
  - In its Gender Equity Task Team Report (the GETT report), the Department of Education identified the following issues to be considered and addressed relating to gender-sensitive education and violence against women:
    - Identifying means of correcting gender imbalances in enrolment, dropout rates, subject choice, career paths and performance.
    - The advantages and disadvantages of single sex schools.
    - Sexism in curricula, textbooks, teaching and guidance;

- Sexism, sexual harassment and violence throughout the education system.

The GETT report also lists the following recommendations:

- That new legislation should be developed to make explicit the legal responsibilities of education authorities to uphold the rights of students to be free from discrimination and harassment.
- That the National Department of Education should develop an interim policy on sex and gender based harassment and violence.
- That the National Department of Education should develop a training package for educational managers on their responsibility to prevent discrimination, violence and harassment as well as curriculum packages which incorporate learning about gender and violence at all levels of education.

The Minister of Education made an oral submission to the Committee regarding the Minister and the Department's efforts to address violence against women. The following points were made:

- The Department of Education's 1997 report on Gender Equity in Education dealt with sex based violence in schools.
- The Director-General of Education reported to the Committee that, in their attempts to include sex and gender education in the curriculum, they had initially experienced some resistance from sections of the communities who did not want to expose small children to issues of sexuality. It was hoped that the issue could be more appropriately addressed under the auspices of Curriculum 2005.
- The Minister of Education reported that a gender Equity Directorate had been established in April 1999, which liaises with Gender Focal Points in Provincial Departments through the National Gender Co-Ordination Committee.
- The Education Department was also preparing gender training programmes for all national and provincial officials, as well as a Mainstreaming Handbook for use by gender officers.
- A school-based project on sex-based and gender-based violence and harassment was being developed.

The Committee would like to receive a formal response from the Department of Education on the following issues:

- The Department's efforts to ensure that gender issues are not isolated to the Gender Equity Unit.
- What programmes the Department is planning in order to raise awareness about sexism and violence against women in educational institutions and in particular the pre-service

- and in-service training of teachers and to raise awareness in the general public.
- The provision of extended day care facilities for younger children and infants born to school girls.
  - The Department's investigation into the desirability of single sex government schools and the possibility of teaching certain subjects separately to boys and girls.
  - The development of gender sensitive textbooks and curricula, as well as the development of comprehensive age-sensitive and sexual health education.
  - The Department's efforts to improve the education and Matric pass rates and to decrease the dropout rate of girls, especially rural African and Coloured girls.
- Other important theories that emerged for the perpetuation of violence against women in South Africa noted:
    - The intersection of race and gender oppression – examples of the double burden of oppression borne by black women are slavery and indentured servitude. Women slaves and their bodies were considered the property of their owners. A certain perception of how African women should be treated also emerged.
    - Changes in the social order – research has shown that an increase in violence against women, and especially sexual violence often occurs to changes in the social order.
    - Legitimising violence against women – the difficulties created by African traditional and customary law by adhering to customs that are oppressive to women.
    - Militarisation – the apartheid era militarisation of South Africa and the use of violent repression together with anti-apartheid movement decisions about education and armed reaction have resulted in entire generations of 'lost' and violent young men and a general culture of violence – where violence is seen as a legitimate means of conflict resolution.
      - In addition, a culture was cultivated in which qualities regarded as 'feminine' is treated with contempt as 'weakness' and a tough, aggressive, brutal and competitive masculinity is promoted.
      - Professor Jacklyn Cock similarly blamed the legacy of militarisation which involves "a proliferation of weaponry and ideas which link violence to masculinity".

### **The Budget and Allocation of Resources**

- At a Cabinet meeting in 1996, the Department of Finance committed itself to considering the reallocation of military expenditure to support women's economic advancement. In

1992/93, the Department reduced expenditure on Defence from 9.1% of total government spending to 5.7% in 1997/98. Spending on social services increased from 43.7% to 46.9%.

