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.[157]

- accurate and adequate forensic investigations for the purpose of criminal prosecution.[158]

- that more female police officers be made available to assist survivors of violence[159];

- 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;[160]

- that more police stations be established and equipped, including satellite police stations, especially in the rural and poorer areas;[161]

- that urgent attention be given to more visible street policing[162] and street lighting.[163]

o Welfare services and shelters

The Committee recommends:

- that the Department of Welfare embarks on extensive training of its officials to equip them to deal with survivors of violence against women[164];

- that both government and civil society give urgent attention to the establishment of shelters for abused women. This is

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[157] Reported by the National Network on Violence Against Women
[158] A need identified by both the Director of Public Prosecutions and the President of the Regional Court for the Western Cape
[159] The National Network on Violence Against Women reported repeated requests by women for counselling by female officers.
[160] Recommendation by UNISA's Institute for Social and Health Sciences
[161] Recommendation by Gender Advocacy Programme
[162] Recommendation by the MRC's CERSA. This issue was also raised in the White Paper on Safety and Security "In Service of Safety" 1999 – 2004 – September 1998
[163] Issue raised by the Department of Welfare
[164] Recommendation by ADAPT

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.[165]

o 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;[166]

- 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.

o Incarceration of offenders

The Committee recommends that:-

- the Department investigates the implementation of weekend incarceration, especially of perpetrators of domestic violence;[167]

- a fund be created to which victims or relatives can apply to fund expenses related to attending parole hearings;[168]

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[165] Recommendations by the Centre for Rural Legal Studies, the Commission on Gender Equality and the National Network on Violence Against Women

[166] Issue raised by the Director of Public Prosecutions. Women's Health Project also reported that general practitioners were wary and ill-equipped to deal with the non-physical aspects of domestic violence, such as offering counselling and referring the survivor to social structures for assistance.

[167] Recommendation by Masimanyane

- a fund be created to assist prisoners who become victims of violence.[169]

o Public awareness and education

The Committee recommends:

- 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 campaign must address both women and men, and must also 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[170];

- 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;[171]

- 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.[172] Attention also need to be given to teacher-training to ensure that teachers feel qualified to deliver such education[173];

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[168] The Department of Correctional Services recommends that this fund be created by the Department of Justice.
[169] The Department of Correctional Services recommends that this fund be provided for by this Department.
[170] Recommendation by the Masimanyane Women's Support Centre, the MRC's CERSA and the National Network on Violence Against Women
[171] Recommendation by the Gender Advocacy Programme
[172] Recommendation of the MRC's CERSA
[173] Recommendation of the MRC's CERSA

- for parents by way of national workshops and seminars on parenting skills[174]; and

- for men through employee's organisations and unions.[175] 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;[176] and

- in communities by representatives of the police, welfare and legal services[177], 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[178]:

  - 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 can say no to sex, and how? Who can ask for it?

  - Who has or is allowed to have multiple sexual partners? And why?

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[174] Recommendation by MRC's CERSA
[175] Recommendation by the MRC's CERSA. COSATU has already initiated a campaign on violence against women and produced a guide for shopstewards on this issue.
[176] Recommendation by the MRC's CERSA
[177] Recommendation by the MRC's CERSA
[178] Recommended by the MRC's CERSA in their research report on "Sex, violence and constructions of love among Xhosa adolescents: putting violence on the sexuality agenda"

- 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.[179]

[179] 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

TABLINGS NO 76—2002

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 8th to 17th 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.

<u>An Overview – Violence against Women Hearings, November 1999</u>

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[180]

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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[180] 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 trail 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 were "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 reported on her attendance at a judicial colloquim 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.

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- 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.

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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 liases 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 though 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.

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 mater 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 8th to 17th 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.

PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA

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[181]

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.

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

PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA

- 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.

Report to be considered.

No 42—2002] FOURTH SESSION, SECOND PARLIAMENT

REPUBLIC OF SOUTH AFRICA

MINUTES OF PROCEEDINGS

OF

NATIONAL ASSEMBLY

FRIDAY, 14 JUNE 2002

1. The House met at 09:01.

2. The Deputy Speaker took the Chair and requested members to observe a moment of silence for prayers or meditation.

3. [09:02] Notices of motion.

4. [09:17] The Chief Whip of the Majority Party moved without notice: That the House—

   (1) notes that Sunday, 16 June 2002, will mark the twenty-sixth anniversary of the student uprising that occurred all over the country in 1976;

   (2) futher notes that high school students engaged in peaceful protest against inferior Bantu Education and called for an end to minority rule;

   (3) acknowledges that this student and youth generation played an important role in the achievement of peace, democracy and unity of all people of South Africa, irrespective of race, colour or creed;

   (4) remembers these heroes; and

   (5) resolves to work towards strengthening non-racial and non-sexist democracy which they have helped to achieve.

   Agreed to.

5. Mr C T Frolick moved without notice: That the House—

   (1) notes that the Comrades Marathon, once referred to as the Ultimate Human Race, takes place next Monday, 17 June 2002, between Durban and Pietermaritzburg in KwaZulu-Natal;

   (2) expresses its best wishes to the 12 000 national and international athletes who will be competing in this race;

   (3) wishes the organisers of the race, the Comrades Marathon Association, and all the sponsors the best of luck for an outstanding event;

   (4) expresses its support for and confidence in all our athletes who will be competing in this truly South African race; and

- 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.
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   (4) expresses its support for and confidence in all our athletes who will be competing in this truly South African race; and

(5) also expresses the hope that a South African will cross the finishing line first.

Agreed to.

6. FIRST ORDER [09:18]

Debate on Vote No 23—Justice and Constitutional Development, ***Appropriation Bill*** [B 4—2002] (National Assembly—sec 77).

Debate concluded.

7. [12:11] The House, at the request of the Chief Whip of the Majority Party, discussed the following subject: ***Letsema: Youth service for sustainable development***.

Debate concluded.

8. The House adjourned at 13:37.

S MFENYANA,

Secretary to Parliament.

No 18—2002] FOURTH SESSION, SECOND PARLIAMENT

REPUBLIC OF SOUTH AFRICA

MINUTES OF PROCEEDINGS

OF

NATIONAL COUNCIL OF PROVINCES

FRIDAY, 14 JUNE 2002

1. The Council met at 09:36.

2. The Chairperson of Committees took the Chair and requested members to observe a moment of silence for prayers or meditation.

3. [09:37] Notices of motion.

4. [09:38] Dr E A Conroy moved without notice: That the Council—

   (1) notes the act of heroism by Constable Willem van Niekerk of the SAPS at Bethlehem, who risked his life by being lowered upside down into a drop toilet to save a newborn baby after he had allegedly been thrown into the toilet by his mother;

   (2) congratulates Constable Van Niekerk for undertaking this heroic deed without hesitation and without due allowance for his own safety; and

   (3) wishes baby "Miracle", as he was aptly named by the hospital staff, well and a good home filled with warm love.

   Motion agreed to in accordance with section 65 of the Constitution.

5. [09:39] Kgoshi M L Mokoena moved without notice: That the Council congratulates the Select Committee on Security and Constitutional Affairs and that of Local Government and Administration for being so dedicated to their work, because today, immediately after adjournment, or at 12:00, they are going to meet again to consider negotiating mandates from provinces, and to look into other issues relating to the crossing-of-the-floor legislation.

   Motion agreed to in accordance with section 65 of the Constitution.

6. FIRST ORDER [09:42]

   Policy debate on Budget Vote No 15: Education, ***Appropriation Bill*** [B 4—2002] (National Assembly—sec 77).

   Debate concluded.

7. The Council adjourned at 12:13.

S MFENYANA,

Secretary to Parliament.

No 77—2002] FOURTH SESSION, SECOND PARLIAMENT

PARLIAMENT

OF THE

REPUBLIC OF SOUTH AFRICA

ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS

FRIDAY, 14 JUNE 2002

ANNOUNCEMENTS:

National Assembly:

1. The Speaker:

   The following member has vacated his seat with effect from 4 June 2002:

   Ebrahim, E I.

TABLINGS:

National Assembly and National Council of Provinces:

Papers:

1. The Speaker and the Chairperson:

   (1) Report of the Auditor-General on the Financial Statements of the Ingonyama Trust Board for 1 April 1994 to 31 March 1999 [RP 17-2002].

   (2) Report of the Auditor-General on the Financial Statements of the South African Wool Board for 1999-2000 [RP 74-2002].

   (3) Report of the Auditor-General on the Reinsurance Fund for Export Credit and Foreign Investments for the period 1 April 2001 to 30 June 2001 [RP 64-2002].

2. The Minister of Finance:

   (1) Government Notice No R 740 published in Government Gazette No 23463 dated 25 May 2002: Amendment of Treasury Regulations in terms of section 76 of the Public Finance Management Act, 1999 (Act No. 1 of 1999).

   (2) Government Notice No 741 published in Government Gazette No 23450 dated 31 May 2002: Borrowing powers of Water Boards Limited under Schedule 3, Part B of the Public Finance Management Act, 1999 (Act No. 1 of 1999).

National Assembly:

1. The Speaker:

   Special Report of the Public Protector on the investigation into allegations of underpayment of beneficiaries of the Venda Pension Fund, Report No 18 [RP 68-2002].

   Referred to the Portfolio Committee on Finance for consideration and report and to the Portfolio Committee on Justice and Constitutional Development for information.

COMMITTEE REPORTS:

National Assembly:

1. Report of the Portfolio Committee on Finance on the ***Financial Advisory and Intermediary Services Bill*** [B 52—2001] (National Assembly—sec 75), dated 12 June 2002:

   The Portfolio Committee on Finance, having considered the subject of the ***Financial Advisory and Intermediary Services Bill*** [B 52—2001] (National Assembly—sec 75), referred to it and classified by the Joint Tagging Mechanism as a section 75 Bill, reports the Bill with amendments [B 52A—2001].

2. The Task Group on Sexual Abuse of Children, appointed by the Speaker on 11 February 2002 in order to give effect to a National Assembly Resolution of 14 November 2001, has adopted the following report on 12 June 2002:

REPORT OF THE PARLIAMENTARY TASK GROUP ON THE SEXUAL ABUSE OF CHILDREN

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Preamble

We, the members of the Parliamentary Task Group on Sexual Abuse of Children,
Taking note with the greatest concern of the repeated instances of sexual abuse of ever-younger children in our country,
Considering that to protect our children from all instances of such heinous crimes is not only a moral obligation of the highest priority but a legal obligation as well,
Taking into account the rights of the child and values contained in international instruments such as the *African Charter on the Rights and Welfare of the Child* and the UN *Convention on the Rights of the Child*, which are legally binding upon the Republic of South Africa,
Recalling section 28 of the Constitution of South Africa that enshrines the rights of the child and must underpin and inspire all legislation of the Republic,
Having been convened by a decision of the Speaker of the National Assembly of 11 February 2002, and in order to give effect to a motion of the National Assembly of 14 November 2001
Having held public hearings on the issue,
Condemn once again strongly all forms of sexual abuse and violence against children of all ages, irrespective of motivation and person of the perpetrator, and issue the following report for consideration by the National Assembly.

Structure of the Report

The first part of the report will give an introduction that sets out the composition of the Task Group and process of the Public Hearings.
The second part will provide an overview of all the submissions received by the Task Group in the course of the hearings. The views expressed and the recommendations made in these submissions do not necessarily mirror the Task Group's opinion.
The third part contains the views, findings and recommendations of the Task Group with regard to sexual abuse of children.
The final part of this document will set up a framework for the manner in which the Task Group will take forward its recommendations.

1 Introduction

1.1 Composition of the Task Group on Sexual Abuse of Children

The Task Group includes representatives from different political parties present in Parliament and comprises the following members:
Mr S Dithebe (ANC), Mr C Morkel (NNP) - Joint Monitoring Committee on Improvement of Quality of Life and Status of Children, Youth and Disabled Persons;
Ms P Cupido (DP), Prof S Mayatula (ANC) - Portfolio Committee on Education;
Dr O Baloy (IFP), Ms SK Mnumzana (ANC) - Portfolio Committee on Health;
Ms L Mabe (ANC), Mr M Masutha (ANC) - Portfolio Committee on Justice and Constitutional Development;
Mr M George (ANC), Ms A Van Wyk (UDM) - Portfolio Committee on Safety and Security;
Ms S Kalyan (DP), Mr E Saloojee (ANC) - Portfolio Committee on Social Development;
Ms P Govender (ANC), Ms R Southgate (ACDP) - Joint Monitoring Committee on the Improvement of Quality of Life and Status of Women.
The hearings were also attended by a number of other Members of Parliament who were not officially members of the Task Group, but whose contributions over the four days enriched the process significantly.

1.2 Public Hearings

1.2.1 Aims

The aims of the hearings as defined by the resolution of the National Assembly of 14 November 2001 were to analyse the causes of child rape and abuse, and inform the parliamentary counter-strategies appropriately. The Task Group saw the aims of the hearings more specifically as

- Understanding the nature of sexual violence;
- Developing a comprehensive picture of the causes of this crime and the conditions that exacerbate it; the political, social and economic values that underpin this violence;
- Highlighting shortcomings in existing legislation that should protect children, such as the Child Care Act, the Sexual Offences Act, the Criminal Procedure Act;
- Understanding the shortcomings in Government's response to violence against children, such as services to families, especially rape survivors; effective police casework; the criminal justice system, the rehabilitation of offenders;
- Identifying short, medium as well as long term solutions, and what action is needed from Parliament and Government;

Establishing what is needed to change behaviour in respect of the sexual abuse of children.

1.2.2 Process

At the first meeting of the Task Group on 6 February 2002, Mr E Saloojee was unanimously elected as chairperson and it was agreed that he would take the responsibility of setting up the hearings. It was decided at this meeting that the hearings should be publicised as widely as possible and that the relevant government departments should be invited to brief the Task Group on their programmes aimed at combating the sexual abuse of children as well as the legislative framework within which these programmes operate.

Advertisements were placed in the Sunday Times and City Press on 10 and 17 February 2002 indicating a cut-off date for submissions of 3 March 2002. In addition, in the week of 11-15 February 2002 approximately 150 letters were faxed and emailed to a range of organisations and individuals throughout the country who would be interested in the issue of rape and abuse of children. The five relevant Ministers and Departments were invited to make very brief submissions on the first day of the hearings. In addition, the South African Law Commission was invited to talk about their work on the Review of the Child Care Act and the Sexual Offences Act.

Each Member of Parliament was given a batch of ten copies of the print advert with a covering letter asking them to publicise the hearings in their constituencies. The Task Group made every effort to ensure that it would benefit form as wide a range of inputs as possible. The Chairperson engaged the services of the Public Education Department at Parliament, which organised public information radio spots about the issue on 14 radio stations in all the official languages during the week of 23 February 2002 to 3 March 2002. The Public Education Department also facilitated the placement of extensive coverage of the hearings in the Independent Newspaper Group, which includes the Star and the Cape Argus. This was done using the resources of the Public Education Department.

Notwithstanding the time constraints within which the process had to be completed in order for the Task Group to report to the National Assembly by 15 March 2002, 51 responses in terms of applications to make oral submissions were received. Through a process of careful selection, the Chairperson's office and the Committee section decided on which organisations and individuals would be accorded a time slot. This decision was taken with a view to ensure the participation of the broadest spectrum of society possible, and included members of the academic sphere, non-governmental organisations, representatives of the Executive, and concerned or directly affected people from rural and urban environments. Those persons and organisations who could not be accommodated in the programme were invited to submit written submissions.

The Task Group agreed to fund eight individuals who were not able to afford to travel to Cape Town so that people are not excluded due to economic reasons. In all about 76 submissions had been received. The Task Group agreed to accept written submissions in any of the official languages, and in cases where people are unable to write, to accept recorded submissions so that as many voices were heard as possible.

The Task Group was supported in the extensive preparations of the hearings by the Parliamentary Research Unit.

The hearings were held from Monday, 11 March 2002 until Wednesday, 13 March 2002 from 09:00 to 17:00 each day, and from 14:00 until 18:00 on Thursday, 14 March 2002. Although there were serious time constraints, the Task Group is satisfied that it was able to extract from the hearings the relevant information to achieve the aims of the hearings. The meeting on 14 March 2002, at which the Task Group heard submissions from a group of children, was not open to the public. This was done in order to protect the identities of the children, some of who were survivors of abuse including sexual abuse. The Afrika Cultural Trust facilitated the children's participation.

The Task Group heard oral submissions from the following persons and organisations:

Monday, 11 March 2002

- Department of Social Development
- Department of Education
- Department Safety and Security
- Department Justice and Constitutional Development
- Department Home Affairs
- Department of Health
- South African Law Commission
- Chairperson of the NCOP (Ms N Pandor)
- Ms T Duze – Bultfontein
- Community Law Centre (UWC)
- Ms L Khoza – Newcastle

Tuesday, 12 March 2002

- Cape Town Child Welfare Society
- It's Your Move Youth Action
- South African National Council for Child Welfare
- WACA Advice Centre – Ms G A Rankua
- South African Human Rights Commission
- Childline
- UN Child Justice Project
- Ms F Dyanti (Rape Survivor)
- South African Catholics Bishops' Conference
- Domestic Violence Helpline (Durban)
- Shadow Pictures
- Rapcan
- Nadel

Wednesday, 13 March 2002

- Molo Songololo
- Ms R Kadalie

- UCT Children's Institute
- Far North Regional Network on Violence – Pietersburg
- Professional Board for Psychology
- CIET Africa
- Palliative Medicine Institute
- Johannesburg Child Welfare Society
- Medical Research Council
- Child Protection Programme (UWC)
- National House of Traditional Leaders
- ACCESS/ Children's Rights Centre / Soul City

Thursday, 14 March 2002

- Afrika Cultural Trust

A summary of all submissions received by the Task Group listed in alphabetical order follows in section 2 of this Report.

2 Summary of submissions

2.1 ACCESS

2.1.1 Problems

- The nature of data collection regarding women and children is problematic. For example the SAPS will not provide disaggregated data for age on the various crimes. Children are defined as under the age of 15 years and women as 16 years and over. This underestimated the number of children affected by crimes.
- There is an assumption in the ABC strategy that young people consent to sex. Children often lack the power to abstain or to use condoms.
- Fear of HIV/Aids is driving some men to have sex with young children.
- Poverty is a key structural factor that results in abuse. Children are affected the most by poverty.
- Environmental poverty such as leaving children in the care of unsuitable care-givers, overcrowded conditions exacerbated the vulnerability of children.
- The lack of comprehensive social security means that a limited number of children receive grants. The allocated grants are limited and have not increased significantly over the years. This means that in fact there is an actual decrease in the number of children reached by these grants.

2.1.2 Recommendations

- Introduce a comprehensive social security system for all South Africans . A basic income grant is supported.
- Improve access to the Child Support Grant.
- Revisit the care dependency grant criteria to include those that are HIV positive.
- Improve healthcare delivery for sexual abuse survivors.

- Increase and improve the quality of care and support to survivors of violence.
- Restructure the budgetary allocation and commitments to social service spending to address child poverty.
- Adopt the United Nations 20/20 initiative, which is aimed at encouraging donor government and institutions to direct more than 20% of their resources to social spending. It also encourages governments of developing countries to do the same with their domestic expenditure.

2.2 Aids Orphans Community Programme

This submission pointed out that there has been a notable increase in the incidence of child rape, with girls younger than eight years increasingly being targets. It further maintains that in many cases, the rights and protection of children are ignored by government officials, police, teachers, nurses, justice officials and University Law Clinics.

The submission outlines the conditions that lead to the increase in sexual abuse of children in South Africa as being:

- A culture of violence and victimisation;
- A breakdown of the family unit;
- Lack of respect for children's rights and priorities;
- Disrespect of girls and women by men;
- Myths about curing HIV;
- Shocking neglect of cases by police and the justice system;
- A culture of impunity towards the law.

2.2.1 Recommendations

- Police and protection services, and the justice system, are held accountable for cases that they are investigating and prosecuting. They must ensure that their work is done thoroughly and timeously;
- Children are provided with support, protection and counselling services;
- Child protection units should be strengthened and capacitated with experienced and dedicated professionals;
- Special courts should be provided for efficient and fast prosecutions and added protection for children through child friendly services in court;
- The government to act immediately against police and justice officials who aid and abet the work of child rapists and abusers, by allowing cases to be badly investigated, delayed, ignored and even mislaid.
- The establishment of an Ombudsman to deal with follow-up on cases which are reported, but continually delayed or reneged on by the police and justice system;
- Immediate testing for HIV of all sexual offenders;
- Justice officials to oppose bail and heed minimum sentencing criteria for crimes against children.

2.3 Anonymous

The anonymous writer of a letter to the Task Group mentions that his or her grandchild was raped, allegedly by a preacher, but that despite numerous

attempts to bring the matter to the attention of the Police, there has been no movement on the case. The writer suggests that there may have been collusion between the accused and the corrupt police officials.
The submission does not make any recommendations.

2.4 Baby Rape and Child Abuse Investigation Task Team

The submission focused on the role that society plays in creating the environment for such abuse. It argued that South African society is "sick" since it views children as disposable, views sex as casual, tolerates degrading depiction of women and to a large extent tolerates rape. The submission calls for the introduction of stricter sentences but acknowledges that it will not solve the problem. The problem lies in the religious faith of our society that has weakened, thereby negatively affecting the moral fibre.

2.4.1 Proposals

- The 1997 Choice on Termination of Pregnancy Act must be abolished;
- The Government must not fund LoveLife and other programmes that promote immoral behaviour.
- Government must support abstinence until marriage;
- The SABC must not be allowed to promote immoral values;
- The sale and possession of pornography must be made illegal;
- The death penalty for rapists and child abusers must be introduced.

The presentation concludes by showing the links between pornography and the abuse of children. A number of local and international case studies are used.

2.5 Cape Town Child Welfare Society

The submission was based on the need for developing effective capacity building programmes at community level. These programmes have to be cost effective and integrated within the broader legal and justice areas in terms of the protection agencies and courts of law. The Society manages a number of programmes, the latest of which is the Isolobantwana (The Eye on the Children) Programme. This is an innovative, cost effective community capacity building programme aimed at preventing and eradicating child abuse in the communities that the Society serves. The Society impressed upon members of the Task Group the critical importance of social workers and volunteers to ensure successful outreach and programme operations.

2.5.1 The Isolobantwana approach

The programme is structured in such a way that communities identify selected volunteers. These volunteers are trained by the social workers to enable them to deal with cases of child abuse, neglect and family care. The training focuses on topics such as the signs and symptoms of child abuse, parenting skills, legislation and conflict management. After training, the volunteers' knowledge is tested before they are authorised by the Commissioner of Child Welfare to legally remove a child from the primary caregiver in the case of a threat to the child's safety. This is a major breakthrough for the programme, as previously, legislation allowed only police officers and social workers to perform this function. Trained volunteers fulfil specific roles among which would be to:

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- Serve on the Management Committee, which manages the programme and assumes responsibility for sustaining it.
- Assist to investigate cases that are referred to them, counsel vulnerable families or monitor problematic cases for social workers.
- Provide places of safety. Volunteers open their homes to provide care to abused, neglected and abandoned children for up to a maximum of 48 hours, until the matter can be followed up by social workers.
- Fulfil a preventative role by facilitating regular public awareness meetings about pertinent issues in their communities.

2.5.2 Problems previously experienced

- Many abused and neglected children did not receive the necessary assistance, as cases were not reported to the welfare society.
- Most of the communities face similar problems such as unemployment, illiteracy, broken families, substance abuse etc.
- Social workers often felt overloaded with high caseloads, limited human and other resources to deal effectively with cases.

2.5.3 Attempts to address the concerns

- Empowering the community by training selected community members to be available to children at risk.
- Building capacity within communities by increasing their knowledge about resources and responsibility.
- Enhancing networking among communities and harnessing their resources in order to render an effective 24-hour child protection service.

2.5.4 Benefits of the Programme

- It is very cost-effective and services are localised at the community level.
- It has increased the productivity of social workers.
- It has provided a 24-hour child protection service for the target communities.
- It has effectively empowered communities to take responsibility for their lives and the safety of their children.

2.6 Child Abuse Action Group

The submission provides a perspective of gaps in existing legislation/service providers in protecting children in South Africa.

2.6.1 Problems –Social Services

- Too understaffed to deliver necessary assistance to the abused child and their family;
- The Department of Social Development "appears to only do traffic control" – child and or family are just routed from one home to other;
- No trauma therapy or very little ongoing therapy takes places, especially where the family is unable to afford private therapists;
- False hope about a positive outcome is created in the abused and traumatised child that if he/she reports the abuse;

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- Sniggered by the police, peace officers when they try and report their ordeal;
- Victims have to travel far and wait for hours amongst other patients to have a medical attendant examine them;
- Medical attendants are often untrained and insensitive to the emotional state of the child;
- Inadequate training of medical personnel to recognise abuse and insufficient information is recorded and this often impacts on the evidence in court proceedings;
- Some medical practitioners are foreigners and when they leave the country, there is a reluctance or unwillingness to return for the trial or the state cannot afford to pay the bill for their return to the trial.

2.6.2 Problems - Education

Although the Department of Education has embarked on the Life Skills Programme to highlight the aspects of child abuse, it is also important that communities understand that it is also their duty to protect the children. However, many communities are unable to recognise abuse, as it is a way of life.

2.6.3 Problems – Judicial System

- The time it takes to obtain and to see any form of justice is traumatic;
- The impact of this slow process has had negative effects on the child in terms of emotional, educational and social outcomes;
- While there are options for communities to provide input at parole hearings, most often family members are not notified when these hearings take place to lodge their input.
- Conviction rates are low.

2.6.4 Recommendations

- The tendency is to place the child back with the abuser – why not remove the perpetrator.
- The judicial system has to be speeded up;
- As there are perpetrators at all the different levels of society, it is imperative to have private and impartial evaluators of a child who reports abuse;
- The child must receive appropriate therapy to deal with the abuse and society's ability inability to prosecute;
- The child should not be sent to industrial schools or institutions as it appears that their disclosure has punished them while to them it appears that the perpetrators are the heroes;
- It is crucial that communities be encouraged to attend workshops where communities are conscientised around the issue;
- The infrastructure of the various departments need to be established to provide ongoing workshops for communities;
- Officials need to be sensitised to the emotional and mental make-up of the abused child so that the process of interrogation and investigation is conducted in a sensitive manner without inflicting more damage;

- Correctional services officials need to compile and understand the profiles of child abusers and their impact on society.

2.7 Child and Family Welfare Society of Pietermaritzburg

This submission makes recommendations and suggestions about the adoption of a model of better management of child abuse cases. The paper outlines the problems encountered in South Africa when dealing with the issue of sexual abuse of children and thereafter provides a model of managing child abuse based on the Child Advocacy Centre (CAC) Concept. Research has been conducted on the way in which the system currently operates in the United States of America. The Child and Family Welfare Society of Pietermaritzburg is currently engaged in a national project co-ordinated by the South African Society for the Prevention of Child Abuse and Neglect (SASPCAN), which is looking at the viability and establishment of such centres. The paper argues that because of the problems encountered with the present system, the Children's Advocacy Centres (CACs) model provides a useful tool to replicate in the South African context.

The model argues for a comprehensive, multi-disciplinary response to child abuse, ranging from interviews, case tracking, medical services etc. The envisaged model is based on the concept of the one-stop centres but this model's primarily focus will be on strengthening children who are sexually abused.

2.8 Child Protection Programme, University of the Western Cape

2.8.1 Problems

- Child abuse is not confined to a social class.
- Poverty places children at risk.
- Child protection workers are struggling to find a balance between protection and poverty eradication.

2.8.2 Recommendations

- The Department of Social Development should complete the National Strategy on Child Abuse, Neglect and Exploitation and provide a completed draft to Cabinet.
- An inter-ministerial committee should be established to oversee the implementation of the strategy. The main aim of the committee should be to establish inter-sectoral co-operation at national and provincial level.
- Cabinet should allocate grants to fast-track the implementation of the strategy and should mandate all national departments to prioritise implementation of the strategy.
- Provision should be made for implementation in the medium-term expenditure framework.
- There is a focus on community based interventions and therefore a consultative approach on policy is important as is the need for all relevant departments to form partnerships with NGO's, the business sector, research and training institutions and community based organisations to impact both on the development and implementation of a strategy.

- Social services should be a desk in local government structures.
- Neighbourhood childhood intervention is important but links are needed to support these services.

2.9 Childline-South Africa

2.9.1 Childline's services

The Organisation represents six regional Childline structures that provide 24-hour toll-free crisis telephone counselling services to children and their families or caretakers, throughout the country. A total of 50 000 calls are received each month.

Other services offered include:

- Treatment of abused children and their families.
- Court preparation for the child survivor.
- Abuse education and prevention programmes.
- Training of lay counsellors, both for the crisis counselling lines as well as for remote rural and semi-rural areas where there are no formal resources providing services in the field of management and prevention of child abuse.
- Training of professionals who work with abused children.
- Some Childline centres provide for the treatment of child, adolescent and adult sexual offenders.

Sexual abuse is the single largest category of child problems that Childline deals with. Their services tend to be used by the poorer sections of our communities as services are free. Any child or caregiver, who has access to a telephone, has access to Childline.

2.9.2 Childline's experiences

After conducting an overview of statistics of reported child abuse over the last 10 years Childline has noted:

- A massive increase in the number of reported cases of child sexual abuse of up to 400%.
- A decrease in the average age of the sexual assault victim. In 1991 the average age of the sexually assaulted child was between 10 and 12 years. Presently, 50% of all children attending KZN'S therapy services after sexual abuse are under the age of seven years.
- A decrease in the average age of the sexual offender.
- An escalation in the use of brute force.

2.9.3 Causal factors

- The socio-political history of the country has eroded family and community life.
- Broken family lives. Particularly the family life (or lack thereof) of child offenders is characterised by severe emotional, relationship and/or physical deprivation.
- The traditional methods of teaching young people responsible sexual behaviour have been lost and acceptable alternatives have not yet been integrated into family life.

- The HIV/Aids pandemic and the myths that accompany it have also contributed to the vulnerability of children.
- The pandemic of domestic violence.
- Poverty.
- There is lack of financial support for the NGO Sector that works in the field of child sexual assault.
- The lack of service delivery, free schooling and employment opportunities for youth, especially those living in poverty.
- The Government has failed to accept, develop and implement the National Child Protection Strategy.

2.9.4 Solutions to the problems

- Law Reform. The presenter supported the review of the Sexual Offences Act & Child Care Act that is currently underway. However, she argues unless resources and political will are committed to the implementation of law, these acts will remain "paper tigers". Although some progressive legislation is already in place, it is simply not implemented.
- The development and implementation of a National Child Protection Strategy.
- Role-players in the criminal justice system who fail in their responsibility to protect children through corruption, disinterest and carelessness must be held accountable for their failure and disciplined appropriately.
- Resources must be committed to projects that effectively protect children from abuse and manage children after they have been abused.
- Role-players who work within the child protection system must be appropriately selected for their roles, appropriately trained, and appropriately debriefed on a regular basis.
- The Department of Education should be encouraged to include in its life skills education the teaching of human rights, impulse management and responsible sexual behaviour. These skills should be taught to all learners, both male and female at every level of the education process.
- The introduction of social security for all children who are destitute and easier access for those who are deserving of this assistance.
- Attention must be paid to the child sexual offender. It is essential to develop programmes and services for these young people who are usually the victims of abuse themselves. They should whenever appropriate be diverted from the criminal justice system.
- Punishment of the child sex offender has to be more appropriate.
- Attention must be given to child victims of child sexual assault especially male victims. Research at Childline indicates that the male victim of childhood abuse and neglect is more likely to develop abusive behaviour during both child and adulthood.

2.10 Children's Institute, University of Cape Town

Professor Andy Dawes represented the University of Cape Town Children's Institute. The Institute is a multi-disciplinary research institute established within

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the Health Sciences Faculty of UCT. Its primary mission is to conduct research to inform policies and programmatic interventions that will enhance children's well-being and rights. The Institute focuses, in particular, on children rendered vulnerable by poverty and difficult circumstances.

2.10.1 Underlying causes of sexual abuse of children

- Poverty. The presenter argued that while poverty is not the sole cause of sexual abuse, it does amplify the factors that place children at risk. In other words, people with low self-esteem, a low sense of personal control over their lives, and a tendency to depressed moods, struggle more to cope with the strain of poverty. Fundamentally, people who are struggling to cope with the strains of poverty may feel over burdened to the point at which childcare becomes yet another strain. The presenter also distinguished between structural and personal features that raise the risk of abuse. Structural features include overcrowded housing in which there is little possibility of separation between sexualised adults or teenagers and children and poor recreational and related resources for youth. Personal features include high levels of alcohol abuse, large numbers of unemployed men and youth and the struggle of individual parents to cope with the strains of poverty.
- The attitudes and behaviour of men towards women and children. According to the presenter the common denominator in all cases of sexual abuse is that the abusers are men or boys and nine times out of ten the victims are girls. He identified the following cultural and attitudinal factors that are associated with the risk of sexual abuse, regardless of socio-economic status or ethnicity:
  - Male presumptions regarding their rights and powers in relation to women and children.
  - A cultural background that promotes male dominance and aggression towards women and children.
  - An ideology that sexualises young girls through a range of practices. These include media and local community practices such as talent contest in which young girls are lauded for imitating the sexualised performances of pop stars.

2.10.2 Recommendations

- Ensuring that children's immediate human and physical environments do not pose a risk for abuse. This involves community level development and support strategies that can be implemented in the short to medium term.
- Attempting to address some of the underlying attitudinal factors that lay the ground for child abuse in its various manifestations. This involves the much more difficult and long-term process of changing attitude and behaviour. This is likely to occur over several generations rather than in the short term.
- Strengthening social cohesion and making neighbourhoods safe.
- Supporting vulnerable families at risk of abuse.

- Developing programmes aimed at re-orienting attitudes and practices.
- Funding research into the problem and into solutions.

2.11 Children's Rights Centre

The Children's Rights Centre presented a submission supporting the reform proposals made by the South African Law Commission. The Centre mentioned the various agencies or service providers responsible for dealing with the victims and offenders of sexual offences and the procedure for disclosure, reporting, investigating and the court hearings, rules of evidence and sentencing of the sexual offender. They particularly supported the call for a multi disciplinary approach and for child sensitive one-stop centres. The Centre supported the broader definition of rape, handing of victims, treatment against HIV infection and long term monitoring of sex offenders.

2.12 CIET Africa

Dr. Neil Anderson made presentations on behalf of CIET Africa. He provided a summary of a national pilot study on sexual violence and HIV risk in school going youth aged 12-21 years.

The study dealt with various themes including:

- The frequency of sexual violence.
- Social implications of sexual violence.
- The effect of HIV/Aids on children.

2.12.1 Findings

- 6% of both sexes endured from forced sex.
- Rural areas were considerably more affected than urban areas.
- The age at which sex was forced upon children was increasingly young.
- With a strong bias to the rural areas.
- Rape cases are not evenly spread over the country.
- Greater significance of simply any abuse.
- One third of the sample group were sexually active.
- 90% of the older youth were sexually active.
- Touching and beating was more common than forced sex.
- 20% of that males were forced to have sex.
- 19% of the girls were forced to have sex.
- 17% of the boys said that had raped before.
- 9% of the girls agreed to raping before.

He looked at the question whether victims would become villains, and stated that on average victims were three times more likely to commit the crime. He noted that all the findings were based on self-reports and admissions, thereby making the results fairly reliable.

2.12.2 Social implications

- Culture of sexual violence important because 40% to 50% of the children thought that rape did not happen if it was someone that they knew.
- Boys said that girls meant yes when they said no. A ratio of 1: 5 girls agreed.