- In its Second Annual Report (January, 1998 – March 1999), the Committee recorded its formal questions to the Minister of Finance on, *inter alia*, progress on the Ministry's 1996 Cabinet commitments to reduce military expenditure and to utilise the savings towards women's empowerment. The report further indicates that, in a briefing on 16 March 1998, the Minister indicated that military spending had decreased from 4.5% of GDP in 1993/94 to 1.5% in 1999/2000, and that the main beneficiaries of this decrease had been the Departments of Health, Education and Welfare.
- Yet in the Medium Term Budget Policy Statements, the average annual growth in present and projected proportional expenditure for Defence and Intelligence was 14.9%, more than double the figure for any other services, including Education, Health and Welfare.
- The Department of Finance was invited by the Committee to present submissions at the hearings. Although the Deputy Minister attended the hearings, he advised the Committee that the Department had not been able to prepare a submission to the Committee. To date, the Committee has not received a response to questions posed to the Deputy Minister at the hearings.
- The Committee requires an urgent response from the Department of Finance on the following issues:
  - The Department's efforts to address the unemployment of women formerly employed in the clothing and textile industries caused by the liberalisation of trade policy as a means of increasing competitiveness in the manufacturing sector.
- Various projects in the Victim Empowerment Programme (VEP) were intended to focus on issues relating to violence against women and children. However, very few of these projects have sustainable funding, and many of the projects were only intended to operate for one year:
  - "Multi-disciplinary Management of Child Abuse and Neglect" – Donor funding of R2 million paid for the 1998/99 year of operation, for the 1999/2001 years, "alternate sources of funding" would be sought.
  - "Primary Health Care Model to Reduce the Risk of Interpersonal Violence" – this was only intended to be a one-year project to be implemented during 1998/99, with funding of R400 000 sourced from the VEP.
  - "Violence Referral Centres" – a pilot programme to establish "Violence Referral Management Centres in four provinces, receiving referrals from frontline staff": This project was similarly only intended to be a one-year project to be

implemented during 1998/99 at a cost of R510 000, funded by the VEP.

- “Outreach Centres to Counteract Domestic Violence” – a programme designed to give support for the establishment of outreach centres in provinces to expand services to victims of domestic violence. Donor funding of R1.2 million paid for the implementation of this project in Mpumalanga and the Eastern Cape, whilst the VEP paid R1.2 million for its implementation in the North-West Province and the Free State. The VEP would pay R3 million for its implementation in the remaining five provinces in 2000/01. “Alternate funding” would be sought during 1998 for the continued operation of these programmes.
- R65 000 was budgeted from the VEP for “Access to Legal Provisions to Counter-Act Domestic Violence in Rural Communities”, a project intended to be operational during 1998/99.
- “Violence Prevention in Schools”, a project implemented by the Department of Health (in conjunction with the US Centre for Disease Control for the 1998/99 year at a cost of R65 000, funded by the VEP.
- “National Policy Guidelines on Victims of Sexual Offences” – a project encompassing nine provincial workshops to train service providers on the basis of the national policy guidelines on sexual offences – this project was funded by the VEP at a cost of R150 000 during 1998/99.
- “Victim Empowerment in Schools – Life Skills Curriculum” – this project was funded by the VEP at a cost of R150 000, and intended to be a one-year project during 1998/99.
- The VEP paid for a training course for the SAPS entitled “Victims of Violence: Domestic Violence and Sexual Offences Case Handling Training”, at a cost of R100 000 for 1998/99; funding for 1999/2000 and 2000/01 “to be secured in order to extend it to these two years”.
- An information and public awareness project hosted by the Department of Welfare, funded until 2001 by the VEP.
- In its Second Annual Report (January 1998 – March 1999), the Committee reported that no specific budgetary allocations had been made for violence against women, unlike other crimes declared priority crimes in terms of the National Crime Prevention Strategy, such as hijacking. Similarly, departments such as Safety and Security did not have specific, separate budget allocations for violence against women.
- The exclusion of victims of domestic violence from the Fund for Victims of Violent Crime Bill;

- The Commission for Gender Equality also raised the issue of involving the private sector in programmes addressing violence against women.
- Various submissions to the Committee mentioned that the cost of violence against women in South Africa, and especially domestic violence, has been calculated due to ineffective documentation of these incidents by the health and criminal justice sectors. These costs are both public and private, paid for by women and their families.
- Calculating the real economic costs may be hampered by the fact that violence against women is under-reported, prenatal damage caused by the abuse of pregnant women is difficult to quantify, long-term consequences such as inter-generational transfers of violent behaviour cannot be accurately estimated and private costs to women cannot be captured.