- Boys said that girls preferred violent guys. 1: 20 girls agreed.
- Boys said that girls asked for rape
- In general, boys said that girls had no right to say 'no' to sex with their boyfriends. Some females agreed.
- Over half of the youth said that sexual violence was caused by girls, or by both sexes.

2.12.3 Responses

- The teams were welcomed by all but one teacher.
- There was a low non-response rate by the youth.
- There was a high level of participation.
- All schools requested that they return in the future.

He stated that the results pointed to the fact that children did not have anyone to talk to about the problems. This called for guidance counsellors.

2.12.4 Additional findings

- Many youth said that they would/do not use condoms
- 20 –30% of them stated that the use of condoms would not reduce the chance of become HIV infected.
- Many believed that sex with a virgin does cure HIV.
- Many children stated that they believed that they were already infected with HIV.
- Many of the children said that they would have sex, even if in the knowledge that they were HIV positive.
- Between 10% and 15% of the youth were willing to spread HIV.

2.13 Clemenshaw, Dot

The submission highlights the following causes for the abuse of children:

- The gender and resultant power imbalances in our society;
- Uncontrolled sexual urges of men;
- Effects of migrant labour system on tribal and family life.
- Poverty and overcrowding;
- Inadequate childcare facilities for poor families;
- Judgmental sexual education for the youth and health care professionals.
- Biased reporting by the media.

2.14 Commun-'I'-Care Project 2002

This submission details a proposal made to the Gauteng Provincial Government for a multi-disciplinary approach to caring for survivors of child abuse. The programme aims to provide abused children and rape victims a complete, specialised and compassionate service under one roof.

The problems related to child abuse and rape victims identified in the submission include:

- Rape victims from poor communities are often not taken seriously, with the result that they feel threatened by the system and find it difficult to benefit from formal treatment and care structures

- When a victim is very poor, having to travel from one department to another is costly and places an extra burden on the already traumatised victim. The length of time it takes to finalise cases adds to this difficulty.
- The protective system and services are often not child-friendly, with the result that the child sees social service officials, police and the court as threatening and intimidating.
- The system of gathering evidence does not always take into account the needs of very young victims, and the evidence is then insufficient to ensure a conviction – this causes the victim's family and friends to distrust the system.
- The disappearance of case dockets and other delays in completing cases represents secondary abuse. It also causes communities to distrust the abilities of the police.
- There is no effective combined investigation and rehabilitation programme offering victims of abuse a caring and complete service.
- Communities are not informed and educated about the impact that child abuse has on the child; there is also insufficient information about how to identify early stages of child abuse.
- The media attention given to perpetrators fuels the perpetrator's sense of power over the victim. This makes rehabilitation of such a perpetrator much more difficult.

It is therefore recommended that

- Government must accept that it cannot address the problem alone, and that it has to make use of the full cooperation from communities, the private sector, churches etc.
- Society as a whole must accept co-responsibility for fighting child abuse and rape.

2.15 Community Law Centre, University of the Western Cape

Ms. Jackie Gallinetti, co-ordinator of the Children's Rights Project at the University of the Western Cape, concentrated on the judicial aspects to combat sexual abuse of children.

2.15.1 Problems

- Lack of co-ordination and co-operation in dealing with sexual abuse cases.
- Problems regarding child testimony include:
  - Competency of the child to give evidence. Presiding officers often do not have the expertise to decide whether a child is competent.
  - Cautionary rules. General practice is to treat child evidence with caution especially in the case of a single witness.
  - Cross-examination of child witnesses. These guidelines are too loose and encourage aggressive practices. .
  - Evaluation of child evidence. Too many people are involved in the interviewing of child victims, which lead to problems around credibility of evidence.

- Corporal punishment. Chastisement is used as a defence by parents in abuse cases.
- Media. The media has been identifying child victims contrary to provisions in the law.

2.15.2 Recommendations

- A multi-disciplinary approach should be adopted to ensure better co-ordination and co-operation between role players.
- Inter-sectoral agreements and protocols should be incorporated in legislation to increase accountability of departments.
- Presiding officers should be trained in child development in order to assist them to make decisions regarding competency. When in doubt, experts should be called in to make decisions.
- The presenter supports the SALC recommendation to abolish the cautionary rules but because of time calls for immediate amendments to the Criminal Procedure Act.
- The SALC recommendation to control the cross-examination of witnesses in sexual cases should be broadened to include all cases involving children, not only those of sexual abuse.
- It is important to ensure proper training of interviewers and a consistent approach in interviewing children. Pilot projects should be rolled out throughout the country. Pilot projects use a single interviewer and videotapes for evidence.
- Support is given to the SALC recommendation that reasonable chastisement is removed as a defence, but states that they should remove the right to corporal punishment even at home. An awareness campaign should be initiated on alternative means of disciplining children.
- The National Director of Public Prosecutions must instruct its regional offices to enforce sections of the law protecting the identity of children.
- A code of conduct in the media should be established which will protect children from identification.

2.16 Concerned Citizens Against Pornography (CCAP)

The submission raises the following concerns:

- Non-Governmental Organisations and the Government co-ordinated and facilitated a number of events which are aimed at addressing the problem of child and sexual abuse. To date the recommendations of those stakeholders have not been factored into policy and the practices of the justice system;
- The justice system is not sensitive and equipped be able to deal effectively with child sexual abuse issues;
- The rate of abuse of children's rights is high. Child abuse occurs in many instances where people make profit from it;
- The operation of "adult shops' in residential and community shopping areas creates a problem that needs to be addressed. Where communities

oppose such shops in their vicinity, this is often ignored. The rights of individuals seem to be allowed to prevail at the expense of community. As a result the rate of prostitution in those vicinities increases;

- There are a number of child and sexual abuse events that occur in the name of "tradition" while it violates law. There needs to be clarity about these because children are often abused as a result.

2.17 Department of Education

2.17.1 Policies

A range of strategies and polices have been put into place by the Department, shortly after receipt of the Gender Equity Task team Report in 1997. In 2000, a module on Managing Sexual Harassment and Gender-based Violence was developed for schools. The module has been piloted in Gauteng, the Free State and Mpumalanga and will be taken to the rest of the provinces in 2002. It provides schools with the knowledge and skills needed to deal with the different facets of sexual harassment and violence.

The Department, together with the South African Police Service, completed a workbook on Signposts to Safe Schools in 2001. The workbook serves as a reference for action to be taken by schools on a range of school safety matters, including sexual abuse. All schools should receive a copy by the end of May 2002. A teacher's manual on gender equity in education has been developed to ensure that schools become friendly to girl learners.

The Department will work to ensure a common understanding of what constitutes sexual harassment through the development of a national sexual harassment policy.

2.17.2 Programmes

- The Safe Schools project was launched in 1999 in order to create safe and disciplined learning environments that celebrate innocence and value human dignity. The Project, which was launched as part of the Tirisano Implementation Plan, has focused on, amongst others:
  - Improving physical safety at schools
  - Mobilising communities to take ownership of schools
  - Developing policies on school safety
- The focus of the Life Orientation/Life Skills learning Area within Curriculum 2005 is intended to develop the skills, knowledge, values and attitudes that are essential for participating in a democratic society.
- Due to the image of the teaching profession being damaged by the recent Medical Research Council report on the Rape of Girls in South Africa, the Department has to embark on a campaign to restore confidence in the profession.
- In the next few weeks the Minster will be announcing the establishment of a special task team. This task team will work closely with various stakeholders to continuously monitor the implementation of the legal and policy instruments in the education system.

- The Department launched a programme in 2002 to empower girls to extricate themselves from difficult situations. The programme aims to create awareness in girl-children that they are not defenceless and therefore do not have to be victims.

2.17.3 Legislation

An amendment to the Employment of Educators Act of 1998 was introduced in November 2000. The amendment provides for the dismissal of a teacher who has been found guilty of engaging in a sexual relationship with a learner, with or without the consent of such learner. The South African Council for Educators Act of 2000 ensures that when a teacher is found guilty of the sexual abuse of a learner, s/he is deregistered as a teacher and may never be appointed as a teacher.

2.17.4 Inter-Departmental Initiatives

The Safe Schools Project focuses on establishing partnerships between the Department of Education and other government departments as well as civil society organisations.

The Department proposes collaborating with other Departments in order to monitor how survivors experience processes relating to the report of sexual abuse outside schools.

2.18 Department of Health

2.18.1 Problems

- Sexual abuse and rape cases often result in psychological trauma to health workers.
- Sexual abuse of children can result in:
  - Physical trauma to children.
  - Emotional trauma.
  - Physiological trauma.
  - Infections.
  - Risk of exposure to HIV and Aids.
- The Department of Health faces a number of challenges including:
  - Increased number of cases.
  - Increased complexity of injuries requiring specialized medical skills.
  - The need for prolonged and sustained psychological support to the child and the family.
  - Lack of human resources and capacity in certain areas.

2.18.2 Programmes

In addressing the above, the Department has implemented the following:

- Gender Focal Points assist in sensitising health workers to the issues. This will lead to increased investigation of suspicious cases.
- Training of health workers in skills to deal with abused children.
- Forensic nurse training to increase the pool of health care workers in dealing with abuse cases.

- Gender Focal Points together with the Medical Research Council is assessing medico-legal services.
- The department participates in inter-departmental initiatives on violence.
- Family intervention and the promotion of the role of men in child care.

Attention will be given to the reduction of abuse of alcohol and other substances which impact on the sexual abuse of children.

2.19 Department of Home Affairs

2.19.1 Defining Child Pornography

Child pornography is defined as any image, real or simulated, however created, depicting a person who is or who is shown as being under the age of 18 years engaged in sexual conduct or a display of genitals which amounts to sexual conduct.

2.19.2 Effects of Child Pornography

Once a pornographic image is in the public domain, it is likely to be distributed and reproduced, regardless of the fact that the perpetrator has already been caught. These images will therefore inevitably follow the child up to and through adulthood causing immense humiliation and pain. Most children who are sexually abused suffer physical harm including various infections, genital sensitivity and soreness, as well as anal irritation. The child may also be infected with HIV/Aids. The abuse has a negative effect on a child's intellectual and emotional well-being.

2.19.3 Legislation and Conventions Dealing with Child Pornography

- Articles 19 and 34 of the UN *Convention on the Rights of the Child* (CRC)
- The Agenda for Action adopted at the First World Congress Against the Commercial Sexual Exploitation of Children in 1996.
- Convention 182 adopted by the International Labour Organisation in June 1999.
- Article 9 of the *Convention on Cyber-Crime* published by the Council of Europe in June 2001.

2.19.4 Findings

- There is a strong link between the possession of child pornography and sexual abuse.
- The incidence of child pornography is increasing.
- There is a need for an effective, unified international response to child pornography.
- Specialist police units dealing with child pornography need to be established.
- Hotlines or triplines should be set up to allow individuals who have found what they think are illegal material on the Internet to report it.

2.19.5 Recommendations

- There is a need for proper and effective co-ordination at both government and civil society levels.
- **The expertise and resources of the entire criminal justice system, including the Child Protection Unit, must be developed.**

- It is vital that members of the judiciary gain a proper understanding of the new developments in the distribution of child pornography. Their sentencing policy should also reflect society's abhorrence of the sexual abuse of children.
- Internet service providers must be brought into the fight against the use of the Internet for the sexual exploitation of children and child pornography.
- Public education on the dangers of unsupervised access to the Internet must be prioritised.
- Government must give effect to the plan of action of the World Congress Against the Sexual Exploitation of Children.
- The Office of the President must be provided with the necessary resources to become more involved in protecting children from child pornography.
- The setting up of the "24/7" network, which is required of all countries that have signed the Budapest Cybercrime Convention, must be given some priority.

2.20 Department of Justice and Constitutional Development

2.20.1 Policies and Legislation

The Department views the protection of the victims of sexual offences as a matter of the great importance. It has thus tasked the South African Law Commission to conduct urgent investigations with the view to improve the legal framework relevant to dealing with sexual offences. The Commission subsequently published a discussion Paper on Sexual Offences. The Discussion paper contains a draft Sexual Offences Bill that embodies some progressive recommendations on the reform of the law relating to sexual offences.

The Bill includes revised substantive law provisions such as:

- A revised definition of the offence of rape. The proposed definition extends the definition of 'sexual penetration' to include any act which causes penetration by the genital organs of one person into the anus, mouth or genital organs of another person. It will also include penetration by means of any object, including any part of the body of an animal, or part of the body of one person into the anus or genital organs of another person, in a manner, which simulates sexual intercourse.
- A view that non-disclosure by a person infected with a sexually transmissible disease prior to sexual relations with another person constitutes rape.
- Affording vulnerable witnesses, such as children, additional protection measures during a sexual offence trial.
- Provision for the prohibition of the organisation or promotion of child 'sex tours'.
- Child prostitution now constitutes what was previously referred to as Commercial Sexual Exploitation of Children due to the fact that the divergent role players, for example pimps and clients, targeted in the original provisions, are all in some way involved in child prostitution.

In addition, the Department has tasked the South African Law Commission (SALC) to develop a comprehensive new law relating to children accused of crimes (Child Justice Bill). The new system emphasises individual assessment of each child and tries to find alternative ways to deal with children. The idea is to keep them within their families and communities and to protect them from the damaging effects of courts and prison as far as possible. Diversion options and programmes embody restorative justice principles, which focus on reconciliation and restitution rather than on retribution and punishment.

2.20.2 Minimum sentences

The Criminal Law Amendment Act provides for the imposition of minimum sentences in respect of certain serious offences. Section 51 of the Act states that persons convicted of certain serious offences listed in Schedule 2 of the Act must be given a mandatory minimum sentence, unless the judicial officer imposing the sentence is 'satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence'. Rape is one of the offences listed in this Schedule. However, an empirical study by the South African Law Commission (SALC) has shown that the severity of incidents of rape with aggravating circumstances committed after implementation of the Act has increased when compared to pre-implementation sentences. The study thus questions the effectiveness of the minimum sentence approach prescribed by the Act as a crime reduction mechanism.

The SALC has proposed a draft Sentencing Framework Bill, which seeks to address sentencing disparities in a number of ways. It lays down explicitly as a prime sentencing principle that all sentences must be proportionate to the seriousness of the offence. Seriousness, in terms of the draft Bill, is to be determined by the degree of harmfulness of the offence and the degree of culpability of the offender. According to the extended legislative programme of the Department, the Bill will be introduced into Parliament as soon as circumstances permit, either during 2002 or later.

2.20.3 Repeat offenders.

The Criminal Law Amendment Act provides for a mandatory life sentence of persons convicted of two or more offences of rape, but who have not yet been sentenced in respect of such convictions. Repeat sex offenders for rape are therefore liable to a minimum sentence of life imprisonment. In 1997 the Department tightened bail provisions. Section 60 of the Criminal Procedure Act was amended to provide that where an accused person is charged with an offence listed in Schedule 6 of the Act, such a person must remain in custody. The onus is on the accused to prove to the court that exceptional circumstances exist that permit his or her release. Schedule 6 offences include rape where the victim was raped more than once or by more than one person; where the victim was raped by a person charged with having committed two or more offences of rape or by a person knowing he has Aids or HIV.

2.20.4 Provisions for rape victims to testify.

The focus areas of the SALC's discussion paper on Sexual Offences are on process and procedure. Specific recommendations are made in this discussion

paper and the draft Sexual Offences Bill to make it easier for victims of sexual offences to testify in court. This includes, amongst others, the creation of a category of vulnerable witnesses, removal of cautionary rules and one-way mirrors. Section 170A of the Criminal Procedure Act makes provision for the appointment of competent persons as intermediaries. Where the court is of the opinion that a witness under the age of 18 years may suffer undue mental stress if he or she testifies, such intermediaries may be appointed to testify on behalf of the child. The insertion of this section ensures that survivors of sexual offences testify in victim-friendly environments and that secondary victimisation through participation in the criminal justice process is eliminated.

2.20.5 Sexual Offences and Community Affairs Unit (SOCA)

This Unit is one of the Operational Units within the National Directorate for Public Prosecutions. It was established in 1999 to focus on violent and indecent offences against women and children, as well as family violence in general. It ensures that victims and witnesses are treated fairly in court. The main priorities of SOCA are to reduce sexual offences, increase the reporting rate, improve the conviction rate, reduce secondary victimisation and reduce the time taken to finalise cases.

The Unit has established three Multi-Disciplinary Care Centres for the victims of sexual offences and domestic violence at hospitals in the Eastern and Western Cape. These Centres constitute a co-ordinated approach that brings together different service providers in a 'one-stop' model.

2.20.6 Inter-Departmental initiatives

The Department believes that curbing the escalation of violent crimes and rape against women and children requires a common approach by the relevant stakeholders. These are the Department of Justice and Constitutional Development, the South African Police Services (SAPS), Correctional Services, Social Development, Home Affairs, the Office on the Status of Women and the Office on the Rights of the Child in the Presidency.

The National Crime Prevention Strategy (NCPS) has prioritised crimes against women and children. This priority area consists of a number of interdepartmental programmes, supported by departmental action. These programmes are interdependent and complement each other. However, each has a distinct focus and cannot be collapsed into one programme with one approach. They include:

- **Interdepartmental Management Team.** This Team was established in 2000, and is led by the Sexual Offences and Community Affairs Unit (SOCA) of the National Directorate of Public Prosecutions. It also includes the SAPS, the Department of Social Development and the Department of Health. The Team was scheduled to make a submission to Cabinet on a draft action plan for the reduction of rape and the improvement of criminal justice processes with regard to rape and sexual offences during January 2002.
- **Domestic Violence Programme**. The Inter-departmental domestic violence programme addresses aspects like the implementation of the

Domestic Violence Act of 1998, dealing with perpetrators and victims of domestic violence and intersectoral co-operation. The Department of Justice and Constitutional Development is responsible for leading the implementation of the Act. The Department of Social Development is responsible for leading programmes for victims and offenders.

- **Victim Empowerment**. This programme aims to improve services to all victims of crime. It makes provision for victims with specific needs like women and children.

A South African Victim Charter was finalised during 2001 and an implementation plan is being developed. Agreement has been reached on a framework for the development of a set of minimum standards for victim empowerment.

- **Child Protection**. All provinces are implementing a Child Protection register. Guidelines on the notification of alleged child abuse cases has been finalised. Good progress has been made to rationalise national and provincial structures for child protection. A Protocol on the Management of Child Abuse and Neglect has also been completed.
- **Dealing with offenders**. A national Inter-Sectoral Committee on Child Justice, chaired by the Department of Justice and Constitutional Development was specifically set up to gather information and make recommendations for specific interventions concerning the situation of children awaiting trial in detention. The Committee monitors children awaiting trial through the collation of statistics provided by the Departments of Correctional Services, Social Development and SAPS. Further steps to deal with children awaiting trial include the establishment of additional One-Stop Child Justice Centres, improved legal representation for children and providing more diversion programmes.

2.21 Department of Safety and Security

The National Commissioner of Police, Mr. J Selebi, assisted by various staff members, represented the South African Police Service (SAPS). The Department's presentation centred on the three aspects of the work of SAPS in relation to rape and sexual offences, namely:

2.21.1 Policies and Legislation

1. **Prevention.** SAPS' activities focus on the prevention or reduction of crimes through community and sector policing, situational crime prevention and policing the factors (such as drugs and alcohol) that contribute to crime and violence. The policy documents underlying the preventative work of SAPS is the National Crime Prevention Strategy of 1996 and the White Paper on Safety and Security.
2. **Response and Investigation.** The SAPS reaction to crimes like rape and sexual offences includes investigation and gathering evidence for use in

prosecution. The policy documents that relate to the investigation of rape and sexual offences cases are:

- National Instruction 22/1998: Sexual Offences. This document deals with support to victims at crucial aspects of the investigation.
- Family Violence, Child Protection and Sexual Offences Unit (FCS) policy document.

In addition, members of SAPS are providing input and comments into the following legislative processes:

- The Sexual Offences Bill (SA Law Commission Project 107).
- The Child Care Act (SA Law Commission Project 110).
- The proposed amendment to the Films and Publications Act, 1996
- The Child Justice Bill, 2001

3. **Support to victims and witnesses.** The SAPS considers the need to adopt a victim-centred approach in the criminal justice process as crucial. It thus provides programmes to improve services to victims and support victims through the criminal justice process. The Department of Justice and Constitutional Development is currently finalising a Victims' Charter for South Africa. Following from the Victims' Charter, the SAPS is developing a Victim Empowerment Policy and National Instruction. This process is in its final consultative state and will be concluded in 2002.

2.21.2 Programmes

2.21.2.1 Internal Programmes

The SAPS acknowledges the fact that sexism and gender inequality impact negatively on human rights. It has thus committed itself to vigorously fight to eliminate unfair discrimination and to uproot sexual harassment. To this end, it has initiated various programmes and measures. These include:

- Counselling services. This programme is aimed at addressing substance abuse and domestic and marital problems for members and their immediate family members.
- Presentation of pro-active programmes. These include programmes on managing stress effectively, life skills and the facilitation of the development of ethical behaviour.
- Awareness Programmes. These include programmes on suicide prevention, HIV/Aids awareness and prevention and sexual harassment.
- Partnerships. The Department has entered into partnership with several initiatives and institutions. These include the Office on the Status of Women, the Commission on Gender Equality and Non-Governmental Organisations such as NICRO, Women Against Abuse (WAWA) and People Opposing Women Abuse (POWA).

The Department listed various problems that hamper the effective handling of sexual offence cases. These include a guilt feeling of the victim who thus does not go for support, withholding of progress reports from the victim, blackmailing of victims and the attitude of management.

2.21.2.2 External Programmes

1. Prevention

- Crime trend analysis. Crime trends at local level are analysed to inform prevention and crime combating operations.
- Crime prevention projects with Community Police Forums, other community organizations, NGOs and other departments. These programmes target crimes such as rape and sexual offences. Many of them focus on public education and mobilizing communities to report crimes and fulfil their responsibilities as witnesses to crime.
- Crime prevention projects at police stations. During 2001, 20 police stations were prioritised for crime prevention projects to address crimes against women and children. These include crimes such as rape, sexual offences, child abuse and domestic violence. For 2002, 128 where 50% of rape cases are reported, have been prioritised for this purpose.

The Department emphasised the need to mobilize other partners from all government departments and civil society.

2. Response and investigation

- Involvement in multi-disciplinary programmes aimed at crimes against children. These include the Department's involvement in the Family Violence, Child Protection and Sexual Offences Unit (FCS). The Department also participate in various International, national, provincial and local committees and forums working on crimes against children.
- Training courses. The Department offers various training courses for members with regard to offences against children. These include a basic detective course, a sexual offences investigations course, and a FCS Investigators course. During 2002, the Department will also introduce a new course on sign language, which is specifically aimed at assisting people who are unable to voice their concerns or complaints.

Specialised Child Protection Units

As a response to the letter of the Chairperson of the Task Group on Sexual Abuse of Children, the following table gives details on the units located in different provinces. These special units are well equipped with personnel.

Province	**Number of Child Protection Units**
Eastern Cape	**6**
Free State	**2**

Gauteng	**10**
KwaZulu-Natal	**5**
Northern Cape	**4**
Northern Province	**4**
North West Province	**10**
Western Cape	**2**
Mpumalanga	**4**

Convictions and sentences

In the year 2000, 1 551 convictions were made by the Child Protection Units. In the year 2001, 2112 convictions were made. However in 2001only 369 out of 1551 cases were finalized while 378 out of 2112 cases were finalised. The sentences imposed on offenders include fines and imprisonment.

3. Support to victims and witnesses
   - SAPS Victim Empowerment Programme. This programme is aimed at, amongst others:
     - Training SAPS members in victim empowerment.
     - Improving facilities for victims at police stations.
     - Involving the community in practical victim support initiatives.
     - Improving feedback to victims.
   - Implementation of the Domestic Violence Act of 1998. The SAPS is one of the departments responsible for the implementation of the Domestic Violence Act. The Act provides the SAPS with various ways to intervene in domestic violence incidents that are reported. These include:
     - Arrest and protection during the incident.
     - Victim support and referral for further support and counselling.
     - Discretion to arrest where there is imminent harm.

     The Act also requires the SAPS to record all incidents of domestic violence in a register, and report to Parliament every six months on complaints against police officers for non-compliance with the National Instruction on Domestic Violence.
   - Training. Starting in 2002, the basic training for all members include victim empowerment training. During 2001 6 139 members were trained. 30 849 members were trained since the start of the Victim Empowerment Programme.

2.21.3 Inter-Departmental initiatives

The Department stressed the crucial importance of adopting an integrated and multi-sectoral approach to fighting the scourge of rape and sexual violence. The main objectives of such an approach are prevention and co-operation. As such, it

is one of the role players in various programmes with other government departments, non-governmental organizations and community-based organizations.

Inter-departmental initiatives in which the Department participates include:

- The Anti-rape strategy.
- The Domestic Violence Programme.
- The Victim Empowerment Programme.
- The Child Abuse and Neglect Programme.
- The Child Justice Programme.
- The Women Empowerment Programme.

The Department is also represented on the Inter-Departmental Management Team (IDMT) for rape and sexual offences, lead by the Directorate for Sexual Offences and Community Affairs in the National Prosecuting Authority. The IDMT has developed an information-based approach to develop a strategy to address rape and sexual offences.

The Department has management processes in place for each programme to ensure that the work is done in an integrated and inclusive manner.

2.22 Department of Social Development

2.22.1 Introduction

The Department of Social Development stated that the Parliamentary hearings were significant in that they provided an opportunity to find solutions to child abuse and reflected a greater willingness to have the issue of sexual abuse discussed more openly.

2.22.2 Policies

The Department has based its policies on the Constitution of the Republic of South Africa, the United Nations' *Convention on the Rights of the Child* and the *African Charter on the Rights and Welfare of the Child*. The Department's policies on child abuse are not confined to sexual abuse, but also include neglect and exploitation. Protocols for the management of child abuse cases have been developed in all Provinces. The protocols make provision for a multi-disciplinary and integrated service to child victims and their families. A similar protocol has been developed for the national departments and is awaiting final comments from the relevant Ministers. The NCCAN has developed a draft strategy. While the principles and intentions of the strategy are agreed upon, a Programme of Action with specific objectives, targets and time frames must support it.

2.22.3 Programmes

There are a range of services provided by the Department, including trauma counselling, clinical assessment, interim placement of children if required and support in dealing with investigative authorities.

- The Department has initiated a 24-hour service pilot programme providing for social workers to be on call to assist police officers with cases of abuse. The service is fully operational in the Western Cape and the Free State and in one area each in Gauteng and the Eastern Cape.

- A Victim Empowerment Programme, co-ordinated by the Department, has established 100 projects, many of which are one-stop or 24-hour services for women.
- Training has been provided to a range of professionals who work with abused children.
- Life skills programmes for children form part of the workload of social workers in the Provincial Departments.
- Provincial Departments participate in social crime prevention programmes such as the Neighbourhood Response Programme (NRP) in the Western Cape and Safe Houses Programmes (SHP). The NRP assists community members to identify and report child abuse cases. The SHP involves the training of safe house parents.
- Community awareness campaigns are conducted during Child Protection Week in May and Social Development Month in October.
- A Directory of Children's Services has been produced with the assistance of Save the Children Fund, together with a Directory of Services to Victims.

2.22.4 Legislation

The Child Protection Register has been established in all provinces in terms of section 42 of the Child Care Act. The purpose of the register is to monitor each reported case on sexual abuse. The register operates on a manual system. However, the system will be computerised by November 2002. The Inter-Departmental Committee has identified the need to strengthen the legislative framework and harmonise all laws. The Child Care Act is widely regarded as being inadequate and therefore needs to be replaced by new comprehensive childcare legislation. Section 4 of the Prevention of Family Violence Act of 1993 needs to be repealed since it has created confusion with respect to reporting cases of sexual abuse.

2.22.5 Inter-Departmental Initiatives

- Social workers from the Department work closely with officers of the Child Protection Unit (CPU) in certain provinces.
- The NCCAN was established as a sub-committee of the National Plan of Action for Children in South Africa (NPA). The NCCAN comprises the main government departments involved in child abuse, provincial representatives as well as representatives of the non-governmental sector.
- Provincial Child Protection Committees exist in all Provinces.
- Each Provincial Department of Social Development has an official appointed as the Provincial Child Protection Co-ordinator.
- The Inter-Departmental Committee has identified the following priorities for action:
    - Strengthening the legislative framework and harmonising all laws.
    - Improving the investigation of cases of abuse.
    - More attention to prevention.
    - Improving co-ordination of services provided by the various departments and the NGO sector.

- Responding to children with special needs.
- Mobilising partnerships with communities.
- Building institutional capacity at all levels.
- Strengthening governance within the child protection system.
- Enhancing information, research, monitoring and evaluation.

2.23 Domestic Violence Helpline, Durban

2.23.1 Problems

- Victims often suffer secondary abuse as a result of police and court officials being stressed.
- In the Durban area, the following is observed:
  - An increase in the number of younger females between the ages of two-five years who are the victims of sexual abuse. In more than 60% of the cases, the perpetrators are the fathers or stepfathers.
  - The perpetrators are often unemployed and are the caregivers to these children.
  - The number of male adolescent perpetrators has increased significantly and in approximately 70% of the cases, with the sexual crimes being perpetrated against family members.
  - Pornographic materials are being distributed in schools.
  - Younger boys at school, who are curious about sex, have been engaging in sexual acts with boys their own age.
  - It is estimated that half a million female children are sexually victimized annually.
  - one in eight girls are forced to leave school due to pregnancy.
  - Many cases, including that of baby Tshepang and the case of the five year old that was raped, should be dealt with effectively by the justice and police systems.

2.23.2 Recommendations

- Greater awareness programmes in communities.
- DNA testing should be decentralized to ensure that the results are obtained speedily and a conviction can be made.
- Courts should provide qualified social workers or psychologists that are trained to work with the abused children in a sensitive manner.
- In camera facilities should be provided so that children are not exposed to perpetrators.
- The Judiciary needs to address the problem of delays in courts.
- The Child Protection Unit (CPU) needs to employ more trained personnel in the area of child abuse.
- Educators who are perpetrators should not be granted bail and not be allowed to teach again.
- There should be a code of conduct that prohibits sexual harassment and sexual relations between educators and learners.

- Social workers should address learners during guidance periods as part of the school curriculum.
- Government and all stakeholders should work together to eradicate child sexual abuse.

2.24 Donald Fraser Hospital

The Hospital receives an average of 25 cases a month. They have a paediatric nurse and a social work team to deal with them, but are in need of assistance to train them in forensic medicine. The Hospital has listed 15 cases, which they have received. 14 of which deal with sexual violence. The single case dealing with neglect involves the only boy child. All 14 showed physical symptoms of sexual violence. The ages of the survivors range from two to 14. The alleged perpetrators include nine relatives, three persons known to the survivors, four strangers and 1 minor. Predisposing factors include mental disabilities and the parents living in another town. All but 1 case was reported to the police. All are pending, except the one where the accused was a minor, who as a result was not charged. Ten of the complainants have been threatened to varying degrees subsequent to laying charges.

2.25 Dr Yusuf Dadoo Primary School

The principal, Dr Yusuf Ismail, has proposed that the following topic be included in the discussions: "The link between sexual molestation and poverty of children in informal settlements".

2.26 Dyanti, Felicia

The presenter from Langa, spoke about her own childhood experience of being abused.

She related the story of being given away by her mother at the age of five years to live with her great-aunt and uncle. She was promised an education but was made to fend for herself and was used as a slave in the house. She was beaten by her aunt and was not allowed to play with other children.

She was raped four times by the aunt's son. Circumstances in the home forced her to run away. She was taken back after being found by a herdsman in the forest. At the age of 11, the great uncle abused her. At the age of 19 years, she went back home.

2.26.1 Problems

- There is a silence in communities to talk about and deal with rape.
- The Presenter's mother does not really understand what has happened to her and has never asked her about it.

2.27 Far North Regional Network on Violence Against Women

2.27.1 Challenges Facing Rural Areas

- There were approximately nine to 34 rapes reported at five police stations per month.
- The trauma centre has attended to 20 cases each month since December 2001.
- There are no shelters for children in these areas. Children who are abused by their father are sent back home.

- Poverty and a lack of understanding of what constitutes sexual abuse are also problematic.
- In one situation, the family of a three year old child who was raped by her father and subsequently died had no money to bury the child.
- Some children are raped on their way to fetch water as well as on their way to school.
- The Child Protection Unit in the area only has eight investigating officers with no support staff or researchers to assist. There is also no computer or typewriter and no four-wheel drive vehicle to get to remote areas. If a case of rape or abuse is therefore reported in a mountainous area, nothing can be done about the case.
- Children have no support when they get to court.
- Rural communities feel as if they have been forgotten.
- When young girls go to court, they testify before everyone instead of giving evidence in camera. There are furthermore no intermediaries which results in the child feeling uncomfortable.
- Teachers need training since they do not know what to do when a child is abused.
- The myth that Aids can be cured through sex with a virgin continues to spread through the rural areas.

2.27.2 Recommendations

- The Government is unable to stop abuse without the assistance from communities. Community leaders can intervene before the child is raped and must therefore be empowered and given the necessary resources to do so.
- The police have to ensure that when rapes occur, cases receive immediate attention.
- Community members should monitor each case.
- Rural organisations require financial assistance.
- Education campaigns are necessary to create awareness about sexual abuse between the illiterate and poor. These campaigns should be carried out using radio instead of television. It is also important to take language into consideration.
- More money needs to be made available to run workshops with traditional healers so that they in turn can inform communities about the myths surrounding sexual abuse.
- The sexual offences court needs to be monitored by Parliament.

2.28 It's Your Move Youth Action Group

The organization is the youth component of the Molo Songololo NGO and works against the commercial sexual exploitation of children. It consists of approximately 50 t0 60 young people. The programme has three funders, namely Molo Songololo, Terres des Hommes and Save the Children, Sweden.

2.28.1 Target groups for CSEC

According to the group, all children and young people (girls and boys) are vulnerable, especially street children. However, children from stable homes are also at risk. In fact, some children are even 'pimped' by their own parents. Often, children are made false promises of work. They end up being trafficked inside South Africa and across its borders.

2.28.2 Factors that impact on the CSEC

The group listed a number of factors that, in the opinion of young children, impact on the commercial sexual exploitation of children. These include:

- An increase in unemployment.
- Low levels of education.
- Changes in the religious and cultural beliefs of society.
- A breakdown in family and community support systems.
- Lack of social welfare and protective services for children.
- An increased demand for black children for sexual purposes.
- The myth that sex with a virgin will cure sexually transmitted diseases such as HIV and Aids.

2.28.3 Who are the offenders?

The group believes that children could be sexually exploited for commercial purposes by individuals at all levels. These include parents, teachers, taxi drivers and club owners. Organised gangs or syndicates and criminal networks are also responsible for the scourge.

2.28.4 Challenges

- All practices of commercial sexual exploitation of children should be stopped.
- Child trafficking networks and syndicates should be destroyed.
- Preventative measures must be put in place.
- Support structures must be established for survivors.
- Laws should be implemented effectively, especially by child protection authorities.
- Adequate and effective sentences should be imposed on offenders.

2.28.5 Recommendations

- Young people should be involved in the fight against CSEC.
- An international children's day against CSEC should be instituted.
- We should focus on the demands or needs of victims.
- Government must start playing an active role in curbing CSEC.
- Legislation and other programmes aimed at eradicating CSEC should be harmonised so that there is a co-ordinated effort to fight CSEC.
- Organisations should share their mechanisms that provide information on CSEC to ensure optimal usage of resources and avoid a fragmented approach to the problem.