### **Inter-Ministerial Co-Operation and Co-Operative Governance**

- The National Crime Prevention Strategy (NCPS), adopted by the Cabinet in May 1996, is the government's flagship inter-departmental programme in its efforts to combat crime. One of the NCPS programmes which affects issues of violence against women is the Victim Empowerment Programme, hosted by the core NCPS departments, namely Justice, Welfare, the SAPS, Safety and Security and Correctional Services, but also involves the Departments of Health and Education and Provincial Departments;
- The Office on the Status of Women (OSW) was established in the President's Office. R1.5 million of the OSW's funding of R2.5 million for 1998/99 was donor funding, which terminated in August 1999. The budget for 1999/2000 only covers salaries and administration;
- During 1999, the OSW advised the Committee that it was developing a Green Paper on a National Gender Policy to be passed by the Cabinet.
- On 15 March 1999, the OSW also advised the Committee that it was conducting a gender audit on internal transformation and external service delivery of all government departments and all the provinces, with a view to developing a national action plan.
- Although the Department of Foreign Affairs was not requested by the Committee to participate in the November 1999 hearings, the Committee would like to know whether and when a gender desk will be established in the Department. The Committee also requires information regarding the Department's efforts to set up international links to international trafficking in women and prostitution.
- In view of various submissions relating to women's difficulties in escaping situations of especially domestic violence due to a lack of access to alternative housing, the Committee also requires a response from the Department of Housing and Agriculture and Land Affairs (both

of whom were not requested to participate in the hearings) on their efforts to ensure that women are not discriminated against in the granting of housing subsidies, access to rural housing and rural land allocation. The Committee is particularly interested in the progress and achievements of the Women for Housing Group in the Department of Housing with reference to their April 1998 draft document entitled, "Guiding Principles and Practice Relating to Women's Housing Issues".

### **Co-Operation between Government and Civil Society**

- Numerous submissions mentioned the importance of an inter-sectoral approach, involving both government and civil society, in addressing violence against women.
- The National Network on Violence against Women has been most successful in bringing together government and civil society on issues relating to violence against women. The Department of Welfare has formed a partnership with the National Network on Violence against Women and the Network has received financial and administrative support from the Department. The Department of Health also participates in the National Network on Violence against Women.
- The Committee was told of the involvement of organisations like People Opposed to Women Abuse in programmes of the Department of Correctional Services.
- At the same time, many NGOs mentioned their prime difficulty being a lack of funding, and that most of their time was spent on fund-raising instead of addressing their substantive goals.

### **The Need for a Statistical Database**

- In South Africa, there has been a notable lack of community-based data and reliable statistics on violence against women and children, its prevalence and epidemiological studies of risk factors. Most research undertaken on violence against women in South Africa has been relatively small-scale, localised or has focused on particular sub-groups, e.g. health service users.
- Research efforts on the prosecution of sexual offences cases were made extremely difficult through the absence of any record system whatsoever by court officials, and police dockets and court files which were incomplete. Further, there is no official record of how many women phone police stations when they are in a crisis or when their lives are endangered.
- Disaggregation of data and the devising of protocols around domestic violence may yield better data and the Department of Safety and Security is best positioned to do this.
- In its 1998 White Paper, the Department of Safety and Security stated that it aims to improve the reliability of crime statistics in general. The

Committee will request the Department to furnish it with a progress report in this regard.