2.29 Johannesburg Child Welfare Society

2.29.1 Problems

Concern and awareness have escalated in the area of child abuse yet services have deteriorated. There was a lack of questioning around whether existing child protection services are equipped to deal effectively with the problem and there seems little commitment in allocating resources to this area. The child protection system is in neglect and there is no inter-sectoral budgetary process for this. A large number of State child social services are transferred by the State to the NGO sector. These organisations only receive discretionary subsidies that have decreased over the years. There is a de-linking of state subsidies from civil service salaries. The salaries offered to staff of these NGOs are extremely low. This results in a loss of staff often to the State, which offers more competitive salaries. This creates a gap within the organisation and results in secondary victimization for the children, as the children now have to build a relationship with new (often not fully trained) staff.

Budget cuts affect the level of training that can be offered to staff. Training is an essential component of developing skills in order to deliver an effective service and minimize the risk of secondary abuse. Child social service organisations are no longer able to access traditional funding sources such as corporate donations, subsidies and per capita grants and proceeds from scratch cards. The Lotteries Act relegates child protection organisations to the status of charities, which means that they receive a limited contribution from the proceeds.

The Department of Education has restricted their Early Childhood development responsibility to the reception year. The remainder has to be provided by the Department of Social Development. The contribution for Early Childhood Development programmes is at the discretion of provinces. Early Childhood Development programmes therefore often fall between the Department of Social Development and the Department of Education. Numerous services by NGO's are closing around the country.

2.29.2 Recommendations

- A need for proper resourcing of key departments at national and provincial levels such as Social Development, Justice, Safety and Security, Education, Health and Correctional Services.
- It is important for Government to form implementation and financial partnerships with NGO's in the area of child social services.
- It is important to expand existing Early Childhood Development programmes, which have shown to be effective in the prevention of child sexual abuse and assisting in breaking the cycle of poverty.
- Poverty does not cause abuse but plays a role in facilitating abuse. The presenter supports the call for a Basic Income Grant, which will help to address child sexual abuse.

2.30 Kadalie, Rhoda

2.30.1 Defining abuse

Abuse occurs when adults, either physically, or in some other way, hurt children or young people under the age of 18 years. The presenter distinguished between four kinds of abuse, namely physical abuse, emotional abuse, neglect and sexual abuse. These four types of abuse are often interrelated. The presenter thus argued for a multi-pronged approach to address the problem.

2.30.2 Causes of child abuse

According to the presenter, there are no definitive reasons why people abuse children, since these reasons may be different for different abusers. However, she pointed to the following common factors that have been identified as causing adults to abuse children:

- Myths that having sex with virgins will cure Aids.
- High unemployment rates of males in the informal settlements and townships.
- A society characterised by extreme forms of violence. Violence against women and children, in particular, has become endemic to South African Society.
- Stress, financial problems, powerlessness in adult relationships or unhappy circumstances.
- Socio-economic problems such as joblessness, poverty, and a lack of proper housing, etc.

2.30.3 The institutions responsible for protecting children

The presenter cited three main institutions that should bear the responsibility to protect children from all forms of abuse. These are the family, schools and the State.

2.30.4 Proposed measures to protect children

- The family should start teaching children at home about the various aspects of sex.
- The State should:
  - Put in place adequate policies and legislation.
  - Conduct research on, amongst others, the extent, nature and background of the problem, myths around child sexual abuse, etc.
  - Implement compulsory sex education for teachers and learners at all levels, including preschools.
  - Provide care and assistance for victims after rape or abuse has been reported.
  - Police and judicial authorities should commit themselves by ensuring convictions and imposing stiff sentences.

2.30.5 Recommendations for the prevention of child sexual violence

- Assertiveness training and self-defence classes for children at schools.
- Encourage municipalities to reduce the number of unsafe streets.
- Subsidise safer schools projects making the safety of children paramount.

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- National departments should conduct extensive campaigns aimed at men to assume their responsibility to prevent child sexual abuse.
- Children should be encouraged, by means of TV commercials, advertisements, and billboards to talk about their "secrets" with an adult whom they know and trust.
- Conduct community education campaigns on child sexual abuse. These campaigns should also focus on educating adults to be vigilant regarding child abuse and to offer a helping hand when a child needs it.
- All relevant agencies responsible for the human rights of children should conduct extensive research on the issue over an extended period of time.

2.31 Kandawn, Masego

This submission deals with abandonment and neglect of children by an unemployed mother who has left these vulnerable children to survive on their own. The result of this abuse is that the children are unresponsive and withdrawn.

2.32 Khosa, L

The presenter is a teacher from a township in Newcastle, which is characterized by unemployment and poverty. She listed seven cases of abuse which she has confronted in her work and raised the following concerns:

- In most cases, the perpetrators were the breadwinners. This meant that other family members hesitated to report the cases for fear of loss of earnings.
- Drug abuse exacerbates incidence of child abuse.
- Children are often left in the care of other family members or other people whilst the mother is away at work. Most abuse happens after school whilst mothers are at work.
- Mothers are often too busy to listen to their children who report being raped or abused.
- Mothers often trust abusers.
- Some abusers are known criminals and children are too scared to report them.

2.33 Khuma Multi-Purpose Organisation

2.33.1 Recommendations

- A full-time advisor should be appointed at each school around the country especially in primary schools to provide supportive services to abused children.
- A centre for abused children should be established in each area and should be operational 24 hours a day. Children could stay at these centres either on a temporary basis, during times of need, or permanently until they reach the age of 18 years.
- The centre should include representatives of the Child Protection Units, District Surgeons and counsellors to ensure that holistic care is provided to children when they arrive at the Centre after being abused.

- Life sentences should be given to people who are found guilty of raping a child.
- Abusive mothers should be reported to the police and legal action taken against them.
- It would be important to interrogate cultural notions such as the notion that a father is head of a household and therefore has the right to do whatever he sees fit.
- Perpetrators need to be dealt with strongly.
- It is important to look at providing alternative resources to families where the breadwinner is accused of sexual abuse of a child. Many families do not report abuse in these instances due to fear of loss of earnings.

2.34 Lucas, Shabalala

Mr Lucas raises the concern about parental neglect of school children and notes that the non-payment of maintenance severely impedes physiological development of children. Reporting to social workers in the area yield no results and the probability of turning to crime to survive is high. This submission raises the issue of the culture of non-payment and maintenance defaulters who deprive their children of basic necessities of life.

2.35 Maister, Dolly

She believes that the high levels of sexual abuse are due to overpopulation, breaking down of norms, unemployment, lack of formal housing, child prostitution, environmental destruction and poverty. She states that a "prestigious world population survey" 10 years ago, recommended that South Africa adopts a one child per family policy, as China has, in order to deal with some of these challenges. The submission recommends that Government provide incentives and disincentives to support a two-child per family policy. Government should also promote the ABC campaign and testing with regard to HIV/Aids. The use of abortion should be encouraged for accidental pregnancies.

2.36 Maklina, P M

The submission raises the concern about the failure of the justice system to arrest suspects and the release of arrested suspects. It also questions the myth that "sleeping with virgins would cure Aids". It recommends that the minimum sentence for child rapists should not be less than 20 years.

2.37 Mayne, Anne

This submission focuses on the connection between child pornography, prostitution and gangsterism in the organized systematic abuse of children. Ms Mayne's research emphasises the strong link between pornography and violent sex crimes against females and children. This is supported by police statistics, which indicate that there has been a steady rise in child sex abuse crimes from 1992 to the present, in the region of 65%.

Some of the issues that need to be addressed are advertising in mainstream newspapers of teenage girls for sex and families using children as cash commodities to earn an income.

The practice of trafficking of children from the rural areas under the guise of finding them employment as domestics is rife in the Western Cape. These children are then sexually abused and forced into prostitution

2.37.1 Recommendation

- The topic of child prostitution as a form of abuse requires more empirical research.

2.38 Medical Research Council (MRC)

Dr. Rachel Jewkes presented on behalf of the Gender and Health Group at the MRC. Her presentation was based on the numerous research projects undertaken on child rape.

2.38.1 Problems

- The 1998 South African Demographic and Health survey found that 1.6% of women interviewed were raped before the age of 15 years.
- Approximately 20 000 cases of rape against children aged 0-17 years are reported to police each year.
- The survey found that 33% of rapes of under 15 year olds were perpetrated by school teachers and that 21% were perpetrated by relatives.
- One third of cases of rape were gang rapes.
- The consequences of rape include health and social consequences.
- There is an immediate risk of HIV during rape as well as a later risk of high risk sexual practices, which increases the possibility of HIV infection. Teenage pregnancy is also a possible consequence.

2.38.2 Causes of rape:

- Gender inequality in society.
- Childhood environmental factors.
- Poverty.
- Alcohol and drug abuse.

2.38.3 Recommendations

- Address gender inequality.
- Prevent poverty and alcohol abuse.
- Increase resources to police and courts.
- Increase resources to victim support services.
- Provide anti-retrovirals to rape survivors. The use of anti-retrovirals after rape is as effective to rape victims as is providing it to needle-stick victims.
- Improve health services and ensure that health officials receive training with regard to rape survivors.
- Supports the Sexual Offence Legislation of the South African Law Commission.
- The Department of Education must act against predatory school teachers.

2.39 Mkhabela, Pleasure

This submission illustrates the effects that child abuse has on victims. It cites the example of a case in the North West Province where the relatives knew about the

abuse but did nothing, as there was a financial benefit to the victim. The perpetrator paid his victim's school fees. The victim often regards home as an unsuitable place to live and sees the prison environment as a safer. The perception is that it is useless to report the case to the police since nothing would get done and it only exacerbates the situation.

2.40 Molo Songololo

This presentation focused on the organisation's report, which emanated from their research into the "Trafficking of Children for Sexual Exploitation".

2.40.1 Definition of sexual exploitation

The presenter defined sexual exploitation as the sexual, emotional and physical abuse of children through forms of sexual violence. This includes rape, sexual battery, inappropriate sexual contact, exposure to inappropriate sexual acts, pornography and prostitution.

2.40.2 Actions that constitute trafficking of children

All acts involving the recruitment, transportation, transfer, harbouring and receiving of children constitutes trafficking of children. This can happen through any means, including the abduction, sale, use of force, threats, deception and use or abuse of power or authority.

2.40.3 United Nations statistics on trafficking of children

The United Nations estimates that between two and four million people per year are traded against their will into some form of slavery, be it domestic, labour, begging or prostitution. According to the United Nations, many of these are children.

2.40.4 Factors that contribute to trafficking

- Social and economic factors contributing to the increase in poverty and child neglect.
- The vulnerability of children living in poverty.
- Inadequate legislation and application of the law.
- The lack of appropriate services and policies.

2.40.5 Who are the affected children?

- Mainly girl children from the ages four years to 17 years.
- Children from rural and urban areas in search of work for survival.
- Children who have left home because of poverty.
- Children who have been sexually abused.
- Children who have run away from places of safety.

These children are trafficked for their organs, as drug runners, prostitutes, child brides and to work in sweatshops, agriculture, domestic service and in the informal economy.

2.40.6 Legislation and Conventions

South Africa does not have legislation that expressly prohibits the trafficking of people. However, South African children are offered protection from sexual exploitation in several pieces of legislation such as the Constitution, the Child Care Act, the Films and Publications Act and the Prevention of Organised Crime Act. Protection is also extended through International Instruments such as the

United Nations Convention on the Rights of the Child, the Organisation of African Unity (OAU) Convention on Refugees, the *African Charter on the Rights and Welfare of the Child*, the *Hague Convention on the Civil Aspects of Child Abduction*. An Optional Protocol to the UN *Convention on the Rights of the Child* deals with the sale of children, child prostitution & pornography. The Protocol emphasises that State parties must strengthen international and regional co-operation by multi-lateral, regional, and bi-lateral agreements and arrangements to combat the sale of children, child prostitution and child pornography. It further emphasises the importance of protecting the rights and interests of child victims.

2.40.7 Perpetrators and methods used

The perpetrators are usually parents (mainly mothers), family members, older sex workers, gangs, brothel owners, syndicates and agents, government officials and local and foreign nationals. Children are sold, abducted, held in captivity and debt-bonded (Traffickers pays parents for prostituting the child. Children are sold for up to R60 000 – when the debt is nearly paid, they get re-sold). Children are transported via surface, air and sea routes. The report indicates that these girls are debt-bonded for R12 000. Job offers were made to the parents for their children to work in restaurants, domestic service and on farms. Instead they were sold into the sex industry.

2.40.8 Findings

- There is a lack of anti-trafficking legislation.
- A lack of policy and bilateral agreements.
- Poverty & unemployment.
- A lack of services for children.
- An increase in the demand for sex with children.
- An increase in the numbers of prostituted children.
- The impact of HIV & Aids.
- Alleged corruption of officials in Government, police and immigration authorities.
- A lack of public awareness.

2.40.9 Recommendations

- Development of anti-trafficking legislation.
- Extra-territorial legislation and policy to prevent, intervene and rescue victims.
- Prosecution and conviction of all involved or directly benefiting from the trafficking industry.
- Training and awareness programmes for organisations and administrators of justice working with children and their protection.
- Compliance with international agreements and agendas for action.

2.41 Moseki, Joshua

This submission illustrates neglect of children in the household. The deprivation of food results in children resorting to desperate measures in order to have a meal. This submission highlights how the economic plight of parents impact on the ability to provide adequate care for their children.

2.42 Mrwebi, Ms.
The submission details a number of cases where children have been abused, but makes no comments about the causes or recommendations regarding the prevention of sexual abuse of children.
2.43 Msibi, Prudence
This submission raises a concern about the Justice Department's sentencing procedure by arguing that the sentences handed out to perpetrators are too lenient. It indicates that within the context of a rights-based approach, it appears that the rights of rapists are given precedence over the victim. She recommends that the minimum sentence for victims aged one month to 10 years should be 20 years and 15 – 20 years for victims aged 11 years upwards.
2.44 Nadel
The submission by Nadel was presented by Ms Johanna Kehler who stated that there are gaps in the existing legislation regarding child rape. The urgency of this issue requires action to be taken before the new Sexual Offences Bill is passed by Parliament.
2.44.1 Problems
- Current legislation does not do enough to protect children.
- In the year 2000, there were 58 rapes or attempted rapes of children reported each day. In 2001, 21 000 rapes of children were reported for that year. Of these, 21% were committed by male relatives, 41% of all raped people were under the age of 18 years, and of these, 50% were under the age of 11 years.
- Only 9% of all child rape cases taken to court result in a conviction.

2.44.2 Child Care Act
- The Child Care Act provides for the removal of a child in need of care who has been ill-treated. However, 'ill-treatment' is loosely defined and this hinders the prosecution of individuals who are both directly and indirectly involved in child sexual abuse.
- The Act excludes 'any other person' (other than a parent or guardian) who has knowledge of a rape occurring from being guilty of an offence.
- The Act does not clearly define the obligation by certain categories such as teachers, social workers and health care professionals who have knowledge of abuse or reason to suspect abuse, to report this information to the relevant authorities.

2.44.3 Sexual Offences Act
- The Sexual Offence Act does not clearly define what constitutes rape or indecent assault. In fact it can be understood that the only consensual sex, according to the Sexual Offences Act is consensual sex in marriage. Rape is defined as only occurring when the vagina is penetrated by a penis.
- The Sexual Offences Act can also be seen as excluding child rape as it refers only to 'women'. It also excludes female perpetrators and same sex rapes.

- The definitions of immoral or indecent acts are loose and therefore offer little protection to victims.
- The word 'immoral' is value laden and therefore inappropriate to define a criminal act.
- The Sexual Offences Act refers to youth but not to the rape of children specifically. Nadel states that it is insufficient for the offence of child rape and sexual abuse of children to be implied as this does not provide adequate protection for children. Nadel furthermore notes complicity in the use of the word 'with' as apposed to the word 'against' in section 14.
- The different ages of consent for boys and girls are problematic.
- Section 14(2) outlines arguments, which can be used in defence of accusations of rape. These include the rape of prostitute, the accused was under 21 years and that this was a first offence.
- Gender bias still exists in the Sexual Offences Act, which specifically does not provide for rape by a female.
- The cautionary rules treat the testimony of complaints by children and women with caution in court as they are presumed to be unreliable witnesses.
- In the Criminal Procedure Act, the previous sexual history of the complainant is admissible in court.

2.44.4 Recommendations

2.44.4.1 Child Care act

- There is a need for a better definition of ill-treatment and what forms of sexual abuse constitute ill-treatment.
- People who are aware of the occurrence of a rape must be convicted even if they did not directly participate in the rape. The law must allow for the prosecution of any person who allows and facilitates either directly or indirectly a rape to occur.
- If any person has knowledge of sexual abuse they should be obliged to report this information. The law should also provide for the mandatory reporting by certain groups such as teachers and social workers.

2.44.4.2 Sexual Offences Act

- Nadel supports the draft Sexual Offences Bill of the SALC. The draft Bill defines sexual penetration in a more inclusive manner and covers the rape of children, same sex rape and female perpetrators of rape. They recommend that the current definition of 'unlawful carnal intercourse' be replaced by the SALC's definition on 'sexual penetration'.
- Nadel recommends a clear definition of indecent acts and supports the SALC proposal in this regard. They recommend that this definition be included in the current legislation.
- Nadel recommends the removal of the tem 'immoral' from the Sexual Offences Act.

- Nadel recommends that Section 14 be removed in its entirety and be replaced with the SALC's proposed Section 6 of the Sexual Offences Bill entitled 'Acts of penetration or indecent acts with consenting minors'.
- Nadel recommends that the clause declaring it a defence that a child was a prostitute at the time of a rape be removed.
- Minor perpetrators should be tried in appropriate Children's Courts. Furthermore, the age of majority should be decreased to 18 years from 21 years.
- Provision must be made for the perpetration of rape by a female and for the inclusion of same sex offences.
- Nadel supports the SALC recommendation to abolish the cautionary rules. They also support the SALC establishment of a category of 'vulnerable witnesses', which seeks to facilitate the protection of certain categories of witnesses.
- Nadel believes that a child's previous sexual history should never be relevant in a sexual offences case.

2.45 National House of Traditional Leaders (NHTL)

2.45.1 Problems

- The myth that sex with a virgin cures Aids is a myth that has been perpetuated by traditional healers and not traditional leaders.
- There is a thin line between poverty and unemployment, which has a direct impact on child rape and abuse.
- Sex abuse of children in schools is facilitated by the girls wearing short dresses, which may attract weaker men.

2.45.2 Recommendations

- The National House of Traditional Leaders notes with concern the myth and commits itself to work with leaders in the community to dispel the myth that sex with a virgin cures Aids.
- The maintenance of traditional morals.
- A national imbizo is to be convened for provinces and their regions to pledge commitment to the Ubuntu concept. The medical fraternity will be requested to explain the effects of rape on victims. The national imbizo will be followed by provincial imbizos. The purpose of the imbizos is to urge people to develop self-esteem, self-respect and self-trust.
- The Department of Home Affairs and Safety and Security should clamp down on illegal immigrants. Traditional authority police could be involved in these initiatives. Traditional mechanisms of monitoring strangers such as 'Go Bega' would assist in this regard.

2.46 Palliative Medical Institute

Dr Selma Browde presented the submission from the Palliative Medical Institute. This institute offers training for community workers and people involved in home-based care. The submission dealt with two main issues:

- The rape of babies and young children.
- Abuse and poverty.

2.46.1 Problems

- The Institute has come into contact with people, specifically in Gauteng who believe that sex with a virgin cures HIV/Aids. One of the ways to counteract this problem would be to use traditional healers. The presenter stated that there are over 300 000 of these traditional healers and even when a small minority pass this information on to the community, they are an extremely powerful force.
- Reluctance of parents to talk to their children about sex.
- The link between abuse and poverty is clear around the world. Research documents a symbiotic relationship between abuse and poverty. Poverty leads to emotional breakdown and tensions. Deprivation creates a lack of concern for oneself and for others. Poverty and unemployment breaks down the sense of self. This leads to violence inducing behaviour exacerbated by alcohol and drugs. This internal lawlessness puts children at risk, as children are seen as extensions of the self. It is easy to express hatred on ones own, which may take the form of physical or sexual abuse.
- Structural factors are also important including inadequate housing and living conditions. In overcrowded conditions sexual taboos are broken. Incest is commonly associated with poverty. Young children exposed to adult sexual activity become sexually precocious and learn inappropriate sexual behaviour.
- The status of teachers in our schools is low.

2.46.2 Recommendations

- Organise traditional healers who are prepared to cooperate to tell the community that the idea that sex with a virgin cures Aids is untrue. What these healers say and how this should be done must be done in consultation with the healers. A campaign should be well orchestrated and thorough and adequate funds should be made available for the message to be sent clearly and unequivocally to the communities.
- In order to combat rape as well as the spread of HIV, parents must be reached. The reluctance of parents to talk to their children about sex must be combated. The institute has organised a grouping called 'Parents of People with HIV/Aids' which comprise committees of parents. Workshops are held with these committees about issues around HIV/Aids and sexual conduct and encourages these parents are encouraged to speak to other parents about these issues.
- Priorities of spending by Government must be channelled to ensure that poverty alleviation and unemployment are targeted.
- Need to increase the status of teachers and this should be reflected in their salaries.
- Government partnerships with NGO's are important.

2.47 Pandor, Naledi

Ms Naledi Pandor, motivated for the establishment of a South African Sex Offenders Act and a national register of sex offenders.

The sexual abuse and rape of girl children is so widespread in our society that out of 20,000 estimated cases reported each year, nearly half are rapes committed on children.

In schools, sexual violence directed at girls erodes their right to education. Although some of the teachers are to blame, the entire teaching profession should not be condemned. Further research needs to be conducted in this area.

Moreover, South Africa has laws against rape, incest and sexual assault. But there is more that can be done. More so, in view of the fact that paedophiles and rapists are not cured by imprisonment. They are released to commit their heinous crimes once more. By recommending the abrogation of the similar-fact doctrine the Law Commission project team on sexual offences law throws its weight behind the belief that sex offenders are repeat offenders. And that is why we need a Sex Offenders Register Act.

2.47.1 Recommendations

- South Africa should consider enacting an amended version of the UK Sexual Offenders Act and that we follow our Law Commission's recommendations on amending our law of evidence to make it more difficult for sex offenders to escape conviction;
  Compile a national register of sex offenders to ensure that everything was being done to protect children from sexual abuse. Such a register will complement the positive steps already being taken by the police and other government agencies.
- Such a register will make it difficult for offenders get parole.
- Some provisions which could be considered based on both the UK and US examples include:
  - Sex offenders must register with the police within a certain time period after release from prison.
  - Community protection orders ban sex offenders from areas frequented by children.
  - Banning offenders from contacting victims.
  - Adding conditions to sentencing provisions.
  - Posting details of child abusers on the internet.
  - Leaflet drops and posters at Police Stations and at libraries.
- The advantages of having such legislation include:
  - Parents feel more secure and can take the necessary precautionary measure, if they know that a paedophile resides in their area.
- Disadvantages:
  - Sex offenders can provide false addresses and go underground.
  - Vigilante action and human rights violations against sex offenders.
  - Mistaken identity.

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2.48 Phaphamani Rape Crisis Counselling Centre

The Centre believes that its host town, Uitenhage, is the "rape capital" of South Africa and that this perception is having a negative effect on the town's economy. They also highlight the problems rape survivors face in terms of how they are treated by society, especially those from disadvantaged areas. Some of the problems they highlighted in this regard include lack of dignified debriefing rooms at police stations as well as problems with District Surgeons, crisis kits, counselling and support for rape survivors, as well as the geographical remoteness of these services for survivors.

2.49 Professional Board for Psychology

The Psychological Society of South Africa, the Professional Board of Psychology and members of the media are undertaking a research study in the sexually violent attacks against minor children and will work in close collaboration with relevant government departments and civil society institutions. The study will cover the actual incidences of such attacks against children under 10 between 2000 and 2001 and the profiling of the perpetrators. This report will be available in March 2002. The research team consists of numerous distinguished academics.

2.49.1 Aim of the Study

- Adduce the actual incidence of attacks against pre-pubescent children i.e. those under ten years of age.
- Assess and profile alleged perpetrators to better understand the factors that may have contributed to their bizarre behaviour.

2.49.2 Findings of the Study

- The six-nine year age group appeared to have been the most vulnerable to sexual abuse followed by the three-five year age group.
- The most likely age of perpetrators who commit acts of sexual abuse are between 25-35 years old, followed by the 35-50 year old age group.
- It is also important to note that the highest rate of suicide is amongst men between the ages of 25-35 years.
- These findings have serious implications since this age group constitutes the most economically productive population group. The 25-35 year age group is also regarded as the protectors and providers in families.
- There is often an assumption that the increase in rape and child abuse is as a result of South Africa's new democratic dispensation. This could not be further from the truth since it is evident that the socialisation process of the 25-35 year age group occurred during the 1970's and 1980's while Apartheid was at its height.
- There is generally an assumption that rape is committed by someone that is known to the survivor. The study tends to indicate that most of the perpetrators had no significant relationship to the survivor.

2.49.3 Recommendations

- Schools at all levels should be targeted by an awareness campaign to inform and educate children about sexual abuse.

- There is a need for the social affirmation of men.

2.50 RAPCAN

2.50.1 Problems

- The quality of statements taken by the SAPS is poor.
- The high number of cases being withdrawn.
- Confusion around the phasing out of District Surgeons.
- Difficulty in tracing sexual abuse and rape victims.
- Cost of travel expense for parents and families of victims to courts.
- Inadequate facilities at the courts such as lack of interpreters and in-camera facilities.
- No separate waiting facilities for child victims.
- Lengthy trials.
- Under-reporting of child rapes. According to RAPCAN the actual number of children who are raped is about 20 times higher than the official statistics.

2.50.2 Reasons for the high rape statistics of children:

- The high rate of interpersonal and community violence as well as violence against women.
- Patriarchy and patriarchal values.
- Religious and cultural practices.
- Appalling history of human rights practices.
- History of oppression.
- Poverty and unemployment, which leads to a sense of powerlessness.
- Children under the age of 18 years are not deemed to have the same rights as adults.

2.50.3 Factors influencing low reporting rate:

- Parents do not have faith in the judicial system.
- Parents fear that the police will use discretion in terms of investigating the case.
- It is an economic and financial burden to take a case to court especially when there are long delays. These delays cause cases to be withdrawn.
- Interpreters are not readily available and are not accommodated for in the SALC Discussion Paper.
- Fear of secondary trauma.
- Lack of communication among service providers.

2.50.4 Recommendations

- The legislation should provide for the category of 'vulnerable witnesses'.
- The previous sexual history of a child should have no standing in court.
- Training should be given to a broad range of caregivers in order to replace the functions previously performed by District Surgeons.
- Training should be given to all court staff.
- The expertise fee structure for personnel must change.
- A multi-disciplinary approach must be used for sexual offence cases.

- RAPCAN supports the Draft Discussion Paper produced by the SALC on Sexual Offences.
- The Criminal Justice System must be sensitised and trained with regard to the disclosure of abuse.
- Blockages in the Criminal Justice System must be eliminated and resources made available to combat child sexual abuse.
- Bail and minimum sentencing provisions should be tightened.
- A holistic approach must be used to deal with the problem. This would include life skills training at schools around the country.
- There is a need to combat cultural stereotypes.
- Therapeutic services must be developed and expanded.
- There should be focus on the rehabilitation of juvenile offenders.
- There is a need to increase the arrest and conviction rates.
- Sentences should be severe.
- Need to recognise the long-term impact of child abuse.
- Need more effective inter-sectoral coordination and cooperation.
- Investigate the establishment of expert Child Abuse Centres.
- Cultural notions must be combated.

2.51 Regional Child Abuse Protection Committee – KwaZulu Natal Midlands

This submission outlines the meeting held between this group and the Department of Social Development on the 25 February 2002, where it was recommended that children who are subjected to sexual assault and/or rape should automatically be given access to anti-retroviral drugs and counselling – all of which should be facilitated and provided free of charge by the South African Government.

This was a joint submission by: Health Services, Law Enforcement Officials, Welfare (State and NGO sectors), Justice and other Legal Representatives, operating within the KwaZulu Natal Midlands Region.

2.52 **Santho-Qhokotswane, Mamokhothu**

Ms Santho-Qhotswane is a survivor of domestic violence and believes that domestic violence is the main source of child and sexual abuse. Her submission includes documents detailing her experiences of abuse by her husband and her four-year struggle to obtain justice. She points to inefficiency and corruption in the police force and court officials in Bloemfontein as reasons for this.

She notes that decision makers involved in cases of abuse often play a destructive role and cause further trauma to the victims because they lack sensitivity and empathy.

The submission indicates that inefficiency and corruption in the courts inhibit justice and protection of victims. She argues that women are still regarded as inferior and seen as objects. Her concern is that the children growing up in families where there is violence and abuse see it as the norm.

2.53 Shabangu, Jimmy

Mr Shabangu is a Councillor of Ward 15 in Middleburg, Mpumalanga Province. His submission raises concerns about the poor response and inefficiency by

police personnel in the Middleburg Child Protection Unit. The concern arises from the case of Ms Deliwe Maseko, whose child was raped. Although the police was given all the relevant information, the suspect was not arrested.
Mr Shabangu lodged a formal complaint with the Child Protection Unit in December 2001and has not received any response to date.

2.54 Shadow Pictures

Shadow Pictures have been commissioned by the BBC to make a documentary on child rape. This follows the television and international press coverage of the rape of baby Tshepang. The aim of the documentary is to expose the issue and raise certain questions.

2.54.1 Problems

- The Western Cape had its first case of baby rape reported in May 1997.
- Since October 2001, seven other cases of baby rape have been recorded.
- CPU's in the Western Cape and Upington work with very little resources and they often start work at 3am. Many members of the CPU are lost to stress.
- Child rape is not confined to a single race group.
- Where there is poverty and unemployment and where men and children spend hours together every day, there is a higher incidence of child rape.
- The prospects of child rape increases where there is abuse of alcohol and low self esteem.
- It appears that the notion that sex with a virgin cures men with various diseases including Aids has contributed to men seeking out small children and old women with whom to have sex. Some Sangomas have also been spreading this idea. Research has shown that this notion has been prevalent for a while.
- Courts are slow to process cases and the sentences often don't befit the crime.
- Many perpetrators are also in the position to get to small children example educators and child minders.

2.54.2 Recommendations

- It was suggested that the President should:
  - Outline the problem and state that Government will not tolerate the situation by giving new measures to protect children.
  - State clearly that HIV and Aids cannot cured by having sex with a virgin. Traditional leaders should also provide the correct information.
  - Reverse the Government's position on anti-retrovirals for rape victims.
- Children's courts must be established across the country and the process should be made child friendly.
- Encourage and register street committees, which were very effective during apartheid. They must be empowered to responds to cases of abuse against women and children by reporting them to the appropriate structures.

- Initiate a campaign where men can value their masculinity with pride. Traditional ideas about ownership of women and children should be condemned.
- More resources and person power should be provided to the CPU.
- Women should be supported in their efforts to mother their children by, for example, having state funded nursery schools. This will ensure that mothers do not leave their children in the care of unemployed men when working.

2.55 Sigwela, S G

Mr. Sigwela's submission raised the issue of sexual abuse of children within the family. The submission makes the following points:

- The lack of evidence against perpetrators result in them becoming repeat offenders;
- There is an apparent lack of uniform procedures for investigating child rape cases at police stations;
- The use of DNA testing immediately after the rape will facilitate prosecution;
- A fund should be set up for victims in order for them to pay for the DNA testing and other related medical expenses.

2.56 Silangwe, Nozipho

The submission highlights the need for strong campaigns and workshops to raise awareness about protecting children from sexual abuse. The main source of child abuse is men and as most men have lost economic control and dominance over women they are taking out their frustrations on weaker persons, which are children. They also abuse children to fulfil their sexual fantasies.

Awareness campaigns should target men so that they will recognize their responsibility and have a positive view to life and the rights of children. The submission recommends that key male personalities and leaders should be used to campaign against child and women abuse in order to achieve positive results.

2.57 Smith, Charlene

The submission looks at the role of society in creating an enabling environment for dealing with rape. It focuses on the role of parents, government, religious communities, big business, the medical community, alcohol industry in dealing with the child. It illustrates statistically the high incidences of child abuse accompanied by the low conviction rate of child abusers.

Ms Smith argues that in most cases the majority of abusers are not strangers but are persons known to the victims. In several cases they are the caregivers of the abused children. The Child Care Act addresses these issues but local communities need to take more responsibility in enforcing the protection of children.

The submission also looked at the role of government and big business in providing the necessary trained personnel, improving departmental budgets, providing forensic laboratories and forensic kits to police stations and health workers, training personnel and the provision of child care facilities.

She criticises the current training of medical personnel and calls for the improving of rape forensic and rape care training at medical teaching institutions. It calls on the pharmaceutical companies to help fund the proposed training.
The submission suggests that there is a strong link between violent crime and the use of alcohol. It quotes the Medical Research Council study that found alcohol as a common factor in 60% of the murders reported last year. The document proposes that liquor manufacturers fund welfare, training and criminal justice projects through the government tax or other levies imposed.
It is reported that children who are abused are often likely to become abusers themselves. The submission proposes that the Department of Education and Correctional Services should ensure that children do not go to jail and should provide adequate alternative facilities. The presentation argues that children should not be exposed to violence and abuse.
The presentation recommends counselling and peer mediation in schools and calls for the establishment of trauma groups in schools. Teachers need to also be trained. Sexual violence against children is inextricably linked to the high prevalence of violence in our society.

2.58 Social Workers' Association of South Africa

2.58.1 Concerns and problems experienced

The submission suggests that the current system of handling the sexual abuse of children is inadequate and further traumatises the child. There are too few social workers with specialised training to deal with the survivor's immediate needs as well as longer-term therapy. The coordination between social service agencies and the CPU is lacking, and there seems to be no recognition that the social worker is a professional equipped to deal with a child's emotional needs.
The submission further notes that there was no standard interview protocol, that the medical personnel are sometimes not properly trained for this specialised area or simply too thinly spread especially in the rural areas.
With reference to the court system, the submission states that courts are not child-friendly and the court process takes much too long. The survivor could be exposed to the perpetrator because they have to use the same entrance to the court and sometimes the same waiting room. The manner in which the testimony given by a child is treated, suggests that members of the legal profession regard children as unreliable witnesses.
Dealing with abuse on a regular basis causes severe trauma to social workers, who feel that they are fighting a losing battle. This results in social workers feeling burnt-out.

2.58.2 Recommendations

- South Africa should implement the relevant articles of the Convention on the Rights of the Child
- All matters relating to offences against children should be heard in the High Court
- All sectors dealing with sexual abuse should receive training in this specialised field

- Courts should be made more child-friendly, for example by making use of one-way mirrors in interview rooms and inter-mediators to protect survivors from perpetrators
- Children should have the right to legal representation
- Cases should be finalised within 4 to 6 weeks
- Social workers should receive recognition and support in continually dealing with such negative issues a child abuse
- There must be greater co-operation between the different professions that work in the interests of children

2.59 Soul City

The presentation was based on the knowledge accumulated through research on issues such as child and women abuse, HIV/Aids and sexuality education.

2.59.1 Problems

- Progress made with regard to policing, prosecution and survivor assistance is not sufficient to deter rapists and inculcate mutual respect between men and women.
- Child and infant rape is an extension of violence against women. Perpetrators treat children with a sense of entitlement and children are objectified.
- Other problems include that women often take the blame for men raping children, they are often blamed for the rape of children and gang rape is prevalent and referred to as a game.
- Whilst women have been empowered about their rights this has also made them vulnerable by not educating men at the same time which has led to a backlash against women.

2.59.2 Recommendations

- Working with men and boys is a priority and there is a need to promote men's programmes.
- Sexuality and gender education is crucial.
- Encourage parents to talk to their children.
- Ensure that teenagers have information on contraception, sexually transmitted disease and Aids and are aware of their options on the use of the Termination of Pregnancy Act.
- The myth that sex with a virgin cures Aids must be to rest but it should also be established whether the myth is driving the increase in child rape.
- Do more research around perpetrators and why they rape because it is not paedophiles that are raping children and babies.
- Conduct research to provide information on the facts and statistics on child and infant rapes so that it can inform an effective preventative programme of action.
- Expedite the Child Protection Act and the Sexual Offences Amendment Act.
- A safe environment should be ensured to protect children against child abuse. This includes tackling poverty. A Consensus statement on Sexual

Abuse has been compiled and signed by approximately 12 children's rights advocacy groups and provides guidelines on preventing child abuse.

- A national campaign against abuse- 'Every day is anti-abuse day'.

2.60 South African Catholic Bishops' Conference

2.60.1 Problems

- Moral breakdown in society. The most vulnerable in society thus fall victim to those people who have lost their moral bearings.
- Social factors such as overcrowding, unemployment, alcohol abuse and broken families contribute to the problem of child abuse.
- De-humanisation of women takes various forms in our society. Gender relations are characterized by patriarchy and men tend to regard women and girls as possessions.
- Commodification of sex. Advertising and entertainment industries are guilty of marketing sex and sexuality commercially. Sex is thus turned into a product and people are encouraged to want this product.
- Lack of male involvement in addressing issues of child abuse. It is mainly women social workers, counsellors, activists and community workers that are addressing the problem.

2.60.2 Recommendations

- Political leadership as well as churches and other religious bodies have an important role to play in providing moral leadership in the country.
- Men need to be educated to realize that women are autonomous and equal beings.
- The religious sector has a role to play in the way that they instruct their young people in the values of their faiths. There is a need to counter-act the commodification of women and respond to the call for moral renewal.
- Education is important and programmes can be introduced to educate children and youth about appropriate forms of behaviour and interaction. Educators should also be trained to identify problems.
- Budget priorities should take the work that organizations are doing into account and Government should provide organizations with the proper resources to address the problem. Money should be redirected at addressing and protecting children from abuse and not go towards arms.
- Partnership between non-government organizations and Government is an important aspect of addressing the problem of child abuse.
- A dedicated ministry should be established and a specific Cabinet portfolio be created to oversee children's affairs. It is suggested that funding for such a ministry could be obtained from some of the tax relief money returned to the taxpayers.

2.61 South African Human Rights Commission

Advocate Tlakula presented the findings of the South African Human Rights Commission (SAHRC) Report on Sexual Offences Against Children to the Task Group. She indicated that the SAHRC used its mandate with respect to

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upholding and implementing human rights and held an inquiry to investigate whether the criminal justice system actually protects children.

2.61.1 Findings

- The criminal justice system, currently does not work for children who have been abused.
- Children with disabilities face even greater trauma.
- Despite the initiatives put in place, these are insufficient.
- There are a number of individuals who put in an amazing amount of work. Their commitment is however not shared by everyone.
- There is confusion about the duty to report child abuse due to the duplication of mandatory reporting provisions in the Child Care Act and Prevention of Family Violence Act.
- Professionals such as teachers, doctors and dentists fail to report child abuse cases in accordance with the duty imposed on them by legislation.
- There is a poor police response to sexual abuse against children and a failure to comply with national policy and protocol.
- The location of the limited Child Protection Units minimises accessibility to sexually abused children.
- Police report difficulty in tracing children and witnesses living in informal settlements.
- Evidence often gets lost between the examining doctor's office and the police station.
- The withdrawal of cases is a serious flaw in the policing and the possible prosecution of sexual abuse cases.
- There is an extensive shortage of support services for abused children.

2.61.2 Recommendations

- A system that is premised on the best interests of the child needs to be developed.
- Sexual violence against children should be treated as a priority by government.
- National government has to fast-track the legislative review process of various pieces of legislation relating to the protection of children.
- Post exposure prophylaxis is to be dispensed to child victims of sexual violence in all cases.
- More financial and human resources need to be made available to implement programmes of action.

2.62 South African Law Commission (SALC)

2.62.1 Draft Sexual Offences Act

2.62.1.1 Problems

- Inadequate implementation of the law. This includes the lack of protective services in rural areas for children.
- Lack of training particularly of the judiciary, which leads to poor decision-making.

- Lack of resources, exacerbated by high case loads.
- Corruption, particularly amongst police officers influencing the high withdrawal level of cases.
- Child rape and sexual assault is complicated in that it is related to broader social problems, e.g. domestic violence and poverty.

2.62.1.2 Recommendations

1. Substantive Law – Deals with the definition of crimes.
    - Rape is codified and is free of gender biases. It includes sexual penetration of genitals, anus and mouth 'when an act of sexual penetration occurs under coercive circumstances'. The focus is therefore on the coercive nature of the act and not on consent.
    - A new offence, compelled or induced indecent acts is contained in the draft bill.
    - The age of consent is fixed at 16 years for both boys and girls.
    - Child prostitution is criminalized. They are protected up to the age of 18 years. People exploiting children can be prosecuted.
    - The draft Bill provides for extra-territorial jurisdiction.
2. Process and Procedure – It deals with the management of sexual crimes:
    a) Pre-trial
        - The Draft Sexual Offences Act contains guiding principles regarding the interpretation and implementation of the legislation. This principles attempt to protect the rights of victims, their families and communities as well as to ensure a fair trial and management of the accused.
        - There is a need for the co-ordinated management of sexual offences and for inter-sectoral co-operation.
        - Training and debriefing of all professionals working with sexual offence cases is important.
        - There is a need for SAPS to investigate all reported cases and not to accept withdrawal statements from victims.
        - The State is responsible for providing medical examinations, treatment and therapy for sexual assault victims. The Department of Health is responsible for providing prophylactic medication for sexual assault victims including post-exposure prophylactic medication for HIV/Aids.
        - The legislation provides for the creation of a 'vulnerable witness' category that is afforded protective measures by the Court.
    b) Trial Process
        - Enhance the intermediary system.
        - Abolish the competency test.
        - Abolish the cautionary rules.
        - They do not recommend the use of videotaped interviews.
        - Increase the use of expert witnesses.

- Appoint support persons to support victims.
- Increase the use of specialised assessors.

c) Post-trial Process
- Establish a sentencing council.
- Increase the use of Victim Impact Statements.
- The offender should pay compensation to victim wherever possible.
- Rehabilitation of the offender should be combined with punishment.
- SALC does not recommend the development of a sexual offenders register and community notification legislation.
- SALC does not recommend the chemical castration of offenders.
- Recommends that the application for dangerous sexual offenders orders be issued when a sexual offender is released from prison.

2.62.2 Child Care Legislation

The legislation deals with a range of children's issues including child sexual abuse. The focus of the legislation is on children rather than perpetrators and therefore is does not deal with criminal law aspects of the punishment of offenders.

2.62.2.1 Key provisions of the Act:

- It defines parental responsibilities rather than parental rights in order to make parents more accountable in the law for their behaviour and for what they allow to happen to their children under their care.
- There are enabling and mandatory reporting clauses in the Act. A professional must report children in need of care and protection.
- Immunity is given to encourage reporting.
- Reasons must be given for failure to report and failure to do so will be punished.
- The Act makes provision for strengthening the capability of all personnel involved in child sexual abuse cases, for example training.
- Hearings focusing on the abuse of children should be heard simultaneously with hearings on compensation.
- Children's courts can now also recommend that social workers receive an order to investigate and search premises.
- Local Government also has a role to play in amongst others, keeping records on children in need, inspection of care facilities, etc.

2.63 South African National Council for Child Welfare

The submission was made in the context of there not being any systematic collection of national figures on child sexual abuse. It was stated that 5000 cases of sexual abuse were dealt with annually at the 166 Child Welfare societies across the country. The most fundamental issue that needed to be dealt with was

the manner in which children are viewed and perceived. It was submitted that children were currently viewed as inferior and as a commodity.

2.63.1 Causes of Sexual Violence

- The myth that sex with a virgin will cure HIV/Aids has progressed into a significant problem.
- The disempowerment of women and children causes them to bear the brunt of discrimination and violence.
- Poverty affects both men and women resulting in feelings of hopelessness as well as alcohol and drug abuse.
- There is a strong link between poverty and the commercial sexual exploitation of children.
- There appears to be a decline in the moral fibre of South Africa.

2.63.2 Factors Preventing Effective Service Delivery

- The Department of Social Development makes inadequate financial resources available to NGO's preventing them from carrying out their work effectively.
- Essential human and financial resources have to be put in place to achieve the goals set out in new legislation and policy.
- There are various intersectoral gaps.
- The health sector has failed to provide adequate training and facilities needed to combat child abuse.
- There are a lack of resources, training and Child Protection Units.
- Courts and court procedures do not adequately facilitate the smooth processing of sexual abuse cases.
- Life skills training in schools is limited or absent.
- The NGO sector has no formal representation on the structures of the National Plan of Action for Children.
- There are various plans of action for children in the President's Office but nothing is being done to implement this.

2.63.3 Recommendations

- A National Intersectoral Child Protection Strategy has to be developed immediately.
- Resources have to be provided to ensure that new legislative requirements are complied with.
- Provision should be made for the establishment of intersectoral infrastructure.
- Government departments should take note of problems experienced by NGO's.
- Initiatives such as the sexual offences court must be tracked, evaluated and monitored.
- Appropriate diversion and treatment programmes for perpetrators must be developed.
- The register of sex offenders should be seriously considered.

- The present programmes and structures of the National Plan of Action should be reviewed to include NGO representation.
- The percentage of the Department of Social Development's budget used to fund NGO's is inadequate and has to be reviewed.
- Underspending and rollovers within the National Poverty Alleviation Strategy and other programmes are unacceptable.
- The financing policy has to be improved.
- The poor salaries paid to social workers must be improved.
- The existing National Committee on Child Abuse and Neglect should develop and implement its terms of reference.

2.64 Standing Together to Oppose Pornography (STOP)

The mission of STOP is to promote a society in which children are nurtured in an environment of sound family values and in which women and children in particular are protected from sexual crime, sexual exploitation, abuse and violence in accordance with their constitutional rights. STOP opposes the proliferation of pornographic and related sexually explicit material that has become available since 1994.

The organization notes that the Films and Publications Act contributed to the creation of a social climate of "sexual freedom" which degenerated into a culture of "anything goes."

They oppose the availability of pornographic material and feel that the internet is a great source of pornography, which should be obstructed. They note that young boys are vulnerable to the effects of pornography. The television has also contributed to altering standards of sexual behaviour by pushing the limits from the sexually suggestive to overt pornography.

The submission states that rape of children can no longer be viewed as predominantly an act of violence rather that a crime of motivated by passion or lust. With the decline in standards of sexual behaviour, "date rape" has increasingly become common, and the rape of school children by teachers, for instance, are unlikely to be attributable to the underlying need of the perpetrator to commit an act of violence. Like drugs pornography has an addictive effect, followed by an escalation in the need for "stronger" material. Overtime, desensitisation occurs and lastly there is an increased tendency to put into action the sexual activities seen in the pornography. Thus fantasy can become reality – especially dangerous to the community where the addiction has been to child pornography.

Dr William Marshall, a respected child psychologist stated that 87 per cent of girl-child molesters and 72 per cent of boy child molesters regularly use pornography and 86 per cent of rapists regularly used pornography and 57 per cent copied pornographic scenes in the commission of rape. In a 10-year study, the Los Angeles Police Department found that in 60 per cent of child molestation cases, adult or child pornography was used to destroy the conscience of the child and teach them to model perverse behaviour.

Closer to home, in the Western Cape an Attorney-General's Office stated that every case of consensual child abuse she had handled involved the use of pornography. A 1991 study by the Institute of Child and Family Development revealed that prostitution is rife in South Africa, and escalating since our country became known as a premier sex-tourism destination.

2.64.1 Recommendations

- In searching for the causes of the escalation of rape, the mindset of the rapist is due for appraisal;
- Review of the Films and Publications Act. For example: books and magazines of a pornographic nature should be submitted to the Films and Publications Board prior to publication. That is, classification should not be complaints-based as at present;
- Expansion of the duties of the Films and Publications Board to deal with television material. This situation prevails in Netherlands;
- Expansion of the Films and Publications Board's powers to include the law enforcement in liaison with the Police;
- Review of the Business Act in order to legislate tighter requirements for the establishment of Adult premises ("Sex Shops") by e.g.: stringent licensing requirements, limitation of numbers in a given area, and by land-zoning. Such measures could be passed on, as is presently the case, via Provincial law and local government that, by its nature, allows for direct public participation. (Note zoning by-laws are already operative in East London);
- Enforcement of the Broadcast Act. The electronic media should be compelled to adhere to the fine Code of Conduct as contained in the Broadcast Act. At present the Act appears to have not "clout" where contravention of the Code is concerned;
- Establishment of a user-friendly, well-advertised route (including a toll-free phone line) for the public to complain about offensive/harmful television and radio broadcasts.
- A public hearing should be set up by the Portfolio Committee on Communications as matter of urgency to facilitate public debate on the programme content of the electronic media;
- The appointment by the SABC of a suitably qualified person to advise on programme content;
- Setting up of a user-friendly service to enable the public to complain about contravention of the Films and Publications Act;
- Public Education and dissemination of information about the possible dangers of pornography. Members of the Films and Publications Board may be trained to carry out this task, jointly with the Department of Education;
- Students in institutions of higher learning to be encouraged to conduct research around pornography and its harmful effects in society through dissertations and theses. In the meantime, government can commission a

study to do the same, and produce a report within six months. The Human Sciences Research Council may be able to carry out such study.

2.65 Third Law

Third Law is a protest action group of concerned community members responding to the rape of baby Tshepang last year. The Third Law submission argues that the causes of child rape include alcohol abuse, the criminal justice system namely the ineffectiveness of bail, consequences not proportionate to the crime in that criminals are jailed at the expense of tax payers.

2.65.1 Recommendations

- The state providing more resources and expertise to the police services. Increasing the number and improving the skills of police officers;
- The government must ensure child sensitive courts and court personnel;
- Establishing support networks for the families of victims including financial and trauma counselling;
- Strengthen/ enforce the punitive measures of prison sentences and deny bail;
- Rehabilitation programmes must not include child rapists.

2.66 Tjabane, Thembeka

The presenter, from the Free State Province, related evidence based on her own experience. She presented two cases.

Case 1:

In the first case, a child was abused by her uncle, which ultimately resulted in her pregnancy. She is currently 13 years old. The case was reported to SAPS but withdrawn on the basis of lack of evidence.

Case 2:

Ms Tjabane is acting as a foster parent to five children in addition to her own two but has been unable to access the foster grant.

2.66.1 Recommendations

- The pregnancy of the child should serve as prima facie evidence of abuse.
- Bail should not be given in sexual abuse cases.

2.67 Trollip, J E

The submission focuses on existing laws and the role that the community can play to eradicate the problem of child sexual abuse. It argues that the existing laws do not give communities an active role in dealing with child sexual abuse. It raises a concern about the discretionary nature of the Magistrate's Court Amendment Act No: 67 of 1998, which provides for the summoning of assessors who are reliable and capable persons from the community. This needs to be corrected. Another concern is that in reality the assessors are not being regularly summoned for child abuse cases.

The submission also raises a concern about the low rate of conviction of perpetrators of child sexual abuse. Where perpetrators are convicted, the sentences are often lenient and thus not sending a strong messages to potential offenders.

2.68 UN Child Justice Project

The project provides technical assistance to the South African Government for the implementation of the proposed child justice legislation.

The submission focused on:

- The need for an early intervention and prevention approach towards child sex offenders.
- The inherent dangers of criminalizing child sex offending.
- The proposals of the Child Justice Bill on the use of programmes for diversion and alternative sentencing for sex offenders.
- Availability and use of programmes for child sex offenders and gaps in the delivery of programmes as an early intervention and preventative measure.

2.68.1 Problems

- Research has shown that between 50% -60% of all adult sex offenders commit their first sexual offences as children. Children who commit these offences are aged between 13 and 17 years and most are males. In the total sex offending population, children are still a small percentage of those committing the offence.
- Children do not always understand the implications of sexual acts, even when they are hurting other children, as sex is part of the adult world. This may be as a result of acting out things done to them by adults or older children.
- Criminalisation of sex offending could drive the behaviour underground due to the shame, guilt and stigma associated with sex offenders.

2.68.2 Legislation - Child Justice Bill

The Bill proposes the following:

- That children who are accused of crimes be dealt with in an individualized way.
- That children who at the time of the offence is below the age of 10 cannot be prosecuted.
- Children between the ages of 10-14, do not have the capacity to appreciate the consequences of their actions. They therefore have to be treated cautiously and receive the appropriate treatment instead of being criminalized.
- Between the ages of 14-18 years there is the assumption of criminal capacity but other factors such as age of the offender and victim, should be taken into account.
- Promotes the rights of victims through the use of the restorative justice process.
- The emphasis is on the use of diversion programmes and alternative sentencing.
- Alternative sentencing applies to those children who do not get diverted. They thus stand trial.

2.68.3 Recommendations

- Diversion for many sex offenders would be an appropriate way to deal with them. This does not imply that they should not be taken through the criminal justice system. But children's developmental capacity and age has to be considered.
- Need to ensure that programmes are in place to deal with child sex offenders. Currently there is a gap in the availability of specialized programmes. The two that are run are by Childline in Durban and SAYSTOP in the Western Cape.
- Systemic approach to preventing child abuse should be adopted and it involves working with the children who commit the crimes, their families, and other systems that they interact with such as the school, peers and the media.
- Child sex offenders should be seen as a unique population with special needs that can be addressed through early intervention treatment efforts. Research has shown that treatment and prevention will prevent child sex offenders from becoming adult sex offenders.

2.69 United Christian Action

2.69.1 Problems

- The legalisation of pornography – sex offenders and paedophiles are linked to pornography;
- The liberalisation of laws controlling prostitution – younger children are lured into the sex slave industry;
- Existing laws on abortion which make abortions more accessible to young girls;
- Proposed changes to the Marriages Act by the South African Law Commission (SALC) which would change the age requirement of entering into a partnership;
- Proposed changes to the Child Care Act which would legalise a child's "right to confidential contraception and abortion";
- Proposed legalisation of shebeens;
- Legislation on gambling.
- Curriculum 2005, which deals specifically with the "sexually explicit nature of the mandatory sex education imposed on all children regardless of choice and freedom"

2.69.2 Recommendations

- The current Planned Parenthood sex education be scrapped from all South African Schools and in its place, a pro-abstinence, pro-family and pro-marriage sex education be implemented;
- Parents must be allowed more authority in determining when and how their children should be taught sex education at schools;
- The mandatory clause on exposure to sex education courses in classes should be reviewed – parents must be aware of the teaching materials and context in which the syllabus is taught;

- Other alternatives of making children aware of sexuality should be investigated, such as the role of the religious institutions;
- The testing of values through state specified outcomes should be scrapped, as this is unethical.
- All existing laws/legislation must consider the moral impact on children and to crucially address this;
- Pornography and prostitution must be criminalised, with both the user and "subjects' criminalised;
- A more efficient way of arresting and punishing rapists and child abusers should be formulated;
- All offenders should be equally treated, be it teachers, police, politicians and must be liable for prosecution should they violate the law.

2.70 University of Fort Hare. Department of Private Law

The submission was based on empirical research done in the greater King Williams Town area. Visits were made to the Department of Justice offices where cases of child abuse are reported. One of the primary aims of the research was to identify gaps in the legal process and to examine some of the contributing factors.

2.70.1 Causes and contributing factors

- Myths about transferring incurable diseases by adults to children, as has been the case with HIV/Aids stories recently;
- Element of genetics whereby dysfunctional behaviour is transferred to another generation;
- Power dynamics, which result in men dominating women and in this process gaining some sexual satisfaction;
- Perpetrators themselves may have been assaulted but received no treatment resulting in passing on this consequence to other victims.

2.70.2 Legal considerations

- The legal adoption process is biased in favour of economic sustainability of the adopting parents. Few other parental qualities are considered which could serve the best interest of the child.
- Ineffective sentences handed out. The terms often fail to serve the purpose of having a deterrent effect.
- Often the legal maintenance enforcement leads to adults abusing children.

2.70.3 Recommendations

- Longer sentences should be meted out;
- Children should be removed where possible to safer places of care with stringent and justifiable conditions.

2.71 University of Zululand

The presentation notes that rape and child rape is a direct consequence of the silence prevalent in our society. The paper argues that children do not have a voice and that the justice system downgrades their legal evidence. Other causes of child rape cited include: paedophilia, financial dependence, sleeping with a

virgin can cure Aids, sexual awareness of children and the misguided sex education of children.

The paper recommends that children should not be placed in alternative places of care, as this can constitute secondary victimization. It is further recommended that the perpetrator should be placed in a rehabilitation programme and forced to provide for his family and the sustainability of such a programme. If the perpetrator did not have a job then the person should be sentenced to a minimum of five years. The paper also recommends that trials take place within 24 hours and that children can testify by closed circuit cameras.

2.72 Van Rensburg, Pat

The submission argues that there is a link between pornography and the abuse of women and children. It details a number of newspaper reports from across the world that would suggest that the majority of rapists use pornography, and that their habit of viewing pornography is at the root of the violent rape that they perpetrate. The violent sexual scenes are said to be the model that the rapist attempts to emulate what can be seen in the pornographic material he habitually looks at.

The submission also argues that pornography is addictive and that it gives rise to tendencies of sexual sadism, because the person who has become addicted to pornography eventually needs to act out the deviant behaviour depicted in the material.

In addition, the submission deals with the use of pornography in child abuse, noting that in a substantial number of sexual abuse cases, the perpetrator showed the abused children pornographic material as a coercive device.

The submission does not make any recommendations.

2.73 White, Rose

The submission highlights the inadequate public relations campaign on child rape issues. Although issues around sex and Aids are covered extensively in schools and on television, there is no strong preventive component in the message conveyed. The perception exists that people offering this guidance in schools are not properly trained and the facilitation used is not adequate for the classroom. She feels that children need to be informed of their rights and about what to do should they be raped. She suggested that research should be done to look at comparative statistics of South African child rape cases compared to Africa and the rest of the world.

2.74 Women Against Children and Community Abuse (WACCA) Advice Centre

2.74.1 Causes of Child Rape

- There is no communication between children and mothers.
- Alcohol and drugs play a significant role in cases of sexual abuse.
- The myth that raping a virgin will cure HIV/Aids persists. Cases of this nature continue to be reported by communities.

- Unemployment and poverty causes children to accept lifts from strangers on their way to school. This is one of the ways in which abuse can occur.

2.74.2 Gaps in Existing Legislation

- Cases are withdrawn for various reasons. This issue needs to be addressed.
- Cases are postponed for long periods and instead needs to be fast-tracked.
- Acquittals, due to a lack of evidence, need to be investigated.

2.74.3 Recommendations

- Harsher sentences for rapists. It is suggested that sentences for sexual abuse and rape should be at least 20 years.
- Women should attend support groups in communities to teach them how to talk to their children.
- The Crime Protection Unit should be situated outside the police station. Police officers who run these Units should not be in uniform.
- Cases cannot be prolonged in court and ways have to found to reduce the time it takes to prosecute perpetrators.
- Those who neglect children should be sentenced to correctional supervision and undergo training on how to treat children.

2.75 Youngleson, Michele

This submission is based on a journal article entitled "The History of Child Abuse" written by Lloyd deMause in 1998 which chronicles child abuse from ancient times to the present. Child abuse has been depicted as a cycle, which is difficult to break. Parents themselves have to work through their own childhood pain if this cycle is to be broken. The reasons why children are abused, issues of causation and intervention in terms of supporting parents and teaching parenting is explored in detailed. Within each culture and nation child abuse occurs in various forms. This may range form sexual to physical violence and neglect.
Childrearing practices, and the role of the mother and father in supporting child development are integral to solving some of the problems encountered. Various modes of childrearing ranging from projectionist to socialization are mentioned.

2.75.1 Recommendations

- Community parenting centres has proven successful in various parts of the world. This concept is based on volunteer labour, small capital outlays and is tremendously cost effective;
- Teaching "parenting" should be incorporated into adult education programmes;
- Social resources need to be effectively channelled towards consciously assisting the evolution of childrearing.

3 The Task Group's Findings and Recommendations

3.1 Introduction

South Africans all over the country have been united in their condemnation of sexual violence against children. This nationwide condemnation of sexual violence was apparent in the large numbers of individuals and organisations that contributed to the public hearings despite the considerable time constraints within which the process was concluded. The contributions have been of a high standard, and the Task Group's understanding of sexual abuse of children has been enhanced by each of these contributions.

The Task Group finds that the incidence of sexual abuse of children in South Africa is unacceptably high. More than twenty thousand cases of abuse were reported to the South African Police Service in 2001, and statistics of reported cases of abuse are very similar for the preceding years. The Task Group notes with particular concern the suggestion that the abuse reported is only a fraction of the real incidence.

There is often an assumption that the increase in rape and child abuse is a result of South Africa's new democratic dispensation. However, it was argued before the Task Group that the phenomenon is not new, and that the real difference since the democratic transition has been that there has been a greater openness and awareness on the issue of children's rights, with the result that children and communities speak out about abuse more readily. In addition, there has been a much higher level of media coverage of incidences of child abuse.

In relation to international trends, the Task Group notes the global report of the International Tribunal for Children's Rights released in 2001, which stated that despite the nearly universal ratification of the *UN Convention on the Rights of the Child*, all indications are that violence against children worldwide is on the increase.

Before proceeding to more specific findings with regard to the different sectors involved in the protection of children, the Task Group notes that it is necessary to understand the sexual abuse of children in its broader social context, nature, and magnitude, and to develop interventions for primary prevention and prevention of its long-term consequences.

3.1.1 Socio-economic factors

Some presenters suggested that child abuse occurs in particular socio-economic conditions. However, a study that took into consideration the effect of socio-economic conditions and its relationship with abuse, found that sexual abuse occurs in all communities irrespective of socio-economic status. This argument was supported by a number of other presenters, who indicated that there is no simplistic linear relationship between poverty and abuse, although abject social conditions, together with substance abuse, may contribute to abuse.

The Task Group finds that the socio-political and economic history of the country has impacted negatively on family and community life, resulting in a society characterised by extreme forms of violence. Conditions of social deprivation contribute significantly to the erosion of self-esteem, causing loss of respect for the right that women and children have to sexual self-determination. Such

conditions also impact on women's ability to protect themselves and their children against an abusive partner or father.
There have been suggestions that mothers, who allow their children to be abused, must be liable for prosecution. While not in a position to come to a conclusion on the matter of criminal liability for those persons who are aware of abuse but do not prevent it, the Task Group finds that dependency on an abuser may prevent either the abused child or an adult family member who is aware of the abuse from reporting the abuse; this applies to both emotional and economic dependency. The Task Group also finds that in situations where the family has no access to reliable and affordable childcare services, this increases children's vulnerability to sexual abuse.
Another factor that has been linked to the incidence of sexual violence against children is alcohol and substance abuse. Submissions have argued that being under the influence of alcohol or drugs erodes people's ability to respect themselves and those around them. The Task Group recognises that in the context of alcohol and drug abuse children are particularly at risk of abuse.

3.1.2 Societal attitudes

It was argued that dominant attitudes around the power relations between men and women contribute to women and children being viewed as objects or possessions. The Task Group finds that the distorted patriarchal attitudes men have towards women and children contribute to the latter being vulnerable to all forms of violence. It notes the argument in one of the submissions that South Africans have yet to fundamentally interrogate patriarchal notions of power relations between men and women, such as the right of the man as head of the household to exercise his power as he sees fit.
The Task Group finds that while Section 9 of the South African Constitution guarantees equality for all its citizens, at the level of the family and the community this has to be translated into the universal acceptance of the inalienable right of women and children not to be subjected to abuse, whether physical, emotional or sexual. These rights also find their expression for instance in Article 27 of the *African Charter on the Rights and Welfare of the Child* and Article 34 of the *UN Convention on the Rights of the Child*.
The Task Group heard a number of proposals that speak to longer-term solutions to the rebuilding of the social fabric. Among the submissions on the matter were arguments that stated that sexual violence against children is an extension of violence against women. Efforts at eradicating sexual abuse would therefore focus on, among others, changing attitudes through sustained, mass campaigns that challenge the way men see women, and how women see themselves.
Representatives from the faith-based sector suggested that this sector has a particular role to play in the way that they impart the values of their faith to young people. This would include teaching equality between men and women, condemning the commodification of women and educating children and youth about appropriate forms of behaviour and interaction.

A significant number of submissions focused on the need for long term public campaigns aimed at raising awareness of sexual abuse and informing the public in general and children in particular about sexual abuse and children's right to be heard when they report abuse. The Task Group finds that the silence concerning sexual violence, has a negative impact on children's ability to disclose abuse, and that it is critical that children are taught and encouraged to speak out about abuse. It also finds that the process of changing attitudes and behaviour is likely to take many years, and that strategies aimed at reducing the incidence of child rape must take this into account.

Many of the submissions to the Task Group suggested that the myth stating that sex with a virgin cleanses a man of HIV/Aids is a major factor in the incidence of child rape. The Task Group notes the comments by researchers from the Medical Research Council that would indicate that there are some serious misconceptions around the incidence of baby rape and its link to HIV/Aids. Although the idea that having sex with a virgin cleanses you of Aids does exist in South Africa, and there have been reported cases of this as a motivating factor for child rape, the predominant evidence suggests that this is infrequently the case. The MRC researchers further argue that there is no evidence overall that any of the recent infant rape perpetrators, some of whom have been apprehended, knew that they were HIV-positive.

The Task Group also heard from presenters who argued that the practice of virginity testing was potentially harmful to girls in that it makes them vulnerable to being raped within the context of this myth.

The Task Group recognises the importance of the role that traditional healers play in communities' efforts to cope with HIV/Aids. It further acknowledges that traditional healers could add a powerful voice to the message that sex with a virgin cannot cure any person who has been infected with HIV, and that public awareness campaigns around living with HIV could benefit from the contributions of traditional healers. The Task Group commends the statement made by a gathering of 600 traditional healers at Vlakplaas from 15-17 December 2001 where they emphatically state that HIV/Aids can never be cured by having sex with children or babies, young girls who have not reached puberty, or older women.

3.1.3 Recommendations

The Task Group recommends -

- that developmental programmes address the needs of communities holistically, paying attention to strengthening social cohesion, making neighbourhoods safe, supporting vulnerable families and tracking developments in particular communities.
- that developmental programmes that aimed at offering unemployed mothers employment, have built-in mechanisms through which provision is made for safe childcare facilities for the children of those mothers at work.
- that HIV/Aids messages take into account the importance of traditional and alternative medicine in the South African context. It further recommends that

the health authorities target the community of traditional healers with a view to establishing a relationship of trust that will allow for one unequivocal message concerning the treatment of HIV/Aids.

- that social ills such as alcohol and other substance dependency must be addressed as part of a broader preventative strategy that focuses on rebuilding communities and strengthening families.
- that a sustained public awareness campaign be launched by Government in order to highlight the importance of community and individual responsibility for the safety of all children in all communities.

3.2 Social Development Services

3.2.1 Introduction

Much was said at the hearings about the role that the social service sector in South Africa should play in preventing abuse as well as protecting the child survivor of abuse. This section of the findings will focus on the preventative role of social development services.

Although the Task Group does not find that there is a direct correlation between socio-economic conditions and child abuse, it is of the opinion that particular conditions of social deprivation contribute to rendering children more vulnerable to abuse. Addressing abuse at the level of prevention therefore means addressing some of the socio-economic difficulties that South African communities experience.

There are a number of government programmes that are aimed at providing developmental services to communities. Policy documents like the 1997 White Paper on Social Welfare or the National Policy Framework for Families, which although still in a draft form, are clear about the paradigm within which services to families should be provided. However, the budgetary allocation to the Department of Social Development seems to suggest that there is little room for full implementation of programmes envisaged in policy documents because 90% of the budget is currently being spent on social security benefits.

In view of the policy thrust towards family preservation and early intervention, the Task Group notes that unfortunately interventions which tend to disrupt family life, such as the removal of children from their families, are still more readily available than those that are aimed at prevention and early intervention.

The Task Group recognises that there is a lack of coordination of services between the different government agencies. Presenters repeatedly noted that the lack of coordination was one of the main obstacles to tackling the issue of sexual violence effectively, and it was suggested that resources are not effectively spent because of a possible duplication of services. There was a strong call for the completion and implementation of the National Plan of Action for Children, as well as the implementation of the Draft Strategy on Child Abuse and Neglect. The Task Group finds that the responsibility for services to vulnerable children are fragmented between the Presidency, the national Department of Social Development, the provincial Departments of Social Development as well as the

child protection agencies in the criminal justice system. It finds that there is little coordination between Departments and no clear consensus on who is responsible for which service. Nor is there a clear, integrated strategy for both preventative and protective interventions to ensure adequate provision of services.

The Task Group notes the concern raised in various submissions that social workers have to deal with extremely high caseloads under often very difficult circumstances. Social workers tend to react to situations of abuse but are unable to implement preventative strategies; it was further suggested that in many instances, the reactions are too late. Various presenters also focused on the difficulties caused with regard to morale among social service professionals because of the low levels of remuneration in relation to their training and the volume of work expected of them. The Task Group finds that these difficulties have a severe impact on the effectiveness of those services that are in place. It also finds that the current caseloads hamper organisations' ability to advance community development work, which is one of the areas identified as a possible site for preventative programmes.

The availability of safe accommodation for children in need of care is one of the critical elements in both the preventative and protective service framework. Civil society organisations provide a significant portion of these safe houses; there is also a system where members of the community make their homes available to accommodate children in distress. Presenters from this sector have argued that there seems to be little State recognition of their contribution in this regard. The Task Group is of the opinion that it is the State's responsibility to provide a sound policy framework for this service, and to support and fund the service adequately.

The Task Group is of the opinion that preventative services such as family preservation programmes, parenting skills programmes, child care programmes for single working parents, and programmes that focus on alcohol and substance abuse could contribute to addressing some of the conditions that make children more vulnerable to abuse. It further finds that these services should be provided in an integrated manner in order to make them most effective.

However, this requires that there be a clear agreement among stakeholders such as social workers, police officers and medical personnel on the nature of the services to be provided, and clear agreement on who has the responsibility for which aspects of services. It also requires that adequate resources are made available to ensure that services like the 24-hour service pilot programme, which provides for social workers to be on call to assist police officers in cases of child abuse, can be rolled out to all the provinces. There must also be clear efforts to target the disparity in resources and services between the urban and rural areas.

3.2.2 Legislative framework

The Child Care Act (Act No 74 of 1983) provides the primary legislative framework through which children are protected by the State. However, it focuses mainly on interventions after a child has been abused or found in need of care.

Section 11 of the Act provides for the removal by way of court order of a child at risk of significant harm. In terms of Section 42 certain categories of professionals

like health care workers, social workers or teachers must report the suspected "ill-treatment" or "injury" of any child. However, this section of the Act is silent about which aspects of ill-treatment constitute sexual abuse; in fact, the Act does not mention sexual abuse as a distinct form of abuse that may require particular responses. In addition, Section 50 states that any person who ill-treats a child shall be guilty of an offence; however, this section is equally silent on the specific issue of sexual abuse. The Task Group finds that these are serious omissions in the Act, especially in light of the obligations that South Africa has under Article 16 of the *African Charter on the Rights and Welfare of the Child* and Article 19 of the *UN Convention on the Rights of the Child*.

The removal clauses in the Child Care Act (Sections 11 and 12) do not make provision for the abuser to be removed from the child's immediate environment, but rather for the child to be removed. This seems to be in conflict with the concept expressed in policy that every attempt must be made to allow the child to stay with the family, and therefore this omission may not be in the best interest of the child. The Task Group is of the opinion that a provision similar to that in Section 7 of the Domestic Violence Act (Act No 116 of 1998) with regard to protection orders, for example, which make specific provision for the abuser to be removed from the environment in which the child lives, may have to be considered during deliberations on a new children's statute.