### **Recommendations and Queries to Government Departments**

**(Submissions to this section were received from various stakeholders – please refer to full document for details)**

#### **Criminal Justice**

The Committee recommends:

- that the availability of and access to legal aid to women who are victims of violence be given urgent consideration by the Legal Aid Board and the Department of Justice;
- that urgent attention be given to the appointment of more prosecutors, intermediaries, interpreters and magistrates, and that the Department of Justice allocate resources for this purpose;
- that clerks of the court, who will be the point of entry for complainants in terms of the new Domestic Violence Act, be given mandatory training in gender sensitivity and the effects and nature of domestic violence;
- that the establishment of more Sexual Offence and Family Courts receive priority;
- that attention be given by the Judicial Service Commissions to sensitivity to gender issues in the appointment of High Court Judges;
- that gun control laws be enforced more strictly.

#### **Law Enforcement**

The Committee recommends:

- That more female officers be made available to assist survivors of violence;
- That the Department of Safety and Security allocate resources to establish a proper surveillance and data collection system which would make it possible, *inter alia*, to identify specific locations where attacks on women regularly occur and to identify reasons for the non-prosecution of violence against women;
- That more police stations be established and equipped, including satellite police stations, especially in the rural and poorer areas;
- That urgent attention be given to more visible street policing and street lighting;
- That the Department of Safety and Security allocate resources to engage the services of experienced trainers from reputable NGOs to train members of the police in:
  - The devastating effect of violence against women, including domestic violence which is often treated by police officers as “unimportant”;

- Sensitive treatment of traumatised survivors of rape, sexual assault and violence against women in general;
- The various legal remedies available to survivors of violence. It appeared from various submissions that complainants often relied on the police for advice on her choice of remedy. In some cases, it was reported that police try to dissuade women from laying charges against perpetrators by stressing negative consequences for women if they insist on the arrest of the offender;
- Accurate and adequate forensic investigations for the purpose of criminal prosecution.

### Welfare Services and Shelters

The Committee recommends:

- That the Department of Welfare embark on extensive training of its officials to equip them to deal with survivors of violence against women;
- That both government and civil society give urgent attention to the establishment of shelters for abused women. This is also a project in which the private sector can make a specific and greatly needed contribution towards assisting women to remove themselves and their children from situations of violence.

### Health Care

The Committee recommends:

- The incorporation of treatment of the survivors of sexual violence and other violence against women in the curriculum for the training of doctors, nurses and other health workers. Such treatment must also incorporate an understanding of the trauma experienced by the survivor.
- That urgent attention be given to the availability of treatment of rape survivors of STD's and other health risks, and that the Department of Health prioritises establishing the effectiveness of anti-retroviral drugs like AZT for rape survivors;
- That urgent attention be given to women's access to health care, especially rural women;
- That priority be given to the expansion of the existing project for the training of forensic nurses; and
- That the removal of question 11(e) from Form J88 be considered.

### Incarceration of Offenders

The Committee recommends that:

- The Department investigates the implementation of weekend incarceration, especially of perpetrators of domestic violence;
- A fund be created to which victims or relatives can apply to fund expenses related to attending parole hearings;
- A fund be created to assist prisoners who become victims of violence.

## Public Awareness and Education

The Committee recommends that:

- An extensive public awareness campaign in all languages through the use of electronic and print media about the right of women to be free of violence. Such campaigns must address both women and men and must target rural areas in an accessible way. It is also imperative that community organisations, especially religious organisations, are involved in the campaign on an on-going basis and that influential people in the community (including politicians, religious leaders, business leaders and youth organisations) on national, provincial and local level, make public statements in support of the campaign.
- That the Department of Justice drives a public education campaign focussing on legal remedies available to women who are victims of violence, and in particular the provisions of the Domestic Violence Act.
- Proper education on sex, sexual health, the crime of violence against women and alternative conflict resolution mechanisms (other than violence) –
  - As part of the school curriculum, taught at an age-appropriate level from an early age. Such programmes must also focus on the development of self-reliance and self-esteem for both girls and boys. Attention also need to be given to teacher-training to ensure that teachers feel qualified to deliver such education.
  - For parents by way of national workshops and seminars on parenting skills.
  - For men through employee's organisations and unions. Changing men's perceptions should receive high priority as a mainstream issue, and provision should be made for both primary prevention as well as secondary prevention, such as counselling programmes for abusers.
  - In communities by representatives of the police, welfare and legal services, utilising the network of as many community organisations as possible, including women's organisations, specifically to reach women who have already left school and unemployed men.

Such education should address, *inter alia*, the following questions:

- What is love? In what ways can it be demonstrated?
- What do young people do sexually? Why do people have sex?
- Do men and women have equal sexual rights?
- What kinds of relationship can young people have?
- What alternative sexual practices are there?
- How can men and women communicate about sexual matters?
- Who says no to sex, and how? Who can ask for it?
- Who has or is allowed to have multiple sexual partners? And why?
- What is sexual abuse and violence?
- When and why does violence occur within relationships?
- Is violence acceptable within relationships?
- How can potentially violent situations be dealt with?

It appeared from numerous submissions that the lack of employment and realisable aspirations among especially young men contributed towards abuse of women through displacement of frustrations onto vulnerable partners, as well as through increased drug and alcohol use. The Committee therefore recommends that government prioritises job creation in areas where abuse is most prevalent.

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## **Tracking the Changes after the November 1999 Hearings**

### **From 2000 to 2001**

Visits to various provinces by members of the Committee were undertaken in April and June 2000 with a view to meet with Magistrates, South African Police Services Commissioners and

Prosecutors. These meetings formed part of the Committee's investigation into the difficulties experienced by the SAPS, Magistrates and Prosecutors in each of the provinces to monitor the implementation of the National Instruction on the Domestic Violence and Maintenance Act. A delegation of the Committee visited Nelspruit, Mpumalanga on 17 April 2000, Pietersburg, Northern Province on the 19 June 2000, Port Elizabeth, Eastern Cape on the 19 June 2000 and the Western Cape.

The issues highlighted below are prevalent to a greater or lesser degree in all areas that these investigations took place.

#### Domestic Violence

- **Application forms for domestic violence interdicts – shorter forms were requested, more staff are required.**
- **Director Singani, Crime Prevention, informed the delegation that victims are given a choice on whether they want to open a case or get a protection order. Normally victims choose the latter and do not want to open a case. The SAPS need more staff to cope with filling of the forms.**

#### Public Education

- **Public is illiterate and uninformed about the legislation.**
- **The public is often referred back to the police by the magistrate's courts. People get shifted from pillar to post. It is problematic just get more personpower to help with filling in the forms.**

#### Training and Restructuring

- **Training of police officers is ongoing;**
- **Director Singani mentioned the possibility of getting a small structure to deal with domestic violence cases, because police officials are taken away from their**

ordinary duties. The SAPS has to send two police officers to escort victims, which takes up to five hours. There needs to be a clarification of guidelines on the division of labour.

- Director Singani also indicated that there are no clear guidelines on who needs to be doing what, and said that the SAPS cannot deal with both, but they needed a subsection to deal with the matters.

Note from clerk: it is apparent that even senior SAPS officers regard the problem of violence against women as something that is not part of their ordinary work, but an extra burden placed on them. This attitude is alarming and an undertaking must be obtained from the Minister of Safety and Security that this matter will be dealt with immediately and effectively.

#### Manpower and Language

- Director Singani pointed out that when the applicant is referred to the police for assistance with filling in the forms, the police have the problem that they do not have the necessary personpower to assist. He argued that capacity must be built at magistrate courts, for example, translators must be appointed. He complained that they only want to deal with the protection side of matters and this can only be done if there is more capacity but they do not have the time.

#### After-Hours Assistance

- Director Singani stated there were problems getting the required assistance after hours with regard to applications. In Sheshego, the magistrates have set certain hours to deal with domestic violence cases, up to 12h00, for instance.
- When victims go to the police station to deal with the problem, women use interdicts to cover other matters and most cases are withdrawn.

#### **Transport**

- The SAPS do not have enough vehicles to fulfil its transport duties toward victims. There was a shortage of manpower and members still had to manage their work in the time required. There was an appeal that this problem be addressed.