The question of reporting abuse was mentioned repeatedly during the hearings, with presenters making the point that the provisions of the Prevention of Family Violence Act (Act No 133 of 1993) create confusion about the obligation to report abuse. The Task Group notes that there is considerable divergence in the debate on reporting, with proposals going as far as saying that persons who are aware of or facilitate the occurrence of a rape must be prosecuted even if they did not directly participate in the rape. There have also been proposals that persons outside of the categories of professionals listed in legislation be compelled to report abuse, and that any person who fails to report abuse should be guilty of an offence.

Another proposal was that new children's legislation limit mandatory reporting to certain professional categories. The list of professionals that would be compelled to report abuse would need to be refined during the legislative process. The submission further proposes voluntary reporting for persons outside these specific categories. In view of the damage that could ensue from wrongful reporting of abuse, the Task Group finds this position with regard to reporting the most reasonable.

3.2.3 Civil Society Organisations

A very substantial portion of social development work is carried out by civil society organisations, and the Task Group accepts that Government alone is not in a position to do all the work in this field. However, a large number of organisations have registered their concern that the relationship between the State and civil society organisations is characterised by significant difficulties.

Civil society organisations have a critical role to play in providing services to our communities. This role will be optimised if there is a clear understanding of

partnership between Government and civil society organisations. The challenges organisations faced in accessing funding are having a drastic impact on the effectiveness with which services are delivered.

The financing regime in relation to organisations is currently unclear, with the result that they are struggling to provide services at their past level, or to expand services into formerly under-serviced areas. The Task Group takes note of the Department of Social Development's commitment to finalising a financing policy that is clear, accessible and that will foster an equitable distribution of resources for the provision of social development services. However it notes that in the absence of such a policy, the work of a substantial number of organisations is threatened by financial instability.

Presenters referred to the fact that the National Lottery should have provided civil society organisations with funding, but that the distribution of funds has been slow to get off the ground. Very serious questions can also be asked about how funding decisions are made, considering the fact that social service organisations that have emerged in disadvantaged areas are still being under-resourced. The Task Group finds that in view of the importance of social service delivery, it is difficult to understand the rationale behind awarding large sports associations that have ready access to private sector sponsorships large amounts of money from the National Lottery Fund.

The Task Group notes that a number of the organisations of civil society are not functioning effectively because they are not rooted in the communities that they serve. Many of these organisations were established in a pre-democratic South Africa and are still in the process of transforming the paradigm within which they work to suit the current context. Linked to the question of transformation is also the issue of whether social service professionals are appropriately trained.

The Task Group is aware that a number of organisations are making use of volunteers to assist social workers in dealing with cases of child abuse, neglect and family care. The Task Group is of the opinion that the use of volunteers could assist significantly in getting communities involved in fighting abuse and raising awareness of abuse in communities, and that it is important for professionals in the social services sector to recognise and acknowledge the value of volunteers who do not necessarily have tertiary education. However, it finds that the volunteer programmes must be managed in such a manner that continued training is available to volunteers who work in this very difficult and sensitive area, and that they must have access to ongoing support to assist them to deal with the emotional effects of working in the area of child abuse.

It also notes that there is still a large disparity between the provision of services in urban areas and those in rural areas.

3.2.4 Recommendations

The Task Group recommends in relation to the legislative and policy framework

- that the Department of Social Development ensure that process of writing a comprehensive new children's statute is completed as soon as possible, and that particular attention be given to provisions that deal explicitly with sexual abuse.

- that the question of mandatory reporting of abuse be located only in the children's statute in order to eliminate ambiguities around reporting obligations.
- that the children's statute expresses itself clearly concerning the right and responsibility of child protection practitioners in various disciplines to undertake routine investigations in response to allegations of abuse and neglect before a case comes to court.
- that the legislation be explicit with regard to the provision of preventative services to families, and that Government take a clear policy position to phase in services and to ensure that funding for such services is secured.
- that the Department of Social Development, when they investigate the financial implications of the SALC Project Committee 110 proposals with regard to the provision of services at the local government level, give serious attention to the most effective system of funding services at this level.
- that the Department of Social Development finalise the Draft National Policy Framework for Families and translate it into clear programmes of action with concurrent timeframes for the implementation of these programmes. It further recommends that these programmes be adequately funded, and that the critical need for preventative programmes be brought to the attention of National Treasury to ensure that budgetary allocations to the Department allow for the implementation of policy objectives.
- that the Presidency brief the relevant Parliamentary Committees on the implementation status of the National Plan of Action for Children, with specific reference to the prevention of sexual abuse of children.
- that the Department of Social Development brief the relevant Parliamentary Committees on the status of the Draft Strategy on Child Abuse and Neglect with a view to the finalisation and implementation thereof as soon as possible.

The Task Group recommends in relation to social services -

- that the Department of Social Development brief the relevant Parliamentary Committees on its programme for the establishment of one-stop 24-hour Child Abuse Centres.
- that the Department of Social Development brief the relevant Parliamentary Committees on the functioning and effectiveness of the National Child Protection Register as a tool for the prevention of sexual abuse of children.
- that the Department of Social Development strengthen its partnership with the civil society organisations as it relates to the provision of social services, and that it gives due recognition to the contribution that this sector is making in this regard by providing it with adequate funding and support.
- that the Department of Social Development re-examine the subsidies given to civil society organisations so that they are able to focus on a more developmental approach with regard to services and to attract appropriately skilled staff.
- that the Department of Social Development finalise a Financing Policy for the Provision of Social Development Service within the timeframe set out in the

National Estimates of Expenditure for 2002/2003, and that it report to the relevant Parliamentary Committees on progress made in this regard.

- that the Minister of Trade and Industry ensure that the Distributing Agency for the National Lottery Fund reconsider its funding priorities in view of the critical need for greater allocations to the social development sector and in particular organisations that provide services to families and children.
- that the South African Council for Social Service Professions (SACSSP) reports to the relevant Parliamentary Committees on progress made with regard to the promotion of professional boards for social development professions on a bi-annual basis.
- that the SACSSP brief the relevant Parliamentary Committees on progress made with regard to the transformation of training of social service professionals in accordance with the developmental social welfare approach, including the retraining of registered professionals.
- that urgent attention be given to the improvement of conditions of service with respect to all social service professions, and that the SACSSP provide all social service employers with clear and binding guidelines in this regard.
- that the Department of Social Development in cooperation with the Department of Education and any other relevant Department explore the possibility of using existing infrastructure like school premises for the establishment of social networks that include not only students but the community as a whole and integrating the developmental programmes of organisations from all different sectors of society.

The Task Group recommends in relation to civil society organisations -

- that Government in partnership with civil society organisations develop a national protocol to ensure that there is a clear strategy for improving the interaction among all organisations working with abused children.
- that the involvement of local communities in preventing child abuse should not be limited mainly to voluntary participation, but that local government structures must be utilised to strengthen programmes, for example by assisting with the identification of children who are particularly vulnerable to abuse, and to intervene early to prevent abuse, neglect and exploitation.
- that Government support civil society organisation programmes aimed at ensuring that volunteers are appropriately trained to assist in dealing with the problem of child abuse.

3.3 Education

3.3.1 Introduction

A 1998 study by the Medical Research Council (MRC) found that school teachers perpetrate 33% of rapes against children under 15 years. The release of these statistics has caused considerable concern among education authorities and members of the public alike. And although the Task Group notes that reliable data on the extent of sexual abuse in South African schools is hard to find, there

is compelling evidence, such as highlighted in the MRC study to indicate that both the nature and levels of abuse require immediate and urgent action.
According to the MRC, not only is the girl's body violated through sexual abuse in schools, but also her right to education as enshrined in Section 29 of the Constitution, and in various international instruments such as the *International Covenant on Social, Economic and Cultural Rights* (Article 10). Many girls are forced to leave school because of pregnancies fathered by teachers and because of harassment by teachers. A girl's ability to reach her economic and social potential is reduced, which may impact on her subsequent vulnerability to being dependent on sex or the abuser for economic survival.
The Task Group was informed that this type of research does not suggest that the incidence of sexual abuse in South African schools is significantly higher than in other countries. It should be acknowledged, however, that the incidence of children being abused in schools is enough to raise serious concern.

3.3.2 Legislative Framework

The amendment to the Employment of Educators Act (Act No 76 of 1998) should enable education authorities to combat abuse in schools. This Act provides for the dismissal of a teacher who has been found guilty of engaging in a sexual relationship with a learner, with or without the consent of such learner. In addition, the South African Council for Educators Act (Act No 31 of 2000) allows for the deregistration of a teacher when such teacher has been found guilty of the sexual abuse of a learner.
The Task Group was informed that despite the legislative framework and a number of programmes and guidelines that have been developed by the Department of Education, the situation in some schools has not necessarily improved, and enforcement still presents a substantial challenge. A recent study conducted by the Human Sciences Research Council indicated that there are considerable differences in the manner in which schools respond to allegations of abuse perpetrated by both teachers and learners. Some showed zero tolerance, with set disciplinary procedures and structures, and strong links with Social Development offices and the SAPS Child Protection Unit. Other schools used verbal reprimands, random corporal punishment of learners (which is illegal) and parental summonses, while some showed no response at all.
At the same time, the Task Group must note the announcement by the South African Council of Educators that it has deregistered a number of educators found guilty of sexual abuse of learners, because it is of the opinion that this form of action will contribute to changing the patterns of abuse prevalent in schools. It encourages the Council to apply all the legislative measures at its disposal to ensure that educators who are deregistered in this manner are not able to teach in South African schools again. It also encourages the Council to continue speaking out against sexual abuse in schools.
The difficulty education authorities have in enforcing provisions in legislation include a lack of openness, ambiguous attitudes towards violence against girls, and the lack of clear definitions and preventative procedures. The Task Group therefore welcomes the Department of Education's plan to ensure a common

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understanding of what constitutes sexual harassment through the development of a national sexual harassment policy.

3.3.3 Life Skills Education

Much of the discussion around the education system focused on the manner in which educational programmes and curricula impact on public awareness of sexual abuse. There have been differing opinions as to the nature and content of the life orientation/life skills learning area, with some presenters arguing for greater openness about sexuality, while other presentations submitted that pro-abstinence, pro-family and pro-marriage sex education should replace the current sex education programmes in schools.

The Task Group finds that the school environment is an extremely important arena in which to raise consciousness about human rights, gender equality and sexuality. It recognises that there are divergent views about the content of sex education but supports the principle that learning areas should be designed in such a manner that they foster the ability of learners to engage with material in a critical and independent manner. The Task Group therefore cautions against a retreat into silence and denial where issues of sexual abuse are concerned.

The Task Group was not presented with any research to suggest that there is a causal relationship between sex education and learners' greater vulnerability to sexual abuse; the contrary has been suggested by several commentators, namely that the ability to understand the relationship between sexuality and power enables more children to speak out about abuse.

3.3.4 Recommendations

The Task Group therefore recommends -

- that the Department of Education brief the relevant Parliamentary Committees on the progress made with the implementation of the guide on Managing Sexual Harassment and Gender-based Violence in all provinces, as well as the distribution to all schools of the Departmental workbook on Signposts to Safe Schools. This guide should make explicit reference to the protection of the learner's right to education by allowing him or her to remain at the same school without the danger of victimisation.
- that the Department brief the relevant Parliamentary Committees on the mandate, powers and budget of the Special Task Team that the Department plans to establish for the monitoring of the implementation of legal and policy instruments in the school system.
- that the Department brief the relevant Parliamentary Committees on the Safe Schools Project with reference to the effectiveness of this programme in mobilising community participation in the improvement of safety at schools, and with reference to the manner in which this programme has fostered the establishment of partnerships between the Department of Education and other government departments.
- that where interdepartmental partnerships are initiated by the Department of Education with the aim to combat child abuse and offer protection to children who have been abused, the work of such partnerships be facilitated through

adequate funding and the provision of those services necessary to make these partnerships effective.

- that schools at all levels be targeted by an awareness campaign to inform and educate children about sexuality, sexual abuse, responsible sexual behaviour and HIV/Aids.
- that the Department of Education commission research to gauge the extent to which its life skills education programmes contribute to the prevention of sexual abuse in schools and in the community.

3.4 Health issues related to sexual abuse of children

3.4.1 Introduction

The Task Group notes that a large number of submissions focused on a myth present in the country that having sex with a virgin cures HIV/Aids, which is said to cause some infected men to abuse children. The Task Group is not able to establish whether the myth has a significant influence on the number of instances of child rape seen recently in South Africa or whether it is only in rare cases an underlying reason for abuse. In view of the severity of the consequences, however, if a single case emerges out of this perception, it is one too many. Therefore, the Task Group wants to reiterate that all indications from research are that having sex with a virgin does not cure HIV/Aids. It also commends once again the clear and unified statement that a significant number of traditional healers have made in this regard.

The Task Group has heard that sexual abuse of children carries a high risk of infecting the children with HIV/Aids and other sexually transmitted diseases. The abuse can lead not only to infectious disease, but also to pregnancy. Either carrying the pregnancy to term or obtaining an abortion could lead to serious health and emotional problems.

The Task Group also heard submissions that suggested that practices such as virginity testing exposes young girls to a high risk of sexual abuse. Especially for the already abused child, such practices enhance the possibility of further stigmatisation, trauma and suffering. In this instance, the Task Group wants to recall Article 21 of the *African Charter on the Rights and Welfare of the Child,* which obliges South Africa to strive for the total elimination of all "harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child".

3.4.2 Medical response to abuse

Presenters have pointed out that gaps in the responses by police and medical personnel with regard to the immediate health needs of the sexually abused child lead to situations where the health risk for the child is increased. Some presenters have argued that this is due to inadequate training and a lack of sensitivity on the part of these personnel. In these circumstances, the abused child faces the risk of secondary abuse.

It was also pointed out that especially in rural areas, facilities for reporting and treating the abused child are not available or easily accessible. Presenters

informed the Task Group that they often simply clean the child, rather than to wait for the child to be examined by a medical doctor. There also appears to be no clarity about which level of medical personnel would be authorised to treat a survivor of abuse while at the same time securing credible forensic evidence that will contribute to a successful prosecution in cases where a district surgeon is not immediately available to see the survivor. The Task Group was further informed that in some cases survivors are simply refused medical attention. Section 28(1)(c) of the Constitution recognises the child's right to basic health care services. These should include medical treatment for the sexually abused child. Without treatment, the physical, mental and developmental well-being of the child is at serious risk, and without evidence such as blood and semen samples, the case may be seriously compromised. The Task Group therefore recognises that in the absence of adequately resourced facilities and proper evidentiary training for the relevant medical personnel, and clear guidelines concerning the needs of rape survivors, such survivors may be suffering secondary abuse at the hands of those who must care for them.

3.4.3 Recommendations

The Task Group recommends -

- that the Department of Health launch an information campaign aimed at ensuring that communities and all health professionals be informed of the fact that medical treatment for the sexually abused child forms part of the child's right to basic health care services in terms of Section 28(1)(c) of the Constitution.
- that the Department of Health ensure a more equitable distribution of infrastructure to allow for access to suitable treatment facilities across the Republic. This includes comprehensive and informative counselling on all health related issues around infectious disease prevention and treatment, reproductive rights and pregnancy.
- that the Department of Health ensure that all survivors and their caregivers are kept fully informed about all the medical procedures they are likely to undergo and the health risks resulting from the sexual abuse.
- that HIV/Aids prophylaxis be provided without charge to survivors of sexual abuse where appropriate, and that survivors be encouraged to return for results, repeat tests and counselling.
- that the Department of Health strengthen its partnership with the community of traditional healers with a view to co-operating in the fight against popular and dangerous misconceptions with regard to sexual abuse of children.
- that the Department of Health, through the Health Professions Council of South Africa, ensure that all medical personnel involved in caring for and examining survivors of child abuse be trained on and sensitised about their needs, in order to prevent secondary abuse.
- that the Department of Health, through the Health Professions Council of South Africa, ensure that medical personnel responsible for dealing with

survivors of abuse be adequately trained in forensic medicine to ensure that good quality evidence is meticulously documented as rapidly as possible.

- that the Department of Health brief the relevant Parliamentary Committees on its programmes to ensure that survivors of sexual abuse do not suffer secondary abuse at the hands of the medical officers charged with examining and treating them, and that medical personnel have clear guidelines as to their respective responsibilities with regard to reporting abuse, treating survivors and securing evidence.

3.5 Criminal Justice System

The Task Group recalls and emphasises that in all cases involving child survivors and/or witnesses, the best interest of the child, as required by Section 28 (2) of the Constitution, as well as international instruments such as the *African Charter on the Rights and Welfare of the Child* in its Article 4 and the *UN Convention on the Rights of the Child* in its Article 3 forms the guiding principle in all decisions made in relation to such children.

3.5.1 South African Police Service

3.5.1.1 Introduction

A number of presenters felt very strongly that the criminal justice system is not conducive to protecting the rights of survivors of abuse, and in fact suggest that survivors often suffer secondary abuse at the hands of insensitive and inappropriately trained police officials. It appears, for example, that there is little cognisance among police officials that disclosure of abuse is a complex process, and not a one-off event. In many cases, survivors do not have ready access to counselling support in a child-friendly environment, despite the efforts being made to equip police stations with facilities for survivors. The Task Group acknowledges that the police service is engaged in a transformation process, and that the establishment of a human rights culture – including a child rights culture – with members of the South African Police Service is part of that transformation process. It further acknowledges that resource constraints impact on the process of equipping police stations with facilities that cater for the needs of survivors of sexual violence, especially crucial in previously under-resourced areas.

Despite very hard work by committed police personnel, the discrepancy between the numbers of actual reported cases of abuse and conviction statistics for rape and sexual offences suggests that the majority of reported cases are not successfully prosecuted. It was repeatedly reported that cases are withdrawn because of a lack of evidence, or in cases where the prosecutor was of the opinion that the prosecution of the matter would do significant harm to the survivor. The situation is further compounded by the incidence of corruption among police officers, which has a direct influence on the high rate of case withdrawals. The Department of Safety and Security argued that it was a decision of the prosecuting authority to withdraw cases where there was insufficient evidence to secure a conviction, and the Report will address this issue in the Section that deals with the justice system. However, the Task Group is of the opinion that the police have an equally important responsibility to ensure that

through investigative work, adequate evidence is gathered to make successful prosecution possible.

The Task Group welcomes the establishment of the new Family Violence, Child Protection and Sexual Offences Units (FCS), and expresses the hope that these units will be established in as many provinces as possible to ensure that there is a more equitable distribution of this very crucial resource. The Task Group acknowledges that the strain on SAPS resources, exacerbated by extremely high caseloads, impedes the law enforcement agencies' ability to properly follow up cases and secure sufficient evidence to ensure convictions.

3.5.1.2 Review of the Sexual Offences Act:

The Task Group recognises that the Sexual Offences Act is under review, with an aim to strengthening the definition and scheduling of sexual offences. The Task Group supports proposals that rape be codified and defined free from gender bias. The criminalisation of commercial sexual exploitation of children in addition to other forms of sexual exploitation should also assist in combating the growing trend of vulnerable children becoming the victims of this form of exploitation within as well as across South Africa's borders. Specific reference to this issue will be made in the section of this Report that deals with international treaties for the protection of children, and on commercial sexual exploitation.

The Task Group supports further proposals concerning the management of the pre-trial process. It has been argued that secondary abuse of survivors results from the fact that South Africa has no clear strategy for inclusively dealing with child and adult survivors of sexual offences, either on a primary, preventative level or on a secondary, protective level. There is therefore no guarantee that a survivor of a sexual offence entering the criminal justice system will be dealt with in terms of acceptable procedures or be protected from further harm. In view of this, the Task Group supports the proposal with regard to the development of a basic framework or code of conduct, contained in the Sexual Offences Act, within which multi-disciplinary teams deal with cases of abuse.

3.5.1.3 Recommendations

The Task Group recommends

- that the amendments to the Sexual Offences Act be tabled in Parliament as soon as possible, and that this legislation be processed as a matter of priority to ensure that a national strategy for dealing with abuse at the level of the criminal justice system can be developed and implemented as soon as possible.
- that the legislation address the need for intersectoral cooperation between the police, medical personnel, social service professionals and justice officers.
- that Schedule 6 of the Criminal Procedure Amendment Act (Act No 85 of 1997), which legislation deals with conditions of bail, be amended to include the rape of boys under 16.
- that sexual consensual relations with a male under the age of 16 years be criminalised as statutory rape.

- that the Department of Safety and Security brief the relevant Parliamentary Committees with regard to the implementation or completion of the its programmes aimed at improving the manner in which members of the SAPS deal with sexual offences. The Department must also be clear about who will be responsible for the implementation of these timeframes.
- that the Department of Safety and Security prioritise in a programmatic manner the roll-out of facilities and equipment aimed at providing for the needs of survivors at police stations.
- that the Department of Safety and Security ensure that both the Family Violence, Child Protection and Sexual Offences Unit and the Child Protection Units are adequately funded to extend their work in the provinces where the need is the greatest.
- that the Department strengthen its disciplinary procedures for instances where police officials are implicated in the obstruction of a sexual offence matter either by way of ineffective police work or corruption.

3.5.2 Court system

3.5.2.1 General issues and effective prosecution

The Task Group finds that there is cause for serious concern around the manner in which cases involving the sexual abuse of children are dealt with in the court system. Seemingly divergent standards and procedures for both survivors and witnesses suggest that the South African criminal justice system does not have a clear and integrated approach to criminal offences of a sexual nature. What further compounds the situation is the fact that rural communities do not have ready access to courts, which makes participation in a court process a sometimes expensive and challenging experience.

Survivors of rape and other forms of sexual abuse are often made to endure lengthy court proceedings under circumstances that do not necessarily cater to their emotional needs. Justice officials are not always appropriately trained in dealing with child a witness, which makes it more difficult for such court officials to make appropriate decisions concerning the competence of child witnesses.

The Task Group heard different arguments concerning the role of technology in effective prosecution of cases involving sexual violence. In relation to DNA testing, for example, some presenters argued that the service should be decentralised in order to expedite the prosecution of alleged offenders. However, it must be noted that such decentralisation would have cost implications that have to be carefully considered. Furthermore decentralisation could result in the compromising national standard of DNA testing and undermine the value that this kind of evidence can have in court proceedings.

3.5.2.2 Evidence

The Task Group concurs with the contention that the general practice in South African Courts to treat the evidence given by children with caution is outdated. The cautionary rule in sexual offence cases rests mainly on the assumption that complainants in sexual offence cases, and particularly female complainants,

have an "innate" inclination to lie in matters relating to sexual offences. This contention, which according to presenters has found no empirical support in studies comparing the prevalence of false claims in sexual offence cases with those in other criminal offences, suggests that this approach is linked to the age-old stereotyping of women.

The Task Group is also concerned that the adversarial nature of leading evidence and cross-examination in South African courts does not take into account the fact that disclosure of abuse has been shown to be severely traumatic to survivors, or the traumatised state in which the survivor may originally have first reported the sexual abuse.

The Task Group further finds that the introduction of a complainant's previous sexual history may seriously prejudice the finding of the court. This happened in a recent case in the Pretoria High Court that dealt with the abuse of a five year old girl, where the defence suggested that she had invited the abuse by her promiscuous lifestyle, and the Magistrate took these suggestions into consideration in sentencing. The Task Group is of the opinion that calling into question the testimony of a survivor of sexual abuse on the grounds of their previous sexual history may significantly contribute to the continued stigmatisation of survivors, and negatively impact on public perceptions as to the seriousness with which the State treats allegations of abuse.

3.5.2.3 Protection of survivors and witnesses

Because of the emotional trauma attached to giving evidence in a sexual offence matter, the Task Group finds that the silence of the law on the protection of particularly vulnerable witnesses is a serious omission. There is therefore no legal framework within which to offer such witnesses the special protection they need. It has further been reported that while a court will generally order that a rape survivor's testimony be heard behind closed doors, there is in practice very little control over the movement of people in and out of court, even when a child survivor is giving evidence. It was argued at the public hearings that persons with disabilities have particular special needs that are currently not provided for.

Notwithstanding the various provisions of the Criminal Procedure Act (Act No 51 of 1977) it has become commonplace for the media to report on sexual offences or alleged sexual offences, sometimes by including names or identifying details of the survivor and/or the alleged offender and/or graphic details of the assault.

It has been argued that the current legislation should be adequate to protect witnesses. In practice, however, details of survivors of sexual offences, and in particular children, and of persons alleged to be the accused, but not yet formally identified as such or charged, are regularly published despite the provisions of the law. This suggests that the law is not being implemented effectively, and that the imposition of higher penalties for such offences may be necessary to ensure that the provisions are treated with the seriousness they merit.

3.5.2.4 Bail

The Task Group finds the manner in which bail legislation is implemented unsatisfactory. Presenters have argued that the ease with which bail is granted, and the divergent application of bail provisions in different courts, suggests that

there is no single national understanding of the seriousness of sexual violence against children. A significant number of cases were cited where offences are repeated after an accused has been granted bail.

The Department of Justice indicated in their presentation that the existing bail legislation (contained in section 60 of the Criminal Procedure Act) is adequate. Section 60 provides for persons accused of offences listed in Schedules 5 and 6 to remain in custody, and the onus is on the accused to prove that extraordinary circumstances exist why they should be granted bail. The Department also argued that bail provisions have been tightened to deal, among others, with repeat offenders. However, the Task Group notes the number of instances where both in the media and during the public hearings the granting of bail was identified as one of the exacerbating factors in the fight against child rape and abuse. Some presentations called for the establishment of the principle that no person accused of sexual abuse will be granted bail. The Task Group is of the opinion that this issue needs further investigation by the relevant SALC project committee.

The protection of complainants from an alleged abuser once bail has been granted is another matter that must be noted here. Although the Domestic Violence Act (no 116 of 1998) makes provision for the removal of the abusive person from the home environment, in most cases the abuser is returned to the same environment as the abused child – be it at home, the school or the broader community. Presenters have argued that the best interest of the child extends to this level, and that protecting them while the trial is under way, must form part of a holistic approach to the issue of sexual violence against children.

3.5.2.5 Sentencing

There is currently the perception among members of the public that sentences imposed for sexual offences are too lenient, and many calls were made at the public hearings for the imposition of life sentences for persons found guilty of sexual abuse of children. The Task Group finds that the inconsistency in meting out sentence contributes to the trauma the complainants in such cases experience. It is of the opinion that a serious effort must be made to ensure that the legislative framework for sentencing is adhered to by all members of the judiciary.

Some presenters argued that rapists believe that they are able to cite the influence of alcohol or drugs as a mitigating factor when they are apprehended and tried. The Task Group heard some very strong recommendations regarding the control of alcohol as well as the kind of jail sentences that would be appropriate for offenders who claim to have committed sexual violence while under the influence of alcohol. The Task Group feels strongly that alcohol and drug abuse should serve as an aggravating rather than a mitigating factor in sentencing.

The Task Group notes a study by the SALC, which suggests that maximum sentences alone do not necessarily act as a deterrent to serious crime, because since the introduction of mandatory minimum sentences for offences including rape in 1997, the incidence of rape with aggravating circumstances has

increased. However, in view of the marked increase in reporting of rape, the Task Group is of the opinion that the above conclusions do not necessarily reflect accurately on the correlation between heavier sentences and the incidence of serious crime.

This particular study by the SALC Project Committee on Sentencing also found that despite the minimum sentences introduced by the Criminal Law Act (Act No 105 of 1997), and despite the specific reference in the legislation to the seriousness of sexual offences, there is still considerable divergence in the compliance with the Act. The Task Group acknowledges that the question of the effectiveness of minimum sentences, and the consistency with which the provisions of the Criminal Law Act as well as the Criminal Procedure Act are applied insofar as sentencing of sex offenders is concerned, is a complex matter, most of which is covered in depth in the discussion paper by the SALC Project Committee on Sentencing.

3.5.2.6 Recommendations

The Task Group recommends –

in relation to effective prosecution of cases

- that the Department of Justice and Constitutional Development establish clear guidelines for the handling of cases involving sexual offences, that training in these guidelines be made mandatory for all levels of personnel in the courts system and that the guidelines are communicated clearly to all complainants and witnesses before the commencement of a trial. It is further recommended that the Department give the relevant Parliamentary Committees a clear commitment about timeframes for the completion and implementation of such guidelines.
- that the Department of Justice and Constitutional Development, in view of the low conviction rates in relation to sexual offences, provide the relevant Parliamentary Committees with precise statistical information in this regard in order to explore strategies for improving conviction rates.
- that the National Directorate of Public Prosecutions issue a directive to the effect that when an action is brought against an alleged perpetrator of sexual abuse, the action should not be allowed to be withdrawn without the consent of the Director of Public Prosecutions.
- that the National Directorate of Public Prosecutions issue a directive instructing officials in the justice system to report all knowledge of corruption concerning the withdrawal of a sexual offence case.
- that the Department of Justice and Constitutional Development brief the relevant Parliamentary Committees on the progress it is making with regard to eliminating inefficiencies and corruption among justice officials, as well as the status of the Draft Anti-Corruption Bill.
- that officials in the court system give priority to processing cases related to sexual violence, and that they ensure that such cases are completed within the shortest possible time.

- that officials in the criminal prosecuting system have access to adequate resources and advanced technology to secure convictions.
- that DNA testing remain centralised and located with one specialised agency in order to ensure that national standards of testing are established and maintained.
- that the Department of Justice and Constitutional Development continues with the establishment of a system of specialised sexual offences courts on the model of the Wynberg Sexual Offences Court, and brief the relevant Parliamentary Committees on the progress made with the national implementation of this programme;

in relation to evidence

- that the cautionary rule with regard to evidence by women, children and single witnesses in cases of sexual abuse be abolished through a specific provision in the Sexual Offences Act to this effect.
- that the previous sexual history of a complainant in a sexual violence case not be admissible as evidence either in the pre-finding stage of a trial or in mitigation of sentencing;

in relation to the protection of survivors of sexual violence

- that all personnel at courts dealing with sexual offence cases undergo mandatory training to equip them with the necessary skills to deal with survivors of sexual violence, and that this process of skills upgrading form part of a system of performance appraisal to ensure that the State employs the most appropriately skilled personnel in such courts.
- that cultural and language aspects be taken into account by personnel involved in dealing with both survivors and witnesses in cases of sexual abuse, and that the Department of Justice and Constitutional Development give consideration to providing personnel with the relevant training in this regard.
- that provision be made in the Sexual Offences Act for the category of vulnerable witnesses, that this category include all children involved in court proceedings, and that such witnesses be able to claim special protection during the trial. The Task Group also recommends that the needs of persons with disabilities be given special attention when drafting the provisions concerning "vulnerable witnesses".
- that amendments to the Criminal Procedure Act include provisions that will not only make it illegal to make public the identity of survivors in sexual violence cases, and/or the identity of the accused before they have been found guilty/formally charged, but also makes explicit provision for publishers contravening this legislation to be criminally prosecuted and fined.

in relation to bail

- that the National Directorate of Public Prosecutions consider measures that will ensure that the granting of bail, especially in relation to persons accused of committing sexual offences, is administered uniformly throughout the country.

- that the National Directorate of Public Prosecutions consider measures that will ensure that when bail conditions for sex offenders are determined, each decision give attention to the principle contained in Section 7 of the Domestic Violence Act, which provides for the removal of the abuser from the home shared with the complainant when this is in the best interest of the abused child.
- that the Department of Justice and Constitutional Development brief the relevant Parliamentary Committees on the scope of existing bail legislation with a view to identifying and amending possible weaknesses in the legislation.

in relation to sentencing

- that the SALC Project Committee on Sentencing brief the relevant Parliamentary Committees with regard to the progress they are making with the proposed Sentencing Framework Bill, that timeframes be established for the completion of the Bill and that the manner in which the current perceptions around inconsistent and inappropriate sentencing of sex offenders can be addressed, be explored.
- that serious attention be given at the level of the judiciary to the manner in which provisions concerning minimum sentencing are interpreted to ensure that sentences are commensurate with the seriousness of a crime like sexual violence against children.
- that the influence of alcohol and drugs be considered as an aggravating factor in the sentencing of sex offenders.
- that the cost of anti-HIV/Aids prophylaxis treatment for rape survivors be reclaimed from the perpetrator upon conviction.

3.5.3 Correctional Services

3.5.3.1 Introduction

The Department of Correctional Services did not make a submission at the public hearings. In view of the importance of the debate around rehabilitation, and the wider debate in South Africa around restorative justice, the absence of Correctional Services is recognised as unfortunate.

3.5.3.2 Child sex offenders

Some presenters made reference to the position of child sex offenders in the correctional service system, and argued that the system currently does not cater for them adequately. The provisions of the Constitution makes it imperative that Government use detention or imprisonment of children only as a last resort and for the shortest appropriate period of time, and to accommodate children separately from adult inmates (Section 28(1)(g) of the Constitution). Despite a programme to establish secure care facilities in all of the provinces to ensure that children in trouble with the law are accommodated in a manner that takes into account their developmental needs, the reality that hundreds of children are still accommodated in South African prisons is a cause for grave concern. Because of a lack of resources with which to completely develop the programme of secure

care, there seems to be little distinction between children in custody and children in care, which results in children in both categories being accommodated in the same facilities.

It was put to the Task Group that there are currently only two programmes that deal with the rehabilitation of child sex offenders nationally. The Task Group finds completely inadequate, and supports the position that early intervention in relation to child sex offenders plays an important role in enhancing the offender's chances to be reintegrated into society. The Task Group also finds that the large numbers of children in adult prisons implies that they are vulnerable to be abused themselves, and their exposure in this setting to sexual violence which may reinforce the anti-social behaviour at the root of their offence in the first place.

The Task Group is of the opinion that the punishment of the child sex offender has to be appropriate to their developmental capacity and age, and proportionate to the seriousness of the crime. The Task Group notes that the proposed Child Justice Bill contains extensive proposals on the sentencing of child offenders and the diversion of children out of the prison system. In terms of this Bill, the purposes of sentencing children would be in line with the concept of restorative justice – encouraging the child, through a sentence proportionate to the circumstances surrounding the crime, to accept individual responsibility for their actions and to facilitate the reintegration of that child into the family and community.

3.5.3.3 Adult sex offenders

The Task Group again takes cognisance of the assertion that conditions in South African prisons are not conducive to the rehabilitation of sexual offenders, and that the high levels of violence, including sexual violence, may in fact reduce their chances of rehabilitation. It further notes the comments made in various submissions with regard to the suitability of current rehabilitation programmes for adult sex offenders. Of specific importance here is the argument that courts should consider the treatment and rehabilitation of all sexual offenders as part of the sentencing process to ensure that survivors and the community in general are protected against repeat offending once the offender has been released from prison.

The Task Group takes into account a number of recommendations regarding the way Government deals with sex offenders. One of these recommendations contained in a detailed submission is that rehabilitation programmes aimed at sex offenders must be established in correctional facilities as a matter of urgency. There has been a further recommendation that all sex offenders should be required to undergo treatment in an accredited treatment programme, preferably in a community setting, when released on parole or under correctional supervision. The submission also gives attention to the procedures to be followed in sentencing when considering the appropriateness of rehabilitation programmes for a particular offender. The Task Group notes the recommendation that the offender should bear the cost of treatment should he or she be in a position to do so, and that the State should bear the cost of treatment for offenders who cannot

afford to pay for it themselves. At the same time, it acknowledges that severe resource constraints may seriously affect the feasibility of such proposals.
The Task Group recognises that where a "treatment order" forms part of a sentence, this would have to be followed up to ensure that a lack of resources or a lack of insight into the need for rehabilitation are not the reasons why such rehabilitative treatment are not implemented. In addition, there would have to be considerable campaigns aimed at reaching consensus among both correctional services staff and the public in general that such rehabilitation programmes do not constitute a mere waste of money on the offender at the cost of the taxpayer, but that it forms a vital part of a completely new paradigm within which there will be elements of both punitive and restorative justice.
The Task Group further acknowledges that the comments above do not elaborate on all the different aspects of the debate around rehabilitation, and that the issue of effective rehabilitation of sex offenders, the cost of such programmes and the conditions in correctional facilities merit further investigation by both the Departments of Correctional Services and Social Development.