#### **Shelters**

- Shelters are mostly under the management of men. Suspects complain that their wives are given to other men. There is a perception that this is a cultural matter. Some shelters are not open for 24 hours.

#### **Jurisdiction**

- The areas of jurisdiction of the SAPS and the magistrate's courts are not exactly the same. Police officers often go outside of their area of jurisdiction at times, although a certain area may be in the magisterial district. The SAPS has to apply for permission to operate outside their

jurisdiction, but a senior officer may not be available at that crucial time. If jurisdictions could be matched exactly, it would save on time and labour.

### Addresses

- Victims or suspects often do not have proper addresses, because they live in rural areas.

### Magistrates

#### Personpower and Language

- An official informed the delegation that the magistrates in the Northern Province were experiencing the same problems as those in Mpumalanga. They have a shortage of personpower. His civil section has three clerks and they do full-time domestic violence complaints work. On the return date, it often happens that the respondent approaches the court to have the order set aside. The civil trial gets too little attention.
- He pointed out that the civil section is chaotic as the three clerks have to fill in all the forms and they experience problems because of a language barrier;
- Clerks sometimes refer the complainants to the SAPS to help with filling in the forms. They need more staff for the completion of forms and for trials. Other sections of work are being neglected;
- Over 30 000 documents are served per annum. Domestic violence places another burden on the section.

### Restructuring

- Additional posts should be created in order to render services;
- Many magistrates' offices are using an organogram that has been in operation for 30 years – it has not been upgraded.

### Financial Implications of the Domestic Violence Act

- The Domestic Violence Act has financial implications that has not been accounted for. The sheriff has to be paid and magistrates have pleaded that the Sheriffs delay billing until the next financial year.

### Prosecutors

#### **Staff**

- The three divisions – Administration, Prosecution and Magistrates do not communicate. The Act implies that they have certain duties. Acts were passed but due to lack of additional staff, there are major problems. Furthermore, when cases have to go to court, the application is withdrawn and the process is often repeated.
- At times, the magistrate with civil court also deals with applications for victims of domestic violence. The workload is immense and magistrates themselves need more assistance.

### Jurisdiction

- The discrepancies in the jurisdictions of the SAPS and the magistrates' courts – many problems are encountered as the SAPS nearby may want to bring a case before the court but the magistrate may not act because his jurisdiction is elsewhere.

### Inter-Departmental Co-Ordination

- There was a request that an agreement be worked out between the Departments of Justice and Safety and Security to co-ordinate cases. This will result in a better flow of case. There has to be a joint venture between Justice and the police to interrogate the Act and to assist with the smooth running of the implementation.

### Problems with Act

- The Act makes no provision for cases where violence occurs before the interim order has run out and the final order is in place.

### **Training of SAPS**

- Members of the SAPS have not received sufficient training with regard to domestic violence.

### Department of Health and Welfare

#### Bureaucratic and Practical Stumbling Blocks

- In rural areas, there are no specific medical facilities for victims – a clinic is open for certain hours and days.
- Medical facilities have been decentralised to be accessed by all.;
- When domestic violence victims seek help, and if they have a J88 form, they cannot be helped as there may be no doctor present and therefore they will have to go to a hospital.
- Victims are often not accompanied as the SAPS do not have transport or the staff to handle this aspect.
- Many rape victims are taken to hospitals where there is a lack of crime kits and other forms, which would be available if they were accompanied.

### Statistics

- There are only statistics for rape victims and not for domestic violence assault, only for assault. A new form is in the process of being compiled and developed which will help record statistics to separate domestic violence cases from assault cases. This form will now be filled in at hospitals.

The Joint Monitoring Committee on the  
Improvement of the Quality of Life and Status of  
Women

# Summary Report on Violence Against Women

October 2001

## Introduction

The Joint Monitoring 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. The Committee's specific brief is to monitor government's commitments made at the United Nations Fourth World Conference in Beijing in 1995 and the provisions of the United Nations Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) in 1995.

The South African government signed and ratified CEDAW and government departments tabled their commitments to the Beijing Platform of Action (BPFA) in February 1996. Both CEDAW and the BPFA detail a state's obligation to introduce measures to protect the rights of women and mechanisms to eliminate gender-based violence.