3.5.3.4 Register of Sex Offenders

In media reports as well as in discussions before the Task Group, the establishment of a national register of sex offenders has been suggested as one of the preventative measures that could be used to combat the sexual abuse of children. It has been argued that there are a number of examples of how such a register could operate, and the example of the United Kingdom was put as the kind of system that could most benefit the South African context.
In the UK, the Sex Offenders Act 1997 requires those convicted of specified sexual offences involving children, and of other serious sexual offences against adults, to register their names and addresses with the police. At present the registration rules in the UK include the following: sex offenders must register their name and address with a designated police station within 72 hours of their release from jail. Failure to register can lead to a six-month jail term or fine. In addition, the police can apply for a community protection order, which lasts for a minimum of five years, and can bar an individual from areas frequented by children. Head teachers, doctors, youth leaders, sports-club managers and others are notified on a confidential basis of the presence of a local sex offender.
At the core of the argument in favour of such a register is the belief that informing the child protection agencies and certain other professionals who work with children of the whereabouts of a convicted sex offender will enable these agencies and individuals to keep sex offenders away from children. The Task Group notes the contention that rehabilitation of sex offenders in the current prison environment has had little success, and that a significant number of sex offenders become repeat offenders once they have been released from prison.
While noting the arguments in favour of a register of sex offenders, the Task Group has also considered the arguments against it. It has been shown, for example, that there is little to stop a sex offender giving a false address when complying with their mandatory registration requirements. Another important factor that has to be noted is the question of what the public does with the

information in a register, should the general public have access to it, as is the case in some states in the United States of America. Even where access to the register is limited to certain categories of people, there have been numerous cases of misidentification, vigilante attacks on sex offenders, and even suicides of people who have been subjected to public attack after their names were included in a public register of sex offenders. The Task Group notes that placing information concerning offenders on the Internet must be approached very carefully, as such information is accessible not only to the community that it is aimed at protecting, but nationally and internationally, which opens it to abuse.

A third argument is that such a register may drive the activities of sex offenders even more underground, which could make the work of protection agencies all the more difficult.

The Task Group recognises proposals that a register of sex offenders could be useful as a means of keeping serial offenders out of children's services. Such a register should be available to assist with the screening of prospective staff members, volunteers or substitute caregivers for children within schools, designated child care services and major youth organisations, and for no other purpose whatever. In addition, the proposals hold that strict controls on access to this information and strong sanctions for any breach of the limitations should be put in place, and that severe criminal penalties should apply to malicious reporting.

It must be noted that the efficacy of such a register has not been established, nor has the cost implications for South Africa.

3.5.3.5 Recommendations

The Task Group recommends -

in relation to child sex offenders

- that the Department of Justice and Constitutional Development brief the relevant Parliamentary Committees on the measures the Department intends to take with a view to fulfil South Africa's obligations under Section 28(1)(g) of the Constitution with regard to sentencing of child offenders.
- that the Department of Correctional Services brief the relevant Parliamentary Committees on the measures the Department intends to take with a view to fulfil South Africa's constitutional under Section 28 of the obligations with regard to detained children.
- that the Department of Correctional Services brief the relevant Parliamentary Committees on its programmes for the rehabilitation of child sex offenders, as well as the facilities available for the removal of children out of adult prisons.
- that the draft Child Justice Bill be finalised as soon as possible, and that the Department of Constitutional Development brief the relevant Parliamentary Committees on the contents of the Bill, as well as the reasons for the delay in processing this legislation.
- that this proposed legislation also include explicit reference to the mandatory responsibilities of different government agencies to ensure that programmes of restorative justice can be successfully implemented;

in relation to adult sex offenders

- that the Department of Correctional Services brief the relevant Parliamentary Committees on its programmes for the rehabilitation of adult sex offenders, including cost implications of existing and envisaged rehabilitation programmes.
- that the recommendations with regard to the mandatory rehabilitative treatment of sex offenders, where upon assessment found appropriate, be considered for inclusion in the proposed Sentencing Framework Bill, and that members of the judiciary as well as correctional services personnel be trained with regard to the importance of rehabilitative treatment.
- that proposed changes to legislation to allow for more effective rehabilitation of sex offenders include explicit reference to the mandatory responsibilities of different government agencies to ensure that rehabilitation programmes can be successfully implemented;

in relation to a register of sex offenders

- that the establishment of a register of sex offenders be investigated by a task team comprising the Departments of Correctional Services, Safety and Security, Social Development and Justice and Constitutional Development, and that this task team report to the relevant Parliamentary Committees.
- that the effectiveness of such registers in countries where they exist be investigated by the above-mentioned task team.
- that should a register of sex offenders be established, this register not be open to the public, but managed by the Departments of Correctional Services, Social Development and Safety and Security for the purposes of keeping sex offenders out of schools, designated child care services and youth organisations. It further recommends that such a register include an updated history of the offender's offences as well as his or her participation in rehabilitative programmes.
- that this task team investigate the question of including in a register of sex offenders the names and details of persons against whom allegations of abuse have been made, but who have not been found guilty by a court.

3.6 International instruments for the protection of children

3.6.1 Introduction

The Task Group finds that sexual abuse of children can have an international dimension or cross border implications. That is why international cooperation and a common legal standard of norms in relation to these issues are needed in order to properly address the problems involved. The Task Group therefore takes note of the international legal framework with regard to sexual abuse of children within which State authorities and private individuals act.

One of the areas of sexual abuse of children that could have a direct international dimension is the area of commercial sexual exploitation and trafficking in persons. Unfortunately the Task Group was offered no empirical data in relation to the problem. It could therefore not be assessed during the Public Hearings

how widespread these problems are. The Task Group, however, notes that the impact of commercial sexual exploitation on the well being of affected and vulnerable children is devastating and needs to be properly addressed by cooperation of all State authorities on a national and on an international level.

3.6.2 International Law Framework

3.6.2.1 International treaties binding on South Africa

South Africa is bound by the 1990 *African Charter on the Rights and Welfare of the Child* which provides in Article 16 that

> *1. States Parties to the present Charter shall take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while in the care of a parent, legal guardian or school authority or any other person who has the care of the child.*
>
> *2. Protective measures under this Article shall include effective procedures for the establishment of special monitoring units to provide necessary support for the child and for those who have the care of the child, as well as other forms of prevention and for identification, reporting, referral, investigation, treatment, and follow-up of instances of child abuse and neglect.*

South Africa is furthermore party to the 1989 UN *Convention on the Rights of the Child* which contains in Article 19 the obligation that

> *1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.*
>
> *2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.*

South Africa is moreover bound by the 1999 *Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour* (ILO No. 182), to

> [...] *take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.*

In the context of this provision the term "worst forms of child labour" comprises

> [...] *the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances* [...]

and

> [...] *work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.*

It must be noted therefore that South Africa already committed itself on an international level to put into place these above mentioned protective measures for children.

3.6.2.2 Instruments not signed or ratified by South Africa and therefore not binding on the Republic

It must, however, be further noted that other instruments exist on the level of international law that deal more specifically with the topic of commercial sexual exploitation and trafficking in children than the above-mentioned Conventions. In this context two international legal instruments must be taken into account.

The 2000 *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* entered into force on 18 January 2002 without the signature or the ratification of South Africa. This Protocol was drafted by the United Nations because there was a general concern that the *Convention on the Rights of the Child* does not provide for safeguards effective enough to address and deal with the problem of sale of children, child prostitution and child pornography. It therefore aims at extending the measures that States Parties of the *Convention on the Rights of the Child* should undertake with regard to the problem. Concrete measures proscribed by the Protocol include the unconditional extradition of perpetrators of sexual abuse of children (article 5) and the deepening of international collaboration and assistance in the fight against the mentioned crimes and its criminal punishment (article 6). Furthermore, the Protocol places concrete obligations on States Parties to protect the child survivors of such crimes in the course of the establishment of criminal proceedings against perpetrators (article 8), an issue that was raised by various presenters during the public hearings, who expressed major concern in relation to possible secondary abuse of the child survivor.

The Task Group further takes note of the existence of the 2000 *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime.* The *Convention Against Transnational Organized Crime* was signed by South Africa, but has not yet been ratified. Trafficking is defined in article 3 of the Optional Protocol as including

> [...] *the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of the position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploition.*

In the context of the Protocol, exploitation comprises

> [...] *the exploitation of the prostitution of others or other forms of sexual exploitation* [...].

The Protocol aims specifically at criminalising all forms of trafficking in children (see article 5) and at assisting and protecting survivors of trafficking (see article

6). In doing so the Protocol has the potential to extend the protection of sexually abused children beyond what is already granted and provided for by other international treaties such as the more general *African Charter on the Rights and Welfare of the Child* and the UN *Convention on the Rights of the Child.*

The coming into force of these two above-mentioned international law instruments for South Africa would therefore add to the protection of children from all kinds of sexual abuse, both nationally and internationally.

With regard to the specific problem of commercial sexual exploitation of children through the use of modern communication technology, it must be noted that South Africa has signed the Council of Europe *Convention on Cybercrime.* This Convention aims at closing existing loopholes in legislation that emerge through the rapid advancement and development of modern technology. Article 9 of the Convention would place the country under obligation to act against child pornography on the Internet. This Convention could therefore be an answer to questions in relation to crimes committed using the Internet as highlighted earlier in this Report. South Africa, however, has not yet ratified this Convention.

3.6.3 Recommendations

The Task Group recommends

- that further investigation into international trafficking in children, child prostitution, and child pornography be commissioned by the relevant Statutory bodies in order to obtain a clear picture of the extent of the problem; these bodies should brief the relevant Parliamentary Committees on their findings
- and, taking note of the Resolution adopted by the 106th Inter-Parliamentary Conference in Ouagadougou on 14/09/2001, that South Africa immediately sign and ratify the following international instruments in order to provide for the comprehensive protection of children from all forms of sexual abuse, to simplify international collaboration in preventing and punishing these crimes, and to facilitate the closing of possible loopholes in the existing legislation:
  - *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* (U.N. General Assembly resolution A/RES/54/263 of 25 May 2000);
  - *U.N. Convention Against Transnational Organized Crime* (G.A. res. 55/25, annex I, 55 U.N. GAOR Supp. (No. 49) at 44, U.N. Doc. A/45/49 (Vol. I) (2001)),
  - *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime* (G.A. res. 55/25, annex II, 55 U.N. GAOR Supp. (No. 49) at 60, U.N. Doc. A/45/49 (Vol. I) (2001)).
  - Council of Europe *Convention on Cybercrime* (ETS No. 185).

3.7 Commercial sexual exploitation

3.7.1 Introduction

Several presenters raised the question of sexual exploitation of children in a commercial context, for example child pornography and child prostitution. Furthermore, the problem of international trafficking in children for the purpose of commercial sexual exploitation was raised. The Task Group takes note of contentions that South African children are increasingly being trafficked into slavery or prostitution.

However, the Task Group found that the research presented at the hearings did not necessarily reflect the situation in South Africa with regard to the trafficking of children accurately, and that it could not assess the extent of commercial sexual exploitation in South Africa. The Task Group, however, notes that the impact of commercial sexual exploitation on the well being of affected and vulnerable children is devastating and needs to be properly addressed by cooperation of all State authorities on a national and international level. One must not forget that a child does not prostitute her or himself out of free choice but is always a victim of criminal activities of other people.

The problem of child pornography and the State responses to the production, proliferation, and consumption thereof, will be discussed in the context of issues related to the mass media. The Task Group notes that it is a serious criminal offence to use children for the production of pornography, and that the distribution and consumption of this kind of pornography should be punished severely.

With regard to the specific distribution of child pornography through electronic media, the Task Group is of the opinion that there are shortcomings in the national legislation currently in existence. The Film and Publications Act (Act No 65 of 1996), does not properly address the risks imposed by modern technological developments and needs to be updated. Section 27 of the Act creates the offence of knowingly creating, producing, importing or being in possession of a publication or film that contains a visual presentation of child pornography. The definition of the term "film" seems to be broad enough to encompass visual presentations and images relayed on the Internet. However, given its special focus and the nature of the classification system, it is clear that the Act does not, and cannot, specifically regulate Internet material, including advertisements, accessible to children.

3.7.2 Recommendations

The Task Group therefore recommends

- that the Department of Safety and Security ensure that amendments to the Sexual Offences Act that include provisions criminalising commercial sexual exploitation be finalised as soon as possible.
- that a new children's statute include a general provision that criminalises the trafficking in children.
- that if a court finds that a child has been trafficked for purposes of commercial sexual exploitation by his or her parents or any other person

legally responsible for the child, all parental rights of that person be suspended and the child be placed immediately into alternative care.

- that parents who are guilty of trafficking their children, be criminally charged with neglect and abuse of their parental responsibilities
- that the offence of child trafficking be included in the Sentencing Framework Bill as a very serious offence.
- that a child prostitute not be treated as a criminal, but a child in need of care and protection.
- that the Department of Home Affairs, in partnership with the Department of Safety and Security, further ensure that possible loopholes in the current legislation with regard to the distribution of child pornography and the sexual abuse of children using modern technology are closed.
- that an obligation be placed on Internet service providers not to allow child pornography on their servers and, when they become aware of a case of child pornography or sexual abuse of children by use of the Internet, to inform the relevant judicial authorities. Internet service providers must monitor their sites and be liable if they knowingly provide access to child pornography.
- that effective rehabilitation programmes be put into place to educate, encourage and support children to leave a situation of commercial sexual exploitation, and that the provincial departments responsible for Social Development ensure that investigations aimed at determining the extent of the problem are carried out, and allocate resources for such programmes.
- that education programmes be rolled out that sensitise children and the community to the problem of commercial sexual exploitation of children. Such programmes must aim at detecting and identifying risk factors or situations that make children vulnerable to commercial sexual exploitation. In such programmes children must be encouraged to seek help and assistance if they are survivors of sexual exploitation.
- that Government support and encourage initiatives to raise the public profile of organisations that render services to survivors of sexual abuse and exploitation.
- that the challenges highlighted by the Report inform any further debates on the decriminalisation of prostitution in South Africa.

3.8 Media

3.8.1 Introduction

The role of the media in promoting sexual violence against women and children was raised in different submissions; at the same time, some presenters believed that the media has a positive role to play in campaigns aimed at combating these forms of violence. It was argued before the Task Group that the media is contributing to the image of women and children as commodities and that the unequal power relations between men and women exacerbate the situation. This

adds to the perception that men have the right to claim sexual subservience from women and children.

The Task Group notes the concern expressed about the content of programming on the national television channels, especially as it relates to violence or sexually explicit material. It also notes the submission that the South African Broadcasting Complaints Commission is not sufficiently effective in dealing with complaints from the public, and that its Code of Conduct is regularly breached. However, the Task Group did not receive any submission that details such instances.

The Task Group notes at this juncture that it is important to use the media as an effective tool for raising public awareness around sexual violence. It further notes that the media has a responsibility to report regularly and consistently on matters surrounding sexual violence against children, rather than predominantly covering sensational cases. Recommendations on the role of the media in changing attitudes about gender roles, power relations and sexuality are contained elsewhere in this Report.

A substantial portion of the submissions that focused on the media, however, dealt with the question of pornography and its possible link to sexual violence against women and children. The question was raised whether pornography and other media exposure cause rape, and different arguments were put forward at the hearings.

The South African Government made a clear decision around the legality of adult pornography with the introduction of the Films and Publications Act in 1996. While it wanted to make a clear break with the censorship laws of the past, it sought to ensure, among others, that the right to freedom of expression, as it pertains to the right to be in possession of adult material depicting adults in non-violent sexual acts, is protected. At the same time, the legislation sought to prohibit the possession or distribution of child pornography, material that depicts sexual violence and material that depicts bestiality or excessive violence.

The Task Group recognises of the opinion that Government policy, the Films and Publications Board, and the judicial system armed with the Films and Publications Act in turn, has had to balance the individual freedom of expression guaranteed in the Constitution (Section 16) with the need to protect vulnerable sections of society against abuses of that freedom. This tension provides some of the context within which discussions of pornography have taken place, and continues to inform the debate about pornography in South Africa.

Although it considers this a serious and ongoing debate, the Task Group also notes the concern expressed that our laws do not sufficiently protect children against adult pornography. With regard to child pornography, the Task Group emphatically supports Government's position: child pornography is not a matter of freedom of expression, nor is it a genre of erotica. It is both a form of sexual exploitation of children and a representation of that exploitation. The Task Group agrees with the position that child pornography is often used to abuse more children, noting various studies that suggest a direct link between child pornography and abuse.

The Task Group believes that any child pornographic image constitutes child abuse. The image degrades and dehumanises children, whether it involves real children in its production or whether it is simulated. It also notes suggestions that having been abused through child pornography leaves an indelible mark on the child, and could result in severe behavioural consequences for the child in later life. Therefore the Task Group believes that there can be no tolerance for the production, distribution or possession of child pornography.

The distribution of child pornography continues to abuse the child long after the perpetrator may have been apprehended. In view of the operation of the Internet as a worldwide and virtually immediate distribution tool, and the overwhelming evidence that pornographic sites on the Internet are increasingly easy to access, the Task Group expresses great concern that South Africa still has no legislation in place to deal with the distribution of child pornography on the Internet. It notes the proposals contained in the draft Films and Publications Amendment Bill, but finds no satisfactory answer to why this Bill has still not been tabled in Parliament for consideration and adoption.

South Africa is bound by the *UN Convention on the Rights of the Child* (Article 34) of which places it under further obligation to put in place legislation that will expressly protect children against child pornography – a form of commercial sexual exploitation of children. The *African Charter on the Rights and Welfare of the Child* also makes very clear reference (Article 27) to the obligation on States parties to protect children by preventing the use of children in pornographic activities, performances and materials. The link between child pornography and commercial sexual exploitation of children is further established in the International Labour Organization's Convention 182 to which South Africa is party.

These international instruments, already binding upon our country have been discussed more fully elsewhere in this Report.

3.8.2 Protecting survivors from media exposure

The question of the role of the media in identifying sexual abuse survivors and their families is discussed elsewhere in the report within the context of the criminal justice system, and findings and recommendations with regard to appropriate conduct for the media are elaborated there.

However, the Task Group was particularly concerned about the submission made by the producer of a BBC-commissioned documentary film about child rape in South Africa. Members expressed their deep concern about the protection of the identity of survivors or their families in such films. There was also concern about whether participants in documentary films of this nature are being encouraged to participate by way of financial incentive, and whether they are afforded the opportunity to make informed decisions about the implications of their participation in such a film.

3.8.3 Recommendations

The Task Group recommends

- that the draft Films and Publications Amendment Bill be finalised and tabled in Parliament urgently.

- that the Departments of Safety and Security and Home Affairs brief the relevant Parliamentary Committees on the establishment of specialised police units for the combating of cyber crime, including child pornography on the Internet.
- that the Department of Justice and Constitutional Development brief the relevant Parliamentary Committees on its programmes with regard to training officials and staff in the judiciary on the role of new technologies in sexual crimes against children.
- that the debate about protecting children against adult pornography be taken up at a national level.
- that a "24/7" Network be established in terms of Article 27 of the *Convention on Cybercrime* to facilitate international cooperation between South Africa and its co-signatories to the Convention. The Article provides that

  each Party shall designate a point of contact available on a twenty-four hour, seven-day-a-week basis, in order to ensure the provision of immediate assistance for the purpose of investigations or proceedings concerning criminal offences related to computer systems and data, or for the collection of evidence in electronic form of a criminal offence.
- that sustained public awareness campaigns be put into operation to inform all Internet users, but especially parents, of the dangers of children accessing pornography on the Internet, and on ways to block child pornography from their personal computers.
- that the Department of Home Affairs investigate the establishment of "Hotlines" that would enable members of the public to inform the police about possible illegal material on the Internet with a view to removing this material from the servers in question.
- that filmmakers take cognisance of the right to dignity as contained in Section 10 of the Constitution when making documentary films about sensitive issues such as abuse, by ensuring that the identity of survivors and their families is protected. This is especially true as it pertains to children who are unable to make decisions for themselves and who may suffer secondary abuse as a result of such films.
- that the Departments of Home Affairs and Safety and Security investigate the adequacy of the enforcement of the Film and Publications Act as it relates to minors accessing pornographic material, with a view to proposing measures to deal with closing the loopholes.
- that the Departments of Communications and Home Affairs investigate the effectiveness of strategies to monitor media broadcasting as done by the Film and Publications Board, with a view to reporting to the relevant Parliamentary Committees.
- that the Departments of Communications and Home Affairs investigate the effectiveness of the manner in which the South African Broadcasting Complaints Commission enforces its Broadcasting Code of Conduct and

deals with public complaints, with a view to reporting to the relevant Parliamentary Committees.

4 Conclusions

4.1 Overall Findings

Children are our most valuable resource for the future of our country and we need to ensure that they are given the best care, attention, protection and love in order to ensure that the future of the country is in the hands of responsible and caring adults. This message of how precious and vulnerable our children are was brought home to the Task Group when it heard direct evidence from abused children. The Task Group was very moved and touched by the openness and strength of these children who had the courage to share their feelings at the hearings. The Task Group wishes to express its deepest gratitude to these children.

The Task Group is of the opinion that any efforts aimed at addressing the levels of violence in South African society must take cognisance of the conditions under which large numbers of people in South Africa live. The social disintegration that results from the legacy of Apartheid contributes to a situation where violence becomes a means of exerting and asserting power. A situation of poverty very often renders not only the child survivor powerless, but also those persons who must protect the child.

The vision that South Africa has for its children is that they will live in a society in which they can achieve their full potential by growing up in a secure, stable and loving environment where they have the opportunity to develop physically, intellectually, emotionally, socially and spiritually. The rights enshrined in the South African Constitution, and as set out in international instruments such as the *African Charter on the Rights and Welfare of the Child* and the UN *Convention on the Rights of the Child* must form the basis on which this vision is transformed into a reality. In terms of these instruments, both national and international, each child has the right to parental or family care, to grow up within the context of that family and his or her community, and to be protected against maltreatment, abuse, neglect and degradation.

South Africa has in many respects made significant advances in establishing the beginning of a rights-based culture through the passing of crucial legislation that addresses the State's responsibility to give effect to the Constitutional rights. The establishment of a jurisprudence that speaks directly to the manner in which individuals are able to demand certain rights from the State, has been seen as a very important achievement for such a young democracy. However, the social reality that millions of South Africans face daily, and the reality that children are the most vulnerable under circumstances of social deprivation, severely impedes the realisation of those rights.

Government must therefore concentrate its efforts to enhance people's developmental capacity by creating an environment where individuals are able to work, to participate in community life and to protect the families they form part of. Despite very real progress made in relation to improving people's material

conditions and thereby strengthening children's developmental opportunities, every year thousands of children still experience emotional, physical and sexual abuse.

The Task Group has heard the concern, comments and recommendations of a broad number of individuals, organisations of civil society, as well as certain government departments. It has considered all the submissions presented to it, and makes the following findings and recommendations by way of conclusion:

- Sexual abuse of children knows no boundaries of social class, race or gender.
- Conditions of abject poverty and social disintegration make children especially vulnerable to sexual abuse.
- There are serious challenges in the way Government supports services and programmes aimed at preventing sexual abuse of children or protecting them from secondary abuse. The biggest weakness relates to the absence of an integrated approach to sexual abuse: there is no single understanding of the nature of sexual abuse, its effect on children or the needs of child survivors. As a result, government departments do not collaborate effectively and efficiently. While this situation often causes secondary abuse, it is also an inappropriate manner for South Africa to spend its resources.
- Legislation aimed at protecting children and empowering those charged with protecting children needs urgent improvement.
- Certain policies developed in partnership with civil society are not being effectively implemented.
- Law enforcement agencies are not always appropriately trained to deal with child survivors of sexual abuse, and where trained staff work in specialised units, they are under-resourced.
- Certain levels of the criminal justice system do not take the needs of the survivor into account, which results in secondary abuse.
- The child and family welfare services provided by Government are under-resourced, which leads to serous limitations in the scope of services provided and the ability of professionals in government services to cope adequately with the workload expected of them. This also leads to an over-emphasis on curative interventions in respect of vulnerable families and children at risk of abuse, and few resources being available for preventing abuse.
- The child and family welfare services provided by civil society organisations are also seriously under-resourced, which makes it extremely difficult for service organisations to attract appropriately trained professionals to these organisations, and for organisations to focus on preventative programmes.
- In view of the fact that significant numbers of civil society organisations are not effectively rooted in the communities they are meant to serve, the limited resources available for preventative services to children and families are not are not being applied appropriately.
- There is a need for increased public awareness of children's rights as well as the responsibility of each individual to promote and protect those rights, for example, by reporting sexual abuse of children.

4.2 Overall Recommendations

The Task Group recommends -

- that the question of sexual abuse of children be approached in an integrated, comprehensive and holistic manner to ensure that preventative programmes can make an impact on the incidence of sexual abuse in South Africa. This should ensure that the protection and care offered to survivors of sexual abuse is responsive to the full impact of the abuse on the survivor.
- that all programmes aimed at preventing abuse take due cognisance of the material conditions that impact on the prevalence of sexual abuse, and that such programmes are linked to integrated development strategies already in place.
- that the responsibilities that different government agencies have with regard to both prevention of sexual abuse and the protection and treatment of survivors of abuse be spelt out in legislation, where appropriate.
- that Government strengthen partnerships with civil society organisations involved in prevention of sexual abuse and the protection and treatment of survivors of abuse in order to ensure that there is a common understanding of the approach to the protection of children in South Africa.
- that Government commit adequate resources for the implementation of legislation and policy aimed at preventing abuse and protecting children, and that the crucial role of civil society organisations in the areas of both prevention and protection be recognised and supported.
- that sustained awareness campaigns be used to make the public aware of available services aimed at the prevention of abuse and the protection of children through.
- that the relevant government departments ensure that awareness campaigns are aimed at enabling individuals and communities to assist in preventing abuse through early warning signs, to respond to reports of abuse and to access services in this regard.
- that educators be workshopped and trained on the children's rights set out in the *African Charter on the Rights and Welfare of the Child* and the UN *Convention on the Rights of the Child* to raise awareness of these rights among children. This would fulfil some of South Africa's obligations in terms of these treaties to publicise as widely as possible the rights contained therein.
- that policy and legislation be reviewed in accordance with international children's rights instruments ratified by South Africa.
- that the outcome of the public hearings held by the Task Group be publicised and be made available as widely as possible. The Task Group undertakes to make a copy of this Report available to each government department for consideration and implementation of the recommendations contained therein.
- that the official text of the *African Charter on the Rights and Welfare of the Child* and the UN *Convention on the Rights of the Child*, as well as any other international children's rights instrument that is or becomes binding on South

Africa be published in the Government Gazette in order to create an official point of reference.

- that the *African Charter on the Rights and Welfare of the Child* be translated into easily accessible language and be distributed to all schools and public offices throughout the country in order to raise public awareness of children's rights and to fulfil part of South Africa's obligation under the Charter.
- that the relevant Parliamentary Committees follow up and monitor the implementation of the recommendations made to the various government departments. For this purpose it is suggested that these committees invite the departments concerned to brief them on progress made in realising the recommendations not later than six months after the adoption of this Report and that each of these committees report to the National Assembly not later than 12 months after the adoption of this Report.

Report to be considered.

No 43—2002] FOURTH SESSION, SECOND PARLIAMENT

REPUBLIC OF SOUTH AFRICA

MINUTES OF PROCEEDINGS

OF

NATIONAL ASSEMBLY

TUESDAY, 18 JUNE 2002

1. The House met at 14:04.

2. The Speaker took the Chair and requested members to observe a moment of silence for prayers or meditation.

3. [14:05] The Chief Whip of the Majority Party moved: That Rule 253(1) be suspended for the purposes of conducting the Second Reading debate on the ***Financial Advisory and Intermediary Services Bill*** [B 52B—2001] (National Assembly—sec 75).

4. FIRST ORDER [14:06]

   Debate on Vote No 1—The Presidency, ***Appropriation Bill*** [B 4—2002] (National Assembly—sec 77).

   Debate interrupted.

5. The House adjourned at 19:14.

S MFENYANA,

Secretary to Parliament.

No 19—2002] FOURTH SESSION, SECOND PARLIAMENT

REPUBLIC OF SOUTH AFRICA

MINUTES OF PROCEEDINGS

OF

NATIONAL COUNCIL OF PROVINCES

TUESDAY, 18 JUNE 2002

1. The Council met at 15:06.

2. The Chairperson took the Chair and requested members to observe a moment of silence for prayers or meditation.

3. [15:07] Notices of motion.

4. [15:09] Dr E A Conroy moved without notice: That the Council—

   (1) joins the uMshwati mayor, Moses Mkhize, in his condemnation of the unnecessary and senseless murder of Mr Robin and Mrs Joan Dent on their farm in KwaZulu-Natal;

   (2) expresses its deepest sympathy to the Dent couple's sons Jonathan and Nicholas and their family and friends in their hour of mourning;

   (3) wishes Nicholas Dent strength in the period of recuperation following his traumatic experience during which he had to witness the murder of his parents and was then forced to help the murderers as they escaped; and

   (4) will continue to play a reconciliatory role to prevent inflammatory behaviour which could contribute to repetitions of this event and similar shocking events.

   Motion agreed to in accordance with section 65 of the Constitution.

5. [15:10] The Chief Whip of the Council moved without notice: That the Council—

   (1) notes that—

      (a) the birthday of our President takes place at a time when our continent is free;

      (b) our President is one of the principle architects of the New Programme for Africa's Development;

      (c) his birthday will be celebrated with the imminent birth of the African Union;

      (d) he has committed our country and its representatives to achieve peace and resolve conflict in Africa and the world;

(e) he celebrates his birthday as the ANC celebrates its 90th anniversary and is committed to the struggle for the eradication of poverty and re-affirming the dignity of our people; and

(f) in recognition of the richness of the leadership provided, the World Summit on Sustainable Development will be conferring on the soil of our land;

(2) wishes him a very happy 60th birthday, many happy years of contentment, continued wisdom, integrity and spiritual well-being; and

(3) recognises—

(a) his immense contribution and commitment to the achievement of peace, the deepening of democracy and eradication of poverty, the development of our continent and his perennial struggle for the affirmation of the dignity of all persons; and

(b) that the 60 years of his life bear testimony that the integrity and noble commitment of an individual can alter the course of humanity from a situation of conflict to a transition to peace and justice.

Happy Birthday, Mr President.

Motion agreed to in accordance with section 65 of the Constitution.

6. [15:12] Ms P C P Majodina moved without notice: That the Council—

(1) congratulates the National Youth Commission for organising four successful events in the Free State province in honour of Youth Day—

(a) a moral regeneration summit;

(b) the unveiling of a memorial stone with 176 names of our martyrs in Bochabelo Location at St Barnard's School;

(c) a youth rally at Seiso Ramabodu Stadium which was attended by 56 000 youth addressed by the President of the Republic of South Africa; and

(d) the renaming of the Grand Palace Civic Centre in honour of fallen hero Bram Fischer; and

(2) notes that the future of this country is in good, capable hands.

Motion agreed to in accordance with section 65 of the Constitution.

7. [15:13] Prince B Z Zulu moved without notice: That the Council—

(1) notes with shock the death of a patient at St Appolonaris Hospital in KwaZulu-Natal after bathing in boiling hot water;

(2) further notes that her condition had been described as chronic by the hospital authorities;

(3) finds it unacceptable and negligent that a chronic patient was without a nurse when she took her bath; and

(4) calls upon the MEC to act swiftly in line with the call by the President in his state of the nation address to investigate the circumstances surrounding the death of the patient.

Motion agreed to in accordance with section 65 of the Constitution.

8. [15:14] Ms J N Vilakazi moved without notice: That the Council—

(1) notes with concern that children throughout the country are starving because they have not been registered and consequently cannot gain access to a monthly social grant;

(2) further notes that this unacceptable situation is being caused by administrative impediments and a lack of interdepartmental co-operation; and

(3) appeals to the Department of Social Development and to the other departments concerned to make a co-ordinated effort in addressing this problem, and to put together a task team that will focus in particular on the registration of children.

Mr V V Z Windvoël moved as an amendment: That, in paragraph (1), "throughout" be substituted by "in certain parts of".

Amendment agreed to in accordance with section 65 of the Constitution.

Motion, as amended, agreed to in accordance with section 65 of the Constitution, namely: That the Council—

(1) notes with concern that children in certain parts of the country are starving because they have not been registered and consequently cannot gain access to a monthly social grant;

(2) further notes that this unacceptable situation is being caused by administrative impediments and a lack of interdepartmental co-operation; and

(3) appeals to the Department of Social Development and to the other departments concerned to make a co-ordinated effort in addressing this problem, and to put together a task team that will focus in particular on the registration of children.

9. [15:15] Mr R Z Nogumla moved without notice: That the Council—

(1) expresses its concern at an enormous increase in drug use throughout the country;

(2) notes that, according to the ***Cape Times*** of today, 18 June 2002, the number of users has multiplied in the past five years;

(3) further notes with shock that children as young as 11 years are treated for addiction;

(4) expresses its concern at the fact that drug centres are battling to cope with the unprecedented demand for treatment; and

(5) appeals to the Government to intensify measures aimed at the prevention of drug abuse and of the entry of illegal drugs into the country.

Motion agreed to in accordance with section 65 of the Constitution.

10. FIRST ORDER [15:19]

Consideration of ***Constitution of the Republic of South Africa Second Amendment Bill*** [B 17B—2002] (National Assembly—sec 74) and of Report of Select Committee on Security and Constitutional Affairs thereon (Announcements, Tablings and Committee Reports, 18 June 2002, p 951).

Debate concluded.

Question put: That the Bill and the amendment be agreed to.

IN FAVOUR OF: Eastern Cape, Free State, Gauteng, KwaZulu-Natal, Mpumalanga, Northern Cape, Northern Province, North West, Western Cape.

Bill [B 17B—2002] and amendment [B 17C—2002] accordingly agreed to in accordance with section 74(3)*(b)* of the Constitution.

11. SECOND ORDER [15:19]

Consideration of ***Loss or Retention of Membership of National and Provincial Legislatures Bill*** [B 25—2002] (National Assembly—sec 76) and of Report of Select Committee on Security and Constitutional Affairs thereon (Announcements, Tablings and Committee Reports, 18 June 2002, p 952).

Debate concluded.

Question put: That the Bill and the amendments be agreed to.

IN FAVOUR OF: Eastern Cape, Free State, Gauteng, KwaZulu-Natal, Mpumalanga, Northern Cape, Northern Province, North West, Western Cape.

Bill [B 25—2002] and amendments [B 25A—2002] accordingly agreed to in accordance with section 65 of the Constitution.

12. THIRD ORDER [15:19]

Consideration of ***Local Government: Municipal Structures Amendment Bill*** [B 22B—2002] (National Assembly—sec 75) and of Report of Select Committee on Local Government and Administration thereon (Announcements, Tablings and Committee Reports, 18 June 2002, p 951).

Debate concluded.

Bill agreed to in accordance with section 75 of the Constitution.

13. The Council adjourned at 17:02.

S MFENYANA,

Secretary to Parliament.

PARLIAMENT

OF THE

REPUBLIC OF SOUTH AFRICA

ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS

TUESDAY, 18 JUNE 2002

ANNOUNCEMENTS:

National Assembly and National Council of Provinces:

1. The Speaker and the Chairperson:

   (1) The Minister of Finance submitted the ***Wetsontwerp op Heffings op die Private Sekuriteitsbedryf*** [W 11—2002] (National Assembly—sec 77) to the Speaker and the Chairperson on 18 June 2002. This is the official translation of the ***Private Security Industry Levies Bill*** [B 11—2002] (National Assembly—sec 77), which was introduced in the National Assembly by the Minister on 15 March 2002.