The Committee's hearings on violence against women were held from 8<sup>th</sup> to 17<sup>th</sup> November 1999. The objectives of the hearings were the following:

- To identify the blockages which impede women's access to justice.
- To determine the varied ways in which such obstacles to justice can be addressed and eliminated.

**All submissions of the 1999 hearings are available from the Clerk of this Committee.**

Subsequent to the 1999 hearings, the Joint Monitoring Committee on the Improvement of the Quality of Life and Status of Women either initiated or participated in various forums highlighting gender violence in South Africa. These were:

- The provincial visits to 3 provinces by a delegation from the JMC – 17 April 2000 – Nelsruit, Mpumalanga; 19 June 2000 – Port Elizabeth and Pietersburg;
- The joint 2-day workshop between the JMC and the Public Participatory Unit (PPU) of Parliament, 25 – 26 July 2001, Parliament, Cape Town.
- The rural road shows held in conjunction with the PPU.

## **An Overview – Violence against Women Hearings, November 1999**

Submissions from the hearings noted the many achievements made by the state in addressing and confronting the issue of gender-based violence. The state at the highest policy level has committed itself to the elimination of gender violence. The preamble to the Domestic Violence Act 116 of 1998 makes clear this intention as it sets this legislation out as “providing victims with the maximum protection, which the law can provide”. In addition to the Domestic Violence Act, the criminal justice system began the process of transformation with proposed legislation to improve the lives of women confronting the justice system. The South African Law Commission’s Sexual Offences Discussion Paper incorporates a proposed Sexual Offences Bill. SALC has also produced a discussion paper on procedural aspects of the prosecution of sexual offences.

### **Specific Impediments to the Implementation of the Domestic Violence (DVA) and Issues Pertaining to Sexual Offences - Submissions<sup>181</sup>**

The following crucial points were raised at the hearings in written and oral form. It must be pointed out that the hearings were held before the implementation of the DVA (December 1999) and these submissions highlight the perceived problems that would be encountered. These were:

- Women’s inability to access their rights due to lack of knowledge around the DVA.
- Discretion of magistrates in sentencing procedures.
- Legal representation is too costly and therefore disadvantages many poor women.
- Education for the judiciary, for example, clerks of the court, are inadequate.
- Inaccessibility to police stations and courts due to transport problems make it difficult for women to report and follow up and thus recourse to the DVA would not be fully utilised.
- Whilst the legal aspects of the DVA are technically correct, activists argue that support mechanisms to ensure the eradication of domestic violence is lacking.
- Misconception around domestic violence even amongst victims is still viewed as a “private family matter”.
- Language barriers and staff shortages further exacerbate the full implementation of the DVA.
- The 13 forms required to implement the DVA were still not printed.

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<sup>181</sup> A list of stakeholders that provided written and oral inputs and research papers is listed at the back of the main report, February 2000.

- Negative experiences of courts in general, which is a direct consequence of a lack of adequate facilities and human resources to handle victims of gender violence. There are massive backlogs of cases, which cause delays of about nine months between complaint and trial.
- A definite need for the reconsideration of the adversarial system in sexual offences cases.
- Prosecutors and magistrates need training on non-legal aspects of gender-based violence.
- South Africa should seek ways to ensure that women can access the justice system.

**The above were some of the key concerns raised at the 1999 November hearings. For more detail, see the summary report of July 2000 and the comprehensive report of February 2000.**

Key departments and various stakeholders involved in addressing gender-based violence have pointed out the progress that have been made in terms of programmes, budgetary requirements and policies that will aid the process towards the eradication of gender-based violence. **For a full list of submissions made by key departments, please refer to the February 2000 report.**

**Findings from provincial visits (2000)/workshop (2001) and road shows (2001) to monitor the gaps found in the implementation of the Domestic Violence Act of 1998.**

Visits to various provinces by members of the Committee were undertaken in April and June 2000 with a view to meet with magistrates, the South African Police Services (SAPS) Commissioners and prosecutors. These meetings formed part of the Committee's investigation into the difficulties experienced by the SAPS, magistrates and prosecutors in each of the provinces to monitor the implementation of the National Instruction on the Domestic Violence and Maintenance Act (Act 99 of 1998). A delegation of the Committee visited three provinces and visits to the remaining provinces are envisaged in the year 2002.