National Assembly:

1. The Speaker:

   (1) Message from National Council of Provinces to National Assembly:

   Bills, as amended, passed by National Council of Provinces on 18 June 2002 and transmitted for consideration of Council's amendments:

   (i) ***Constitution of the Republic of South Africa Second Amendment Bill*** [B 17D—2002] (National Assembly—sec 74).

   (ii) ***Loss or Retention of Membership of National and Provincial Legislatures Bill*** [B 25B—2002] (National Assembly—sec 76).

   The amended Bills have been referred to the Portfolio Committee on Justice and Constitutional Development for a report and recommendations on the Council's amendments.

2. The Speaker:

   The following papers have been tabled and are now referred to the relevant committees as mentioned below:

(1) **The following paper is referred to the Portfolio Committee on Labour:**

Annual Report and Financial Statements of the Compensation Commissioner for 1999-2000 [RP 208-2001].

(2) **The following papers are referred to the Portfolio Committee on Labour. The Reports of the Auditor-General contained in these papers are referred to the Standing Committee on Public Accounts for consideration and report:**

(a) Annual Report and Financial Statements of the National Skills Fund for 2000-2001, including the Report of the Auditor-General on the Financial Statements for 2000-2001.

(b) Annual Report and Financial Statements of the Compensation Fund for 2000-2001, including the Report of the Auditor-General on the Financial Statements for 2000-2001 [RP 72-2002].

(3) **The following paper is referred to the Portfolio Committee on Finance. The Report of the Auditor-General contained in this paper is referred to the Standing Committee on Public Accounts for consideration and report:**

Annual Report and Financial Statements of the Public Investment Commissioners for 2000-2001, including the Report of the Auditor-General on the Financial Statements for 2000-2001 [RP 50-2002].

(4) **The following paper is referred to the Portfolio Committee on Finance:**

General Notice No 662 published in Government Gazette No 23383 dated 30 April 2002, Statement of the National and Provincial Government's Revenue, Expenditure and National Borrowing as at 31 March 2002, in terms of section 32 of the Public Finance Management Act, 1999 (Act No 1 of 1999).

(5) **The following paper is referred to the Portfolio Committee on Arts, Culture, Science and Technology. The Report of the Auditor-General contained in this paper is referred to the Standing Committee on Public Accounts for consideration and report:**

Annual Report and Financial Statements of the National Arts Council for 2000-2001, including the Report of the Auditor-General on the Financial Statements for 2000-2001.

(6) **The following paper is referred to the Portfolio Committee on Transport:**

(a) Air Services Agreement between the Government of the Republic of South Africa and the Government of the Republic of Mocambique, tabled in terms of section 231(3) of the Constitution, 1996.

(b) Explanatory Memorandum to the Agreement.

(7) **The following papers are referred to the Standing Committee on Public Accounts for consideration and report and to the Portfolio Committee on Agriculture and Land Affairs for information:**

(a) Report of the Auditor-General on the Financial Statements of the Ingonyama Trust Board for 1 April 1994 to 31 March 1999 [RP 17-2002].

(b) Report of the Auditor-General on the Financial Statements of the South African Wool Board for 1999-2000 [RP 74-2002].

(8) **The following paper is referred to the Standing Committee on Public Accounts for consideration and report and to the Portfolio Committee on Trade and Industry for information:**

Report of the Auditor-General on the Reinsurance Fund for Export Credit and Foreign Investments for the period 1 April 2001 to 31 June 2001 [RP 64-2002].

National Council of Provinces:

1. The Chairperson:

(1) Bill passed by National Council of Provinces on 18 June 2002: To be submitted to President of the Republic for assent:

(i) ***Local Government: Municipal Structures Amendment Bill*** [B 22B—2002] (National Assembly—sec 75).

COMMITTEE REPORTS:

National Assembly:

1. Report of the Select Committee on Local Government and Administration on the ***Local Government: Municipal Structures Amendment Bill*** [B 22B—2002] (National Assembly—sec 75), dated 18 June 2002:

The Select Committee on Local Government and Administration, having considered the subject of the ***Local Government: Municipal Structures Amendment Bill*** [B 22B—2002] (National Assembly—sec 75), referred to it, reports that it has agreed to the Bill.

2. Report of the Select Committee on Security and Constitutional Affairs on the ***Constitution of the Republic of South Africa Second Amendment Bill*** [B 17B—2002] (National Assembly—sec 74), dated 18 June 2002:

The Select Committee on Security and Constitutional Affairs, having considered the subject of the ***Constitution of the Republic of South Africa Second Amendment Bill*** [B 17B—2002] (National Assembly—sec 74), referred to it, reports the Bill with an amendment [B 17C—2002], as follows:

NEW CLAUSE

1. That the following be a New Clause:

Amendment of Schedule 3 to Act 108 of 1996, as amended by section 2 of Act 3 of 1999 and section 19 of Act 34 of 2001

3. Schedule 3 to the Constitution of the Republic of South Africa, 1996, is hereby amended by the substitution for item 3 of Part B of the following item:

"3. If the competing surpluses envisaged in item 2 are equal, the undistributed delegates in the delegation must be allocated to the party or parties, including any merged party as contemplated in section 61(2)(b), with the same surplus in sequence of votes recorded, starting with the party or

merged party which recorded the highest number of votes, including combined votes in the case of a merged party, during the last election for the provincial legislature concerned, but if any of the parties with the same surplus—

(a) came into existence on account of changes of party membership or subdivision of parties within that legislature as contemplated in section 61(2)(b); and

(b) did not participate in the last election for the provincial legislature concerned,

the legislature must allocate the undistributed delegates in the delegation to the party or parties with the same surplus in a manner which is consistent with democracy.".

3. Report of the Select Committee on Security and Constitutional Affairs on the ***Loss or Retention of Membership of National and Provincial Legislatures Bill*** [B 25—2002] (National Assembly—sec 76), dated 18 June 2002:

The Select Committee on Security and Constitutional Affairs, having considered the subject of the ***Loss or Retention of Membership of National and Provincial Legislatures Bill*** [B 25—2002] (National Assembly—sec 76), referred to it, reports the Bill with amendments [B 25A—2002], as follows:

NEW CLAUSE

1. That the following be a New Clause:

Amendment of section 2 of Act 69 of 1998

2. Section 2 of the Determination of Delegates (National Council of Provinces) Act, 1998, is hereby amended by the substitution for subsection (4) of the following subsection:

"(4) *(a)* If the total number of special delegates determined in terms of subsection (3) in respect of a particular provincial legislature is less than four, the delegates of the parties that are entitled to only one delegate in the delegation of that province must, despite subsection (1), become special delegates in the sequence from the lowest to the highest number of votes, including combined votes in the case of a merged party as contemplated in section 61(2)(b) of the Constitution, that have been recorded for those parties during the last election of that provincial legislature, until four special delegates have been allocated to parties in the provincial delegation: Provided that if any of the parties that are entitled to only one delegate in the delegation of that province—

(i) came into existence on account of changes of party membership or subdivision of parties within that legislature as contemplated in section 61(2)(b) of the Constitution; and

(ii) did not participate in the last election of that provincial legislature,

the legislature must, in a manner which is consistent with democracy, elect so many delegates from the delegates of those parties to become special delegates as may be necessary to allocate four special delegates to parties in the provincial delegation.

(b) If the total number of special delegates determined in terms of subsection (3) in respect of a particular provincial

legislature is more than four, those special delegates must, despite subsections (2) and (3), become permanent delegates in the sequence from the highest to the lowest number of votes, including combined votes in the case of a merged party as contemplated in section 61(2)(b) of the Constitution, that have been recorded for the parties concerned during the last election of that provincial legislature, until four special delegates have been allocated to parties in the provincial delegation: Provided that if any of those parties—

(i) came into existence on account of changes of party membership or subdivision of parties within that legislature as contemplated in section 61(2)(b) of the Constitution; and

(ii) did not participate in the last election of that provincial legislature,

that legislature must, despite subsections (2) and (3) and in a manner which is consistent with democracy, elect so many special delegates of those parties to become permanent delegates as may be required to allocate four special delegates to parties in the provincial delegation.".

LONG TITLE

1. On page 2, in the fifth line, after "**party**" to insert:

; to amend the Determination of Delegates (National Council of Provinces) Act, 1998, in order to make provision for the determination of certain delegates of a provincial legislature which has been reconstituted on account of changes of party membership and mergers or subdivision of parties

No 44—2002] FOURTH SESSION, SECOND PARLIAMENT

REPUBLIC OF SOUTH AFRICA

MINUTES OF PROCEEDINGS

OF

NATIONAL ASSEMBLY

WEDNESDAY, 19 JUNE 2002

1. The House met at 14:03.

2. The Speaker took the Chair and requested members to observe a moment of silence for prayers or meditation.

3. FIRST ORDER [14:05]

   Resumption of debate on Vote No 1—The Presidency, ***Appropriation Bill*** [B 4—2002] (National Assembly—sec 77).

   Debate concluded.

4. SECOND ORDER [14:22]

   Consideration of ***Constitution of the Republic of South Africa Second Amendment Bill*** [B 17D—2002] (National Assembly—sec 74), as amended by National Council of Provinces, and of Report of Portfolio Committee on Justice and Constitutional Development thereon.

   There was no debate.

   Question put: That the ***Constitution of the Republic of South Africa Second Amendment Bill*** [B 17D—2002] (National Assembly—sec 74) be agreed to.

   Division demanded.

   The House divided:

   AYES—287: Ainslie, A R; Andrew, K M; Asmal, A K; Aucamp, C; Bakker, D M; Balfour, B M N; Baloyi, M R; Bell, B G; Benjamin, J; Beukman, F; Bhengu, F; Blaas, A; Blanché, J P I; Bloem, D V; Booi, M S; Botha, A J; Botha, N G W; Bruce, N S; Buthelezi, M N; Cachalia, I M; Camerer, S M; Carrim, Y I; Chalmers, J; Chauke, H P; Chiba, L; Chikane, M M; Chohan-Kota, F I; Cindi, N V; Clelland-Stokes, N J; Coetzee-Kasper, M P; Cronin, J P; Cupido, P W; Cwele, S C; Da Camara, M L; Davidson, I O; Davies, R H; De Lange, J H; Delport, J T; Diale, L N; Didiza, A T; Dithebe, S L; Ditshetelo, P H K; Dlali, D M; Dlamini, B O; Doidge, G Q M; Dowry, J J; Du Toit, D C; Duma, N M; Dyani, M M Z; Eglin, C W; Ellis, M J; Erwin, A; Fankomo, F C; Farrow, S B; Fazzie, M H; Fihla, N B; Fraser-Moleketi, G J; Gandhi, E; Gcina, C I; Geldenhuys, B L; George, M E; Gerber, P A; Gibson, D H M; Gillwald, C E; Gomomo, P J; Goniwe,

M T; Goosen, A D; Gore, V C; Gous, S J; Greyling, C H F; Grobler, G A J; Gumede, D M; Hajaig, F; Hanekom, D A; Heine, R J; Hendrickse, P A C; Herandien, C B; Hlaneki, C J M; Hogan, B A; Holomisa, S P; Jankielsohn, R; Jassat, E E; Jeffery, J H; Joemat, R R; Jordan, Z P; Kalako, M U; Kalyan, S V; Kannemeyer, B W; Kasienyane, O R; Kasrils, R; Kati, J Z; Kgarimetsa, J J; Kgauwe, Q J; Kgwele, L M; Komphela, B M; Kota, Z A; Kotwal, Z; Lamani, N E; Landers, L T; Le Roux, J W; Lee, T D; Lekgoro, M K; Lekota, M G P; Lishiva, T E; Lobe, M C; Lockey, D; Louw, J T; Louw, S K; Luthuli, A N; Lyle, A G; Mabe, L; Mabena, D C; Madlala-Routledge, N C; Maduna, P M; Magazi, M N; Magubane, N E; Magwanishe, G; Mahlangu, G L; Mahlangu, M J; Mahlawe, N; Mahomed, F; Maimane, D S; Maine, M S; Makasi, X C; Malebana, H F; Maloney, L; Maluleke, D K; Malumise, M M; Manuel, T A; Maphalala, M A; Mapisa-Nqakula, N N; Martins, B A D; Masala, M M; Maserumule, F T; Mashimbye, J N; Masithela, N H; Masutha, M T; Mathibela, N F; Matsepe-Casaburri, I F; Maunye, M M; Mayatula, S M; Maziya, A M; Mbete, B; Mbombo, N D; McIntosh, G B D; Mdladlana, M M S; Mfundisi, I S; Mguni, B A; Mkono, D G; Mlambo-Ngcuka, P G; Mlangeni, A; Mnandi, P N; Mnumzana, S K; Modise, T R; Modisenyane, L J; Moeketse, K M; Mofokeng, T R; Mohamed, I J; Mohlala, R J B; Mokoena, D A; Molebatsi, M A; Molewa, B G; Moloi, J; Moloto, K A; Mongwaketse, S J; Montsitsi, S D; Moonsamy, K; Moorcroft, E K; Moosa, M V; Morkel, C M; Morobi, D M; Moropa, R M; Morutoa, M R; Morwamoche, K W; Moss, M I; Mothoagae, P K; Motubatse, S D; Mpahlwa, M; Mpaka, H M; Mthembi-Mahanyele, S D; Mthembu, B; Mtsweni, N S; Mufamadi, F S; Mutsila, I; Mzondeki, M J G; Nair, B; Nash, J H; Ncinane, I Z; Ndzanga, R A; Nel, A C; Nel, A H; Nene, N M; Newhoudt-Druchen, W S; Ngaleka, N E; Ngcengwane, N D; Ngculu, L V J; Ngubeni, J M; Nhleko, N P; Nhlengethwa, D G; Niemann, J J; Njobe, M A A; Nobunga, B J; Nonkonyana, M; Nqakula, C; Nqodi, S B; Ntombela, S H; Ntuli, B M; Ntuli, M B; Ntuli, R S; Ntuli, S B; Nzimande, L P M; Odendaal, W A; Olckers, M E; Olifant, D A A; Oosthuizen, G C; Opperman, S E; Pahad, A G H; Pahad, E G; Phadagi, M G; Phohlela, S; Pieterse, R D; Pretorius, I J; Rabie, P J; Rajbally, S; Ramakaba-Lesiea, M M; Ramgobin, M; Ramotsamai, C M P; Rasmeni, S M; Redcliffe, C R; Reid, L R R; Ripinga, S S; Saloojee, E; Schalkwyk, P J; Schippers, J; Schmidt, H C; Schneeman, G D; Schoeman, E A; Schoeman, R S; Scott, M I; Seeco, M A; Sekgobela, P S; Selfe, J; Semple, J A; September, C C; September, R K; Seremane, W J; Shabangu, S; Shilubana, T P; Shope, N R; Sigcau, S N; Sigcawu, A N; Sigwela, E M; Sikakane, M R; Simmons, S; Sisulu, L N; Sithole, D J; Skhosana, W M; Skweyiya, Z S T; Smith, V G; Smuts, M; Solo, B M; Solomon, G; Sonjica, B P; Sosibo, J E; Sotyu, M M; Swart, P S; Thabethe, E; Tinto, B; Tolo, L J; Tshabalala-Msimang, M E; Tsheole, N M; Twala, N M; Uys, P; Vadi, I; Van den Heever, R P Z; Van der Merwe, A S; Van der Merwe, S C; Van Deventer, F J; Van Jaarsveld, A Z A; Van Schalkwyk, M C J; Van Wyk, A (Anna); Van Wyk, J F; Van Wyk, N; Xingwana, L M T; Zita, L; Zondo, R P; Zuma, J G.

NOES—42: Abrahams, T; Abram, S; Baloyi, O S B; Bhengu, G B; Buthelezi, M G; Cassim, M F; Dhlamini, B W; Douglas, B M; Dudley, C; Ferreira, E T; Green, L M; Hlengwa, M W; Koornhof, G W; Lucas, E J; Madasa, Z L; Makanda, W G; Mars, I; Mbadi, L M; Meshoe, K R J; Middleton, N S; Mndende, O N; Mogoba, M S; Mpontshane, A M; Mulder, C P; Mulder, P W A; Mzizi, M A; Ndlovu, V B; Nefolovhodwe, P J; Ngubane, H; Nkabinde, N C; Pheko, S E M; Ramodike, M N; Roopnarain, U; Seaton, S A; Sibiya, M S M; Skosana, M B; Southgate, R M; Swart, S N; Van der Merwe, J H; Van Wyk, A (Annelize); Vos, S C; Zulu, N E.

Question agreed to in terms of section 74(3)*(a)* of the Constitution.

Constitution of the Republic of South Africa Second Amendment Bill [B 17D—2002] (National Assembly—sec 74) accordingly agreed to.

5. THIRD ORDER [14:33]

Consideration of ***Loss or Retention of Membership of National and Provincial Legislatures Bill*** [B 25B—2002] (National Assembly—sec 76), as amended by National Council of Provinces, and of Report of Portfolio Committee on Justice and Constitutional Development thereon—(Minister for Justice and Constitutional Development).

There was no debate.

Question put: That ***Loss or Retention of Membership of National and Provincial Legislatures Bill*** [B 25B—2002] (National Assembly—sec 76) be agreed to.

Division demanded.

The House divided:

AYES—286: Ainslie, A R; Andrew, K M; Asmal, A K; Aucamp, C; Bakker, D M; Balfour, B M N; Baloyi, M R; Bell, B G; Benjamin, J; Beukman, F; Bhengu, F; Blaas, A; Blanché, J P I; Bloem, D V; Booi, M S; Botha, A J; Botha, N G W; Bruce, N S; Buthelezi, M N; Cachalia, I M; Camerer, S M; Carrim, Y I; Chalmers, J; Chauke, H P; Chiba, L; Chikane, M M; Chohan-Kota, F I; Cindi, N V; Clelland-Stokes, N J; Coetzee-Kasper, M P; Cronin, J P; Cupido, P W; Cwele, S C; Da Camara, M L; Davidson, I O; Davies, R H; De Lange, J H; Delport, J T; Diale, L N; Didiza, A T; Dithebe, S L; Ditshetelo, P H K; Dlali, D M; Dlamini, B O; Doidge, G Q M; Dowry, J J; Du Toit, D C; Duma, N M; Dyani, M M Z; Eglin, C W; Ellis, M J; Erwin, A; Fankomo, F C; Farrow, S B; Fazzie, M H; Fihla, N B; Fraser-Moleketi, G J; Gandhi, E; Gcina, C I; Geldenhuys, B L; George, M E; Gerber, P A; Gibson, D H M; Gillwald, C E; Gomomo, P J; Goniwe, M T; Goosen, A D; Gore, V C; Gous, S J; Greyling, C H F; Grobler, G A J; Gumede, D M; Hajaig, F; Hanekom, D A; Heine, R J; Hendrickse, P A C; Herandien, C B; Hlaneki, C J M; Hogan, B A; Holomisa, S P; Jankielsohn, R; Jassat, E E; Jeffery, J H; Joemat, R R; Jordan, Z P; Kalako, M U; Kalyan, S V; Kannemeyer, B W; Kasienyane, O R; Kasrils, R; Kati, J Z; Kgarimetsa, J J; Kgauwe, Q J; Kgwele, L M; Komphela, B M; Kota, Z A; Kotwal, Z; Lamani, N E; Landers, L T; Le Roux, J W; Lee, T D; Lekgoro, M K; Lekota, M G P; Lishiva, T E; Lobe, M C; Lockey, D; Louw, J T; Louw, S K; Luthuli, A N; Lyle, A G; Mabe, L; Mabena, D C; Madlala-Routledge, N C; Maduna, P M; Magazi, M N; Magubane, N E; Magwanishe, G B; Mahlangu, G L; Mahlangu, M J; Mahlawe, N; Mahomed, F; Maimane, D S; Maine, M S; Makasi, X C; Malebana, H F; Maloney, L; Maluleke, D K; Malumise, M M; Manuel, T A; Maphalala, M A; Mapisa-Nqakula, N N; Martins, B A D; Masala, M M; Maserumule, F T; Mashimbye, J N; Masithela, N H; Masutha, M T; Mathibela, N F; Matsepe-Casaburri, I F; Maunye, M M; Mayatula, S M; Maziya, A M; Mbete, B; Mbombo, N D; McIntosh, G B D; Mdladlana, M M S; Mfundisi, I S; Mguni, B A; Mlambo-Ngcuka, P G; Mlangeni, A; Mnandi, P N; Mnumzana, S K; Modise, T R; Modisenyane, L J; Moeketse, K M; Mofokeng, T R; Mohamed, I J; Mohlala, R J B; Mokoena, D A; Molebatsi, M A; Molewa, B G; Moloi, J; Moloto, K A; Mongwaketse, S J; Montsitsi, S D; Moonsamy, K; Moorcroft, E K; Moosa, M V; Morkel, C M; Morobi, D M; Moropa, R M; Morutoa, M R; Morwamoche, K W; Moss, M I; Mothoagae, P K; Motubatse, S D; Mpahlwa, M; Mpaka, H M; Mthembi-Mahanyele, S D; Mthembu, B; Mtsweni, N S; Mufamadi, F S; Mutsila, I; Mzondeki, M J G; Nair, B; Nash, J H; Ncinane, I Z; Ndzanga, R A; Nel, A C; Nel, A H; Nene, N M; Newhoudt-Druchen, W S; Ngaleka, N E; Ngcengwane, N D; Ngculu, L V J; Ngubeni, J M; Nhleko, N P; Nhlengethwa, D G; Niemann, J J; Njobe, M A A; Nobunga, B J;

Nonkonyana, M; Nqakula, C; Nqodi, S B; Ntombela, S H; Ntuli, B M; Ntuli, M B; Ntuli, R S; Ntuli, S B; Nzimande, L P M; Odendaal, W A; Olckers, M E; Olifant, D A A; Oosthuizen, G C; Opperman, S E; Pahad, A G H; Pahad, E G; Phadagi, M G; Phohlela, S; Pieterse, R D; Pretorius, I J; Rabie, P J; Rajbally, S; Ramakaba-Lesiea, M M; Ramgobin, M; Ramotsamai, C M P; Rasmeni, S M; Redcliffe, C R; Reid, L R R; Ripinga, S S; Saloojee, E; Schalkwyk, P J; Schippers, J; Schmidt, H C; Schneeman, G D; Schoeman, E A; Schoeman, R S; Scott, M I; Seeco, M A; Sekgobela, P S; Selfe, J; Semple, J A; September, C C; September, R K; Seremane, W J; Shabangu, S; Shilubana, T P; Shope, N R; Sigcau, S N; Sigcawu, A N; Sigwela, E M; Sikakane, M R; Simmons, S; Sisulu, L N; Sithole, D J; Skhosana, W M; Skweyiya, Z S T; Smith, V G; Smuts, M; Solo, B M; Solomon, G; Sonjica, B P; Sosibo, J E; Sotyu, M M; Swart, P S; Thabethe, E; Tinto, B; Tolo, L J; Tshabalala-Msimang, M E; Tsheole, N M; Twala, N M; Uys, P; Vadi, I; Van den Heever, R P Z; Van der Merwe, A S; Van der Merwe, S C; Van Deventer, F J; Van Jaarsveld, A Z A; Van Schalkwyk, M C J; Van Wyk, A (Anna); Van Wyk, J F; Van Wyk, N; Xingwana, L M T; Zita, L; Zondo, R P; Zuma, J G.

NOES—42: Abrahams, T; Abram, S; Baloyi, O S B; Buthelezi, M G; Cassim, M F; Dhlamini, B W; Douglas, B M; Dudley, C; Ferreira, E T; Green, L M; Hlengwa, M W; Koornhof, G W; Lucas, E J; Madasa, Z L; Makanda, W G; Mars, I; Mbadi, L M; Meshoe, K R J; Middleton, N S; Mkono, D G; Mndende, O N; Mogoba, M S; Mpontshane, A M; Mulder, C P; Mulder, P W A; Mzizi, M A; Ndlovu, V B; Nefolovhodwe, P J; Ngubane, H; Nkabinde, N C; Pheko, S E M; Ramodike, M N; Roopnarain, U; Seaton, S A; Sibiya, M S M; Skosana, M B; Southgate, R M; Swart, S N; Van der Merwe, J H; Van Wyk, A (Annelize); Vos, S C; Zulu, N E.

Question agreed to.

Loss or Retention of Membership of National and Provincial Legislatures Bill [B 25B—2002] (National Assembly—sec 76) accordingly agreed to.

6. [14:39] Questions: Cluster 3: Economics.

7. [16:38] Notices of motion.

8. [16:53] The Deputy Chief Whip of the Majority Party moved without notice: That the House—

   (1) notes that the Association of National Olympic Committees (ANOC) has recently bestowed on Dr Sam Ramsamy, the President of the National Olympic Committee of South Africa (NOCSA), a merit award for his contribution to the Olympic spirit;

   (2) recognises this achievement, a first for a South African, as a milestone;

   (3) congratulates Dr Sam Ramsamy on his nomination for one of sport's prestigious awards.

   Agreed to.

9. The Deputy Chief Whip of the Majority Party moved without notice: That, notwithstanding Joint Rule 221 and subject to the concurrence of the National Council of Provinces, the official texts of the following bills without delay be sent to the President without the official translations, the official translations to follow as a matter of urgency:

   (1) ***Constitution of the Republic of South Africa Amendment Bill*** [B 16B—2002] (National Assembly—sec 74);

(2) ***Constitution of the Republic of South Africa Second Amendment Bill*** [B 17D—2002] (National Assembly—sec 74);

(3) ***Local Government: Municipal Structures Amendment Bill*** [B 22B—2002] (National Assembly—sec 75); and

(4) ***Loss or Retention of Membership of National and Provincial Legislatures Bill*** [B 25B—2002] (National Assembly—sec 76).

Agreed to.

10. The Deputy Chief Whip of the Majority Party (for the Chief Whip of the Majority Party) moved: That, notwithstanding Rule 81, the time for a declaration of vote on Thursday, 20 June 2002, shall not exceed two minutes.

Agreed to.

11. FOURTH ORDER [16:55]

Second Reading debate—***Financial Advisory and Intermediary Services Bill*** [B 52B—2001] (National Assembly—sec 75).

Debate concluded.

Bill read a second time.

12. The House adjourned at 17:56.

S MFENYANA,

Secretary to Parliament.

No 20—2002] FOURTH SESSION, SECOND PARLIAMENT

REPUBLIC OF SOUTH AFRICA

MINUTES OF PROCEEDINGS

OF

NATIONAL COUNCIL OF PROVINCES

WEDNESDAY, 19 JUNE 2002

1. The Council met at 15:05.

2. The Deputy Chairperson took the Chair and requested members to observe a moment of silence for prayers or meditation.

3. [15:06] Notices of motion.

4. [15:08] The Chief Whip of the Council moved without notice: That the Council—

   (1) welcomes the decision of the Constitutional Court with regard to the constitutionality of certain provisions of the Magistrates Act;

   (2) notes that the Constitutional Court overturned the High Court judgment of Mr Justice Southwood who in his judgment among others referred to the magistrates' profession as the personal fiefdom of the Minister for Justice and Constitutional Development;

   (3) further notes that most of the provisions that were found to be unconstitutional by Justice Southwood were crucial to the transformation of the magistrates' profession;

   (4) believes the Constitutional Court judgment is a vindication of the arguments of the Minister for Justice and Constitutional Development; and

   (5) further believes the decision will lay a firm basis for the acceleration of transformation within the magistrates' profession.

   Motion agreed to in accordance with section 65 of the Constitution.

5. [15:10] Prince B Z Zulu moved without notice: That the Council—

   (1) notes that more than one thousand people have been arrested and at least R62 million recovered in Gauteng since the beginning of the year;

   (2) congratulates the members of the Gauteng commercial crimes unit on their outstanding work in securing these arrests; and

(3) hopes their success will inspire other units to work with the same commitment and dedication in bringing alleged criminals to book.

Motion agreed to in accordance with section 65 of the Constitution.

6. [15:11] Mr T Ralane moved without notice: That the Council—

(1) welcomes the announcement by the Minister for Justice and Constitutional Development that some 1 985 posts are to be created to take the pressure off magistrates in their administrative tasks;

(2) also welcomes the announcement that six new magistrates courts are to be built this year; and

(3) believes these announcements are proof of the commitment by the Minister to increase access to justice for ordinary South Africans.

Motion agreed to in accordance with section 65 of the Constitution.

7. [15:13] Mr J Horne moved without notice: That the Council—

(1) notes with concern the alleged rape and murder of a Xhu woman by a Khwe man, which led to serious tension between the two communities of Schmidsdrift in the Northern Cape; and

(2) makes a serious but urgent appeal to the two communities to give the relevant authorities the opportunity to investigate the alleged crime and not to take the law into their own hands, so that calm and peace can be restored.

Motion agreed to in accordance with section 65 of the Constitution.

8. [15:14] The Chief Whip of the Council moved without notice: That, notwithstanding Joint Rule 221 and subject to the concurrence of the National Assembly, the official texts of the following bills without delay be sent to the President without the official translations, the official translations to follow as a matter of urgency:

(1) ***Constitution of the Republic of South Africa Amendment Bill*** [B 16B—2002];

(2) ***Constitution of the Republic of South Africa Second Amendment Bill*** [B 17D—2002];

(3) ***Local Government: Municipal Structures Amendment Bill*** [B 22B—2002]; and

(4) ***Loss or Retention of Membership of National and Provincial Legislatures Bill*** [B 25B—2002].

Motion agreed to in accordance with section 65 of the Constitution.

9. [15:17] The Chief Whip of the Council moved: That leave of absence be granted to Rev M Chabaku for the period 27 May 2002 to 30 June 2002.

Motion agreed to in accordance with section 65 of the Constitution.

10. FIRST ORDER [15:19]

Policy debate on Budget Vote No 20: Correctional Services, ***Appropriation Bill*** [B 4—2002] (National Assembly—sec 77).

Debate concluded.

11. SECOND ORDER [15:19]

Policy debate on Budget Vote No 21: Defence, ***Appropriation Bill*** [B 4—2002] (National Assembly—sec 77).

Debate concluded.

12. THIRD ORDER [15:19]

Policy debate on Budget Vote No 23: Justice and Constitutional Development, ***Appropriation Bill*** [B 4—2002] (National Assembly—sec 77).

Debate concluded.

13. FOURTH ORDER [15:19]

Policy debate on Budget Vote No 24: Safety and Security, ***Appropriation Bill*** [B 4—2002] (National Assembly—sec 77).

Debate concluded.

14. FIFTH ORDER [19:49]

Consideration of ***Private Security Industry Levies Bill*** [B 11—2002] (National Assembly—sec 77) and of Report of Select Committee on Security and Constitutional Affairs thereon (Announcements, Tablings and Committee Reports, 19 June 2002, p).

Debate concluded.

Declaration of vote made on behalf of the Democratic Party.

Bill agreed to in accordance with section 75 of the Constitution (Democratic Party dissenting).

15. The Council adjourned at 19:53.

S MFENYANA,

Secretary to Parliament.

No 79—2002] FOURTH SESSION, SECOND PARLIAMENT

PARLIAMENT

OF THE

REPUBLIC OF SOUTH AFRICA

ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS

WEDNESDAY, 19 JUNE 2002

ANNOUNCEMENTS:

National Assembly and National Council of Provinces:

1. The Speaker and the Chairperson:

   (1) Assent by the President of the Republic in respect of the following Bills:

   (i) ***Basic Conditions of Employment Amendment Bill*** [B 70D—2001]—Act No 11 of 2002 (assented to and signed by President on 18 June 2002);

   (ii) ***Labour Relations Amendment Bill*** [B 77D—2001]—Act No 12 of 2002 (assented to and signed by President on 18 June 2002); and

   (iii) ***Media Development and Diversity Agency Bill*** [B 2B—2002]—Act No 14 of 2002 (assented to and signed by President on 18 June 2002).

National Assembly:

1. The Speaker:

   (1) Bills passed by National Council of Provinces on 19 June 2002: To be submitted to President of the Republic for assent:

   (i) ***Constitution of the Republic of South Africa Second Amendment Bill*** [B 17D—2002] (National Assembly—sec 74).

   (ii) ***Loss or Retention of Membership of National and Provincial Legislatures Bill*** [B 25B—2002] (National Assembly—sec 76).

2. The Speaker:

   The following papers have been tabled and are now referred to the relevant committees as mentioned below:

(1) **The following papers are referred to the Select Committee on Land and Environmental Affairs:**

(a) Report of the Auditor-General on the Financial Statements of the Ingonyama Trust Board for 1 April 1994 to 31 March 1999 [RP 17-2002].

(b) Report of the Auditor-General on the Financial Statements of the South African Wool Board for 1999-2000 [RP 74-2002].

(2) **The following paper is referred to the Select Committee on Economic and Foreign Affairs:**

Report of the Auditor-General on the Reinsurance Fund for Export Credit and Foreign Investments for the period 1 April 2001 to 30 June 2001 [RP 64-2002].

National Council of Provinces:

1. The Chairperson:

(1) Bill passed by National Assembly on 19 June 2002: To be submitted to President of the Republic for assent:

(i) ***Private Security Industry Levies Bill*** [B 11—2002] (National Assembly—sec 77).

(2) Message from National Assembly to National Council of Provinces:

Bill passed by National Assembly on 19 June 2002 and transmitted for concurrence:

(i) ***Financial Advisory and Intermediary Services Bill*** [B 52B—2001] (National Assembly—sec 75).

The Bill has been referred to the Select Committee on Finance of the National Council of Provinces.

TABLINGS:

National Assembly and National Council of Provinces:

Papers:

1. The Minister of Environmental Affairs and Tourism:

(1) Stockholm Convention on Persistant Organic Pollutants, tabled in terms of section 231(2) of the Constitution, 1996.

National Assembly:

1. The Minister of Foreign Affairs:

(1) Letter from the Minister of Foreign Affairs, dated 18 June 2002, addressed to the Speaker of the National Assembly requesting the ratification of the Protocol to the Treaty Establishing the African Economic Community Relating to the Pan-African Parliament:

Dear Madam Speaker

Request for ratification of the Protocol to the Treaty Establishing the African Economic Community Relating to the Pan-African Parliament

As you are aware the Protocol to the Treaty Establishing the African Economic Community Relating to the Pan-African Parliament ("the Protocol") was approved at the Pan-African Parliament meeting held in Pretoria, South Africa from 7-10 November 2000 and was subsequently adopted by the Assembly of Heads of State and Government at the OAU Extra- Ordinary Summit in Sirte, Libya on 2 March 2001.

In my capacity as Minister of Foreign Affairs I have signed the Protocol in Addis Ababa, Ethiopia on 14 March 2002 during the 75th Ordinary Session of the OAU Council of Ministers that was held from 9-15 March 2002. Subsequently, the Department of Foreign Affairs submitted the Protocol to Cabinet with the request that it be approved that the Protocol be submitted to Parliament for ratification in accordance with section 231(2) of the Constitution. Cabinet agreed to this on 29 May 2002.

I therefore request that the Protocol be tabled in the National Assembly for the purpose of approving its ratification in accordance with the provisions of section 231 of the Constitution of the Republic of South Africa. An Explanatory Memorandum is attached hereto for this purpose.

It will be in the interests of South Africa as incoming Chair of the African Union to ratify the Protocol before the forthcoming African Union Summit in July 2002. The early establishment of the Pan-African Parliament is also important to involve broader sectors of society in the objectives of the African Union and to promote fundamental principles such as democracy, human rights, transparency and accountability in Member States.

Thank you for your assistance in this matter.

Yours Sincerely

NKOSAZANA DLAMINI-ZUMA

(2) Explanatory Memorandum on the Ratification of the Protocol to the Treaty Establishing the African Economic Community Relating to the Pan-African Parliament:

1. SUMMARY

1.1 A submission is made to Parliament to request that approval be given for South Africa to ratify the Protocol to the Treaty Establishing the African Economic Community Relating to the Pan-African Parliament ("the Protocol") in accordance with section 231(2) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996).

1.2 South Africa signed the Protocol on 14 March 2002. Cabinet approved that the Protocol be submitted to Parliament for ratification on 29 May 2002.

1.3 The Protocol envisages the establishment of a Pan-African Parliament, initially as one of the organs of the African Economic Community, but ultimately as an organ of the African Union.

1.4 It is recommended that South Africa ratifies the Protocol to the Treaty Establishing the African Economic Community Relating to the Pan-African Parliament.

1.5 The Protocol should be ratified as soon as possible, as it will be in South Africa's interests as incoming Chair of the African Union to do so before the forthcoming African Union Summit in July 2002.

2. BACKGROUND

2.1 **The Protocol envisages the establishment of a Pan-Africa Parliament, initially as one of the organs of the African Economic Community, but ultimately as an organ of the African Union.** *A copy of the Protocol is attached as Annexure.*

2.2 The Protocol was finalised at an OAU meeting of Parliamentarians and Experts held in Pretoria from 7-10 November 2000. Dr. F.N. Ginwala, the Speaker of the National Assembly, chaired this meeting, also acting in her capacity as chair of the SADC Parliamentary Forum. Ms. N. Pandor, Chair of the National Council of Provinces, led the South African delegation at this meeting. The South African delegation was comprised of Parliamentarians from both the National Assembly and National Council of Provinces as well as officials from the Department of Foreign Affairs and the Department of Justice.

2.3 The OAU Extraordinary Summit adopted the Protocol on 2 March 2001. South Africa signed the Protocol on 14 March 2002. In accordance with Article 21 of the Protocol it must be ratified in accordance with each States' Constitutional procedures and instruments of ratification must be deposited with the Secretary General of the OAU. The Protocol will enter into force once 23 Member States (a simple majority of Member States of the African Economic Community) have ratified it. To date, three States have ratified the Protocol.

2.4 At the time that the Protocol was negotiated (2000), the Constitutive Act of the African Union had not yet entered into force. As a result the Protocol was drafted under the auspices of the Treaty Establishing the African Economic Community ("the AEC Treaty") to which South Africa is a Party.

2.5 In an interim phase of 5 years from the entry into force of the Protocol, the Pan-African Parliament will have advisory and consultative powers only. After 5 years a review conference will be held to amend the Protocol to provide for legislative powers. This review process will be subject to a separate approval process by Member States, and ultimately by Parliament.

2.6 The Pan-African Parliament will be comprised of 5 Parliamentarians (one of whom must be a woman) from each Member State, as elected or designated by the National Parliament. The Pan-African Parliament will meet at least twice a year in ordinary session. The seat of the Pan-African Parliament must be determined by the Assembly. Informal indications are that it may rotate to different Member States during the interim phase of 5 years.

2.7 The establishment of the Pan-African Parliament is fully consistent with, and can contribute to, the promotion of NEPAD principles. South Africa will be chairing the African Union from July 2002-July 2003. It is important that South Africa leads by example and demonstrates its commitment to the African Union by ratifying the Protocol, which will establish one of the organs of the African Union. This will place South Africa in a much stronger position to encourage similar commitment by other Member States of the African Union.

3. OBJECTIVES

3.1 Article 3 of the Constitutive Act of the African Union sets out the objectives of the Pan-African Parliament as follows:

— To facilitate the effective implementation of the policies and objectives of the OAU/AEC and, ultimately, of the African Union;

— To encourage good governance, transparency and accountability in Member States;

— To familiarise the peoples of Africa with the objectives and policies aimed at integrating the African continent, within the framework of the establishment of the African Union;

— To promote peace, security and stability;

— To contribute to a more prosperous future for the peoples of Africa by promoting collective self-reliance and economic recovery;

— To facilitate cooperation and development in Africa;

— To strengthen continental solidarity and build a sense of common destiny among the peoples of Africa;

— To promote the principles of human rights and democracy in Africa; and

— To facilitate cooperation among Regional Economic Communities and their Parliamentary Fora.

3.2 The early establishment of the Pan-African Parliament is also important to involve broader sectors of society in the objectives of the African Union and to promote fundamental principles such as democracy, human rights, transparency and accountability in Member States.

4. IMPLICATIONS

4.1 ORGANISATIONAL AND PERSONNEL IMPLICATIONS

The National Parliament will have to nominate five Parliamentarians as South Africa's representatives to the Pan-African Parliament. The Parliamentarians will have to attend meetings of the Pan-African Parliament twice a year, once the Pan-African Parliament has been established.

4.2 FINANCIAL IMPLICATIONS

The establishment of the Pan-African Parliament will have

additional financial implications for the African Union. This in turn will be reflected in the assessed membership contributions of Member States to the African Union. However, the OAU/AU Secretariat has not made any financial projections on the cost of the Pan-African Parliament and it is therefore impossible at this stage to determine what the additional financial implications will be. It should be noted that these additional financial implications will be borne by all Member States in their assessed contributions to the African Union, regardless of whether or not they are Parties to the Pan-African Parliament.

4.3 COMMUNICATION IMPLICATIONS

The Department of Foreign Affairs has embarked on an Outreach Programme to popularise the African Union and the Pan-African Parliament, as part of the African Union, will be part of the whole strategy of popularisation.

4.4 LEGAL IMPLICATIONS

In the five year interim stage the Pan-African Parliament will have advisory and consultative powers only and there is therefore no conflict with the Constitution. Article 11 of the Protocol does, however, provide that the Pan African-Parliament will be given wider legislative powers after its interim stage, which will be determined by the Assembly of the African Union. If the Pan-African Parliament is given wider legislative powers after the five year interim stage then it is understood by the terms of the Protocol that this will have to be done by an amendment to the Protocol, which will have to be separately approved by Cabinet and Parliament.

It should be noted, however, that in ratifying the Protocol, States are in principle agreeing that legislative powers can be given to the Parliament at a later stage, although the exact nature and extent of these legislative powers must still be determined. Section 43 of the Constitution provides that the legislative authority of the national, provincial and local spheres of government is vested in Parliament, the provincial legislatures and the Municipal Councils respectively. Thus, while there is no constitutional conflict between the provisions of the Protocol and those of the Constitution in the immediate term, there is a possibility that once legislative powers are granted to the Pan-African Parliament after the five year interim stage that this will have to be accommodated in legislative amendments in the South African law. The nature and extent of legislative amendments that are required can only be determined once it is clear what the powers of the Pan-African Parliament will be in this regard.

Legal opinions from the State Law Advisers at the Department of Justice and the State Law Advisers (IL) at the Department of Foreign Affairs are attached.

5. OTHER DEPARTMENTS/BODIES CONSULTED

During the negotiation and finalisation of the Protocol a large number of stakeholders (governmental and non-governmental)

were consulted. The National Assembly, National Council of Provinces the Department of Justice and Department of Foreign Affairs were part of the delegation negotiating the Protocol. In addition, comments were sought from non-governmental organisations during the negotiation of the Protocol. Comments were received from ACCORD, the Africa Institute, the Institute for Security Studies and Rand Afrikaans University.

6. RECOMMENDATIONS

It is recommended that Parliament agrees to the ratification of the Protocol to the Treaty Establishing the African Economic Community Relating to the Pan-African Parliament in accordance with the provisions of section 231(2) of the Constitution.

For Attention: Mr T Ceke
Route: DEC200

PROTOCOL TO THE TREATY ESTABLISHING THE AFRICAN ECONOMIC COMMUNITY RELATING TO THE PAN-AFRICAN PARLIAMENT

1. The State Law Advisers (IL) have been requested to comment on the acceptability of the abovementioned Protocol with international law and South Africa's international obligations.

2. The State Law Advisers (IL) were involved in the negotiations that led to the adoption of the Protocol and we are familiar with its provisions. In our view the Protocol is acceptable from an international law point of view.

3. The Protocol is a binding international agreement requiring ratification (in terms of Article 21 of the Protocol) and as such approval from both Houses of Parliament, in accordance with section 231(2) of the Constitution, will be required to ratify the Protocol.

4. Parliament will also want to know whether the Protocol, or any of its provisions, can be deemed to be self-executing in terms of section 231(4) of the Constitution. The term "self-executing" is not defined in the Constitution. In accordance with past practice the term is understood to mean those provisions that will be automatically applicable in South African law, without the need to enact implementing legislation.

5. In this context we are of the opinion that neither the Protocol nor its provisions can be said to be self-executing. The reason for this is that the Protocol operates in the international sphere and that particularly in the first stage of its existence, the Pan-African Parliament will have advisory and consultative powers only, and in this regard will report to the Assembly of the African Union. There are no obligations in the Protocol which are defined clearly enough to be said to be self-executing.

6. It should be noted, however, that Article 11 of the Protocol does envisage that, at a later stage, the Pan-African

Parliament will be vested with legislative powers. These are not applicable during the first phase of the Parliament's existence, but in ratifying the Protocol states are in principle indicating their intention and willingness to agree to these additional powers of the Parliament once they are so defined. In principle, it is understood that the additional legislative powers of Parliament will have to be defined through amendments to the Protocol in accordance with Article 24 of the Protocol.

7. States will also, once the Pan-African Parliament is established, have to make administrative arrangements for their participation in the Parliament, for example by designating the 5 Parliamentarians to participate in the Parliament in accordance with Article 4 of the Protocol. As these are administrative arrangements, and not legislative arrangements, however, they are not considered to be self-executing provisions in the sense that the term is used in paragraph 4 above.

8. Please do not hesitate to contact me if you have any further queries in this regard.

SIGNED
J B SCHNEEBERGER
STATE LAW ADVISER (II)

PRETORIA
29 APRIL 2002

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The Chief State Law Adviser
(International Law)
Departement of Foreign Affairs
Private Bag X152
PRETORIA
0001

FOR ATTENTION: ADV J B SCHNEEBERGER

PROTOCOL TO THE TREATY ESTABLISHING THE AFRICAN ECONOMIC COMMUNITY RELATING TO THE PAN-AFRICAN PARLIAMENT: YOUR UNNUMBERED FACSIMILE DATED 24 APRIL 2002

The State Law Advisers remark as follows:

1. We have scrutinized the "Protocol to the Treaty establishing the African Economic Community relating to the Pan-African Parliament", hereinafter referred to as "the Protocol", in terms of paragraph 5.20*(a)* of the *Manual on Executive Acts of the President of the Republic of South Africa*. Cognisance was taken of the fact that the Government of the Republic of South Africa has already signed the Protocol, and as such, no amendments regarding the drafting of the Protocol have been effected.

2. It should, however, be noted that Article 11 of the Protocol providing that "[t]he Pan-African Parliament shall be vested with legislative powers to be defined by the Assembly" is in conflict with the Constitution of the Republic of South Africa, 1996 (Act No 108 of 1996), hereinafter referred to as "the Constitution". Regarding legislative powers, section 43 of the Constitution provides that, in the Republic of South Africa, the legislative authority of the national, provincial and local spheres of government is vested in Parliament, the provincial legislatures and the municipal councils, respectively. Furthermore, section 2 of the Constitution provides that "[t]his Constitution is the supreme law of the Republic; any law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled".

3. Subject to our foregoing remarks, we are of the opinion that no other provision of this Protocol is in conflict with the domestic law of the Republic of South Africa.

CHIEF STATE LAW ADVISER
A S WOEST/S M MASAPU//2002-05-17

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(3) The Protocol to the Treaty Establishing the African Economic Community Relating to the Pan-African Parliament:

PROTOCOL TO THE TREATY ESTABLISHING THE AFRICAN ECONOMIC COMMUNITY RELATING TO THE PAN-AFRICAN PARLIAMENT

PREAMBLE

The Member States of the Organization of African Unity State Parties to the Treaty Establishing the African Economic Community:

Bearing in mind the Sirte Declaration adopted at the Fourth Extraordinary Session of the Assembly of Heads of State and Government held in the Great Socialist People's Libyan Arab Jamahiriya on 9.9.99 establishing the African Union and calling for the speedy establishment of the institutions provided for in the Treaty establishing the African Economic Community signed in Abuja, Nigeria, on 3 June, 1991 and the establishment of the Pan-African Parliament by the year 2000;

Noting, in particular, the adoption by the Assembly of Heads of State and Government meeting in its 36th Ordinary Session in Lome, Togo, from 10 to 12 July, 2000, of the Constitutive Act of the African Union, thereby giving concrete expression to the common vision of a united, integrated and strong Africa;

Further noting that the establishment of the Pan-Parliament is informed by a vision to provide a common platform for African peoples and their grass-roots organizations to be more involved in

discussions and decision-making on the problems and challenges facing the Continent.

Conscious of the imperative and urgent need to further consolidate the aspiration of the African peoples for greater unity, solidarity and cohesion in a larger community transcending cultural, ideological, ethnic, religious and national differences;

Considering the principles and objectives stated in the Charter of the Organization of African Unity;

Further considering that Articles 7 and 14 of the Treaty establishing the African Economic Community provide for a Pan-African Parliament of the Community, whose composition, functions, powers and organization shall be defined in a related Protocol;

Recalling the Cairo Agenda for Action which was endorsed by the Thirty-first Ordinary Session of the Assembly held in Addis Ababa, Ethiopia, from 26 to 28 June 1995 (AHG/Res. 236 (XXXI), and which recommended the speeding up of the rationalization of the institutional framework in order to achieve economic integration at the regional level;

Recalling further the Declaration on the Political and Socio-Economic Situation in Africa and the Fundamental Changes Taking Place in the World, which was adopted by the Twenty-sixth Ordinary Session of the Assembly in Addis Ababa, Ethiopia, on 11 July 1990;

Considering that by the Algiers Declaration (AHG/Decl.1 (XXXV) of 14 July 1999 the Assembly reaffirmed its faith in the African Economic Community;

Determined to promote democratic principles and popular participation, to consolidate democratic institutions and culture and to ensure good governance;

Further determined to promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments;

Conscious of the obligations and legal implications for Member States of the need to establish the Pan-African Parliament;

Firmly convinced that the establishment of the Pan-African Parliament will ensure effectively the full participation of the African peoples in the economic development and integration of the continent;

HEREBY AGREE AS FOLLOWS:

Article 1
Definitions

In this Protocol, the following expressions shall have the meanings assigned to them hereunder:

"Assembly" means the Assembly of Heads of State and Government of the Community;

"Bureau" means the officers of the Pan-African Parliament as provided for in Article 12 (5) of this Protocol;

"Community" means the African Economic Community;

"Council" means the Council of Ministers of the Community;

"Court of Justice" means the Court of the Community;

"General Secretariat" means the General Secretariat of the Community;

"Member of Pan-African Parliament" or "Pan-African Parliamentarian" means a representative elected or designated in accordance with Article 5 of this Protocol;

"Member State" or "Member States", unless the context otherwise prescribes, means Member State or Member States of the Community;

"OAU" means the Organization of African Unity;

"President" means the Member of the Pan-African Parliament elected to conduct the business of Parliament in accordance with Article 12 (2) of this Protocol;

"Region of Africa" shall have the meaning assigned to it in Article 1 of the Treaty establishing the African Economic Community;

"Secretary General" means the Secretary General of the Community;

"Treaty" means the Treaty establishing the African Economic Community.

Article 2
Establishment of the Pan-African Parliament

1. Member States hereby establish a Pan-African Parliament the composition, functions, powers and organization of which shall be governed by the present Protocol.
2. The Pan-African Parliamentarians shall represent all the peoples of Africa.
3. The ultimate aim of the Pan-African Parliament shall be to evolve into an institution with full legislative powers, whose members are elected by universal adult suffrage. However, until such time as the Member States decide otherwise by an amendment to this Protocol:
   i) The Pan-African Parliament shall have consultative and advisory powers only; and
   ii) The Members of the Pan-African Parliament shall be appointed as provided for in Article 4 of this Protocol.

Article 3
Objectives

The objectives of the Pan-African Parliament shall be to:

1. facilitate the effective implementation of the policies and objectives of the OAU/AEC and, ultimately, of the African Union;
2. promote the principles of human rights and democracy in Africa;
3. encourage good governance, transparency and accountability in Member States;

4. familiarize the peoples of Africa with the objectives and policies aimed at integrating the African Continent within the framework of the establishment of the African Union;
5. promote peace, security and stability;
6. contribute to a more prosperous future for the peoples of Africa by promoting collective self-reliance and economic recovery;
7. facilitate cooperation and development in Africa;
8. strengthen Continental solidarity and build a sense of common destiny among the peoples of Africa;
9. facilitate cooperation among Regional Economic Communities and their Parliamentary fora.

Article 4
Composition

1. During the interim period, Member States shall be represented in the Pan-African Parliament by an equal number of Parliamentarians;
2. Each Member State shall be represented in the Pan-African Parliament by five (5) members, at least one of whom must be a woman;
3. The representation of each Member State must reflect the diversity of political opinions in each National Parliament or other deliberative organ.

ARTICLE 5
Election, Tenure and Vacancies

1. The Pan-African Parliamentarians shall be elected or designated by the respective National Parliaments or any other deliberative organs of the Member States, from among their members.
2. The Assembly shall determine the beginning of the first term of office of the Pan-African Parliament at its session immediately following the entry into force of this Protocol.
3. The term of a Member of the Pan-African Parliament shall run concurrently with his or her term in the National Parliament or other deliberative organ.
4. The seat of a Member of the Pan-African Parliament shall become vacant if he or she:
   a) dies;
   b) resigns in writing to the President;
   c) is unable to perform his or her functions for reasons of physical or mental incapacity;
   d) is removed on grounds of misconduct;
   e) ceases to be a Member of the National Parliament or other deliberative organ;
   f) is recalled by the National Parliament or other deliberative organ; or

g) ceases to be a Pan-African Parliamentarian in terms of Article 19 of this Protocol.

Article 6
Vote

The Pan-African Parliamentarians shall vote in their personal and independent capacity.

Article 7
Incompatibility

Membership of the Pan-African Parliament shall not be compatible with the exercise of executive or judicial functions in a Member State.

Article 8
Privileges and Immunities of Pan-African Parliamentarians

1. The Pan-African Parliamentarians, while exercising their functions, shall enjoy in the territory of each Member State the immunities and privileges extended to representatives of Member States under the General Convention on the Privileges and Immunities of the OAU and the Vienna Convention on Diplomatic Relations.

2. Without prejudice to Paragraph (1) of this Article, the Pan-African Parliament shall have the power to waive the immunity of a member in accordance with its Rules of Procedure.

Article 9
Parliamentary Immunities

1. The Pan-African Parliamentarians shall enjoy parliamentary immunity in each Member State. Accordingly, a member of the Pan-African Parliament shall not be liable to civil or criminal proceedings, arrest, imprisonment or damages for what is said or done by him or her within or outside the Pan-African Parliament in his or her capacity as a member of Parliament in the discharge of his or her duties.

2. Without prejudice to Paragraph (1) of this Article, the Pan-African Parliament shall have the power to waive the immunity of a member in accordance with its Rules of Procedure.

Article 10
Allowance

The Pan-African Parliamentarians shall be paid an allowance to meet expenses in the discharge of their duties.

Article 11
Functions and Powers

The Pan-African Parliament shall be vested with legislative powers to be defined by the Assembly. However, during the first term of its existence, the Pan-African Parliament shall exercise advisory and consultative powers only. In this regard, it may:

1. Examine, discuss or express an opinion on any matter, either on its own initiative or at the request of the Assembly or other policy organs and make any recommendations it may deem fit relating to, inter alia, matters pertaining to respect of human rights, the consolidation of democratic institutions and the culture of democracy, as well as the promotion of good governance and the rule of law.

2. Discuss its budget and the budget of the Community and make recommendations thereon prior to its approval by the Assembly.

3. Work towards the harmonization or co-ordination of the laws of Member States.

4. Make recommendations aimed at contributing to the attainment of the objectives of the OAU/AEC and draw attention to the challenges facing the integration process in Africa as well as the strategies for dealing with them.

5. Request officials of the OAU/AEC to attend its sessions, produce documents or assist in the discharge of its duties.

6. Promote the programmes and objectives of the OAU/AEC, in the constituencies of the Member States.

7. Promote the coordination and harmonization of policies, measures, programmes and activities of the Regional Economic Communities and the parliamentary fora of Africa.

8. Adopt its Rules of Procedure, elect its own President and propose to the Council and the Assembly the size and nature of the support staff of the Pan-African Parliament.

9. Perform such other functions as it deems appropriate to achieve the objectives set out in Article 3 of this Protocol.

Article 12
Rules of Procedure and Organization of the Pan-African Parliament

1. The Pan-African Parliament shall adopt its own Rules of Procedure on the basis of a two-thirds majority of all its members.

2. The Pan-African Parliament shall elect, at its first sitting following its election, by secret ballot, from among its members and in accordance with its Rules of Procedure, a President and four (4) Vice Presidents representing the Regions of Africa as determined by the OAU. The election shall, in each case, be by simple majority of the members present and voting.

3. The terms of office of the President and the Vice-Presidents shall run with the National Parliament or the deliberative organ which elects or designates them.

4. The Vice-Presidents shall be ranked in the order of first, second, third and fourth initially, in accordance with the result of the vote and subsequently by rotation.

5. The President and the Vice-Presidents shall be the Officers of the Pan-African Parliament. The officers, under the control and direction of the President and subject to such directives as may be issued by the Pan-African Parliament, shall be responsible for the management and administration of the affairs and facilities of the Pan-African Parliament and its organs. In the discharge of their duties, the Officers shall be assisted by the Clerk and the two Deputy Clerks.

6. The Pan-African Parliament shall appoint a Clerk, two Deputy Clerks and such other staff and functionaries as it may deem necessary for the proper discharge of its functions and may by regulations provide for their terms and conditions of office in accordance with the relevant OAU practice as appropriate.

7. The President shall preside over all Parliamentary proceedings except those held in committee and, in his or her absence, the Vice-Presidents shall act in rotation, in accordance with the Rules of Procedure which shall also deal with the powers of the person presiding over Parliamentary proceedings.

8. The Office of the President or Vice-President shall become vacant if he or she:

   a) dies;

   b) resigns in writing;

   c) is unable to perform his or her functions for reasons of physical or mental incapacity;

   d) is removed on grounds of misconduct;

   e) ceases to be a Member of the National Parliament or other deliberative organ;

   f) is recalled by the National Parliament or other deliberative organ; or

   g) ceases to be a Pan-African Parliamentarian in terms of Article 19 of this protocol.

9. Removal on the grounds stipulated in 8*(c)* or *(d)* above shall be on a motion to be decided on by secret ballot and supported at the end of debate by two-thirds majority of all the Pan-African Parliamentarians. In the case of removal under the ground stipulated in 8*(c)*, the motion shall, in addition, be supported by a medical report.

10. A vacancy in the Office of the President or Vice-President shall be filled at the sitting of the Pan-African Parliament immediately following its occurrence.

11. The quorum for a meeting of the Pan-African Parliament shall be constituted by a simple majority.

12. Each Pan-African Parliamentarian shall have one vote. Decisions shall be made by consensus or, failing which, by a two-thirds majority of all the Members present and voting. However, procedural matters, including the question of whether a matter is one of the procedure or not, shall be decided by a simple majority of those present and voting, unless otherwise stipulated in the Rules of Procedure. In the event of an equal number of votes, the person presiding shall have a casting vote.

13. The Pan-African Parliament may establish such committees, as it deems fit, for the proper discharge of its functions and in accordance with its Rules of Procedure.

14. Until the Pan-African Parliament appoints its staff, the General Secretariat of the OAU shall act as its Secretariat.

Article 13
Oath of Office

At its first sitting, after the election and before proceeding with any other matter, the Pan-African Parliamentarians shall take an oath or make a solemn declaration which shall be set out as an Addendum to this Protocol.

Article 14
Sessions

1. The inaugural session shall be presided over by the Chairperson of the OAU/AEC until the election of the President of the Pan-African Parliament who shall thereafter preside.

2. The Pan-African Parliament shall meet in ordinary session at least twice a year, within a period to be determined in the Rules of Procedure. Each ordinary session may last up to one month.

3. Two-thirds of the Pan-African Parliamentarians, the Assembly or the Council, through the Chairperson of the OAU, may, by written notification addressed to the President, request an Extraordinary session. The request shall provide a motivation for and details of the matters to be discussed at the proposed Extraordinary session. The President shall convene such a session which shall discuss only the matters stipulated in the request. The session shall end upon exhaustion of the agenda.

4. The proceedings of the Pan-African Parliament shall be open to the public, unless otherwise directed by the Bureau.

Article 15
Budget

1. The annual budget of the Pan-African Parliament shall constitute an integral part of the regular budget of the OAU/AEC.

2. The budget shall be drawn up by the Pan-African Parliament in accordance with the Financial Rules and Regulations of the OAU/AEC and shall be approved by the Assembly until such time as the Pan-African Parliament shall start to exercise legislative powers.

Article 16
Seat of the Pan-African Parliament

The seat of the Pan-African Parliament shall be determined by the Assembly and shall be located in the territory of a State Party to this Protocol. However, the Pan-African Parliament may convene in the territory of any Member State at the invitation of that Member State.

Article 17
Working Languages

The working languages of the Pan-African Parliament shall be, if possible, African languages, Arabic, English, French and Portuguese.

Article 18
The Relationship between the Pan-African Parliament and the Parliaments of Regional Economic Communities and National Parliaments or Other Deliberative Organs

The Pan-African Parliament shall work in close co-operation with the Parliaments of the Regional Economic Communities and the National

Parliaments or other deliberative organs of Member States. To this effect, the Pan-African Parliament may, in accordance with its Rules of Procedure, convene annual consultative fora with the Parliaments of the Regional Economic Communities and the National Parliaments or other deliberative organs to discuss matters of common interest.

Article 19
Withdrawal

The Pan-African Parliamentarians from a Member State which withdraws from the Community shall automatically cease to be Pan-African Parliamentarians.

Article 20
Interpretation

The Court of Justice shall be seized with all matters of interpretation emanating from this Protocol. Pending its establishment, such matters shall be submitted to the Assembly which shall decide by a two-thirds majority.

Article 21
Signature and Ratification

1. This Protocol shall be signed and ratified by the Member States in accordance with their respective Constitutional procedures.
2. The instruments of ratification or accession shall be deposited with the Secretary General of the OAU.

Article 22
Entry into Force

This Protocol shall enter into force thirty (30) days after the deposit of the instruments of ratification by a simple majority of the Member States.

Article 23
Accession

1. Any Member State may notify the Secretary General of its intention to accede to this Protocol after its entry into force. The Secretary General shall, upon receipt of such notification, transmit copies thereof to all Member States.
2. For any Member State acceding to this Protocol, the Protocol shall come into force on the date of the deposit of its instrument of accession.

Article 24
Amendment or Revision of the Protocol

1. This Protocol may be amended or revised by the decision of a two-thirds majority of the Assembly.
2. Any Member State party to this Protocol or the Pan-African Parliament may propose, in writing to the Secretary General, any amendment or revision of the Protocol.
3. The Secretary General shall notify the proposal to all Member States at least thirty (30) days before the meeting of the Assembly, which is to consider the proposal.

4. The Secretary General shall request the opinion of the Pan-African Parliament on the proposal and shall transmit the opinion, if any, to the Assembly, which may adopt the proposal, taking into account the opinion of the Pan-African Parliament.

5. The amendment or revision shall enter into force thirty (30) days after the deposit of the instruments of ratification with the Secretary General by two-thirds of Member States.

Article 25
Review of the Protocol

1. Five years after the entry into force of this Protocol, a Conference of the States Parties to this Protocol shall be held to review the operation and effectiveness of this Protocol, and the system of representation in the Pan-African Parliament, with a view to ensuring that the objectives and purposes of this Protocol, as well as the vision underlying the Protocol, are being realised and that the Protocol meets with the evolving needs of the African Continent.

2. At intervals of ten years thereafter, further Review Conferences of States Parties to this Protocol may be convened with the same objective as stated in Paragraph 1 above. Such Conferences may be convened at an interval of less than ten years, if so decided by the Pan-African Parliament.

Done at Sirte, Libya, 2 March 2001

In terms of a decision of the House on 20 March 2002 these documents have been referred to the Working Group on the African Union for consideration and report.

COMMITTEE REPORTS:

National Assembly:

1. ***NOTE:*** ***The Report of the Portfolio Committee on Public Service and Administration on the Joint Investigating Report into the Strategic Defence Procurement Packages, which appeared in the Announcements, Tablings and Committee Reports of 10 December 2001 (p 1515) contained an error, in that the last sentence of the second paragraph under "A. Introduction" was incorrectly worded. The following is the correct sentence:***

   "The matter was handled by the Standing Committee on Public Accounts of the National Assembly, which recommended that an independent and expert forensic investigation be conducted, hence the National Assembly's approval of that report on 3 November 2000."

2. Report of the Portfolio Committee on Justice and Constitutional Development on the ***Constitution of the Republic of South Africa Second Amendment Bill*** [B 17D—2002] (National Assembly—sec 74), dated 19 June 2002:

   The Portfolio Committee on Justice and Constitutional Development, having considered the ***Constitution of the Republic of South Africa Second Amendment Bill*** [B 17D—2002] (National Assembly—sec 74), amended by the National Council of Provinces and referred to the Committee, reports that it has agreed to the Bill.

Report to be considered.

3. Report of the Portfolio Committee on Justice and Constitutional Development on the ***Loss or Retention of Membership of National and Provincial Legislatures Bill*** [B 25B—2002] (National Assembly—sec 76), dated 19 June 2002:

> The Portfolio Committee on Justice and Constitutional Development, having considered the ***Loss or Retention of Membership of National and Provincial Legislatures Bill*** [B 25B—2002] (National Assembly—sec 76), amended by the National Council of Provinces and referred to the Committee, reports that it has agreed to the Bill.

Report to be considered.

4. **Fourth Report of the Standing Committee on Public Accounts, dated 12 June 2002:**

The Standing Committee on Public Accounts, having heard and considered evidence on the Report of the Auditor-General on the Financial Statements of Vote 7—Department of Defence (Department), the Trading Account for Medical Stock (TAMS), and the Special Defence Account (SDA) for the year ended 31 March 2001 [RP 138-01], referred to it, and having considered the Department's Annual Report for 2000-01, the Responses by the Department to the Committee's Preliminary Questions and the written submissions made by the Secretary for Defence subsequent to the hearing on 20 March 2002, reports as follows:

A. Audit opinion

While the Auditor-General gave an unqualified opinion on the financial audit, the Committee notes with concern that the compliance audit was qualified.

The Committee recommends that the Department pay special attention to all aspects resulting in the qualification, and urgently implements corrective measures with the view to avoiding such a qualification in future.

B. Excessive stock levels

The issue of excessive stock levels within the Department, estimated at between R70 billion and R100 billion, has remained a matter of grave concern to the Committee for many years, for a variety of reasons.

Excessive stock represent financial resources, which could be redirected to other strategic and needy areas. It places a great burden on the Department to effectively manage and maintain control over excessive stock. The longer excessive stock remains undisposed, the greater the danger of a widening gap between the book value of the stock and the actual revenue realised upon the disposal of such stock.

While the Committee has noted several steps taken by the accounting officer, it remains very concerned at the slow pace of disposal. The indication that the completion date of determining excessive stock levels and the reduction thereof is foreseen to be in 2005, is of serious concern to the Committee. This means that the Department Excessive Stock Level Plan would have been running for five years without knowing what the excessive stock levels are and how it will be reduced.

Equally disturbing is the indication that the Department's evaluation of stock in monetary terms is dependent on the computerisation of units, because the Department has been computerising units for more than a decade.

The indication that the Treasury Approval to account by quantity would remain in place in the interim, is problematic for the Committee. The guidelines issued by the National Treasury on financial statements and records indicate that the public sector is moving towards accrual accounting. This means that the accounting of stock/equipment will soon have to be done in terms of monetary value.

The Committee recommends that, as a matter of urgency, the Department take steps to ensure that when the final instructions are given to use an accrual accounting system, the Department would not have to negotiate an extension of time for implementation.

The Committee is dissatisfied with the Department's failure to implement the Auditor-General's recommendations. It notes that the Department is in the process of compiling a comprehensive document regarding the progress made with each of those recommendations. The Committee notes the Department's undertaking to submit the said document to the Committee by 1 July 2002. The submission will be evaluated in order for the Committee to consider the adequacy of the remedial action being taken by the accounting officer.

C. Transformation process

Concern was expressed at the hearing regarding the Auditor-General's comments to the effect that, notwithstanding the expenditure of R55 million on consultants, the original aim of the transformation process of providing adequate, appropriate, affordable and accountable Defence by the year 2000, had not been achieved.

The Auditor-General further stated that it was difficult to determine whether the Department's Strategic Plan, the new master plan for the transformation process, would assist the Department in achieving the original aim.

The Committee is concerned that if the objectives are not achieved, the Department stands in danger of incurring fruitless and/or wasteful expenditure.

The Committee notes that the issue of transformation has been reassessed, that a new approach and strategy has been presented and accepted, and that a new change management strategy will be developed in 2002-03.

While the Committee recognises that the issue of transformation is both complex and challenging, the constant reassessments and development of new approaches and new strategies leave the Committee concerned, since it creates the impression that the Department is still grappling with the issue without a clear way forward.

The Committee notes that the next briefing to the Department management on the transformation process has been scheduled for 7 July 2002.

The Committee recommends that it be provided with a written update by the accounting officer on the briefing by 31 July 2002.

D. Risk management system

The Committee notes with concern the Department's delay in developing a holistic risk management system for implementation in the financial year 2001-02.

The Committee notes the reason for the delay, and welcomes the Department's initiatives to rectify the situation.

The Committee notes the Department's written undertaking to submit a formal report to it on 1 July 2002, confirming the successful implementation of the system.

The Committee recommends that the Auditor-General follow up and report thereon during the next audit.

E. Fraud prevention strategy

The Committee expresses its grave concern at the fact that originally the fraud prevention strategy was supposed to have been developed for implementation during 2001-02, but that a fully operational strategy is now only envisaged for the year 2002-03.

The Committee notes the Department's written commitment to submit a formal report to it on 1 October 2002, confirming the successful implementation of a fraud prevention strategy.

The Committee recommends that the Auditor-General follow up and report thereon during the next audit.

F. Computerised debtors system

It is with grave concern that the Committee notes that for the past four years the Auditor-General has reported on the inadequacies of the debtor management system of the Department.

It is with equal concern that the Committee notes that the original implementation date of October 2000 for a computerised debtor system has now been delayed until at least July 2002.

The Committee welcomes the Department's written undertaking to the effect:

1. That the development and programming would be completed in June 2002, for envisaged implementation by July 2002
2. That the Department will submit a formal report to the Committee on 1 August 2002, confirming the successful implementation of a computerised debtors system.

The Committee recommends that the Auditor-General follow up and report on the above during the next audit.

G. Inadequate information systems

The Committee expresses its concern at the Department's inability to provide certain information in the Notes to the Financial Statements. It welcomes the National Treasury's establishment of a forum for

Chief Financial Officers to, inter alia, deal with the adequacy of information produced by the financial management information system.

The Committee views with reservation the Department's assurance that it will be able to comply with the new set of standards set by the Accountant-General for the current year's financial statements. It does so because the Committee notes that the requirements being set by the Accountant-General are still being considered by the Department, together with its ability to comply with them.

The Committee therefore recommends that the Auditor-General, in his next audit report, comment on the completeness of the information reflected in the notes to the financial statements.

H. Reconstituted Audit Committee

The Committee expresses dissatisfaction with the non-functionality of the Audit Committee