Some of the key concerns highlighted by participants at the above interactive sessions revealed the following problems (to a lesser or greater degree in different areas) encountered by women "victims" accessing the justice system:

- Application forms for domestic violence interdicts were too lengthy. Shorter forms were requested.
- More staff is required to assist women at various stages.
- The public is still illiterate and uninformed about the legislation.
- Although training of police officers is ongoing, there is a perception among certain SAP officials that violence against women is something that is not part of their ordinary work, but an extra burden placed on them.

- Lack of staff in certain courts and police stations further hamper the process.
- Language issues and lack of translators at some assistance points were lacking.
- There are problems with receiving the required assistance after hours with regard to applications.
- Lack of vehicles to fulfil duties toward victims.
- Shelters for women are mostly under the management of men.
- The areas of jurisdiction of the SAPS and the magistrates' courts also pose a problem.
- The Domestic Violence Act has financial implications and all aspects have not been fully covered.
- The Act makes no provision for cases where violence occurs before the interim order has run out and the final order is in place.
- In rural areas, there are no specific medical facilities for victims as clinics are only open on certain days and for specific hours.
- Rape victims are taken into hospitals where there is a lack of crime kits and the necessary forms required.

## **Recommendations**

Stakeholders from various sectors at the 1999 hearings, the 2000 visits to the three provinces and the 2001 road shows and workshop recommended that:

- The availability of and access to legal aid to women who are victims of violence be given urgent consideration by the stakeholders concerned.
- Urgent attention be given to increasing staff in key departments that work on gender-based violence.
- Both government and civil society give urgent attention to the establishment of shelters for abused women. This is also a project in which the private sector can make a specific and greatly needed contribution.
- Urgent attention be given to the availability of treatment of rape survivors of STD's and other health risks, and that the Department of Health prioritises establishing the effectiveness of anti-retroviral drugs like AZT for rape survivors.
- An extensive public awareness campaign be undertaken in all languages through the use of electronic and print media about the rights of women to be free of violence. Such campaigns must address both women and men, and must target rural areas in an accessible way.
- Proper education on sex, sexual health, the crime of violence against women and alternative conflict resolution mechanisms (other than violence) at all levels in society be done.
- Investigate the possibilities of weekend incarceration, especially of perpetrators of domestic violence.

- Children have emerged as silent witnesses in domestic violence. An integrated approach is key to assist women and children to deal with the effects of violence. Support services to assist women and children should be linked to the courts.
- The application forms should be simplified.
- The judicial process should allow for women to be debriefed after the hearing in order for her to fully understand the terms of the protection order and how it can facilitate her protection.

**For more comprehensive details of the above as well as the recommendations and queries to government departments contained within oral and written submissions, please refer to the attached documents:**

- Report on Violence against Women in South Africa based on the public hearings on Violence against Women held in November 1999 (February 2000).
- Draft Summary Report on Violence Against Women Hearings 1999 (July 2001).
- Report on the visit to Pietersburg (19 June 2000), Port Elizabeth (19 June 2000); Nelspruit (17 April 2000) by a delegation of Joint Monitoring Committee on the Improvement of the Quality of Life and Status of Women.
- National Conference Report – Enhancing the Participation of Women in the Law Making Process, 25 – 26 July 2001.
- Public Participation Unit, Parliament – Evaluation of Pilot Study on the Rural Women’s Project (September 2001).

## **Conclusion**

The legislative process in terms of addressing gender-based violence and increasing women’s substantive equality in South Africa is highly commendable if one notes the time- period in which changes were effected. However, for the cycle of violence to be broken in South Africa, the interlinkages and crosscutting issues between violence against women, poverty and HIV/AIDS within the development framework needs to be more thoroughly scrutinised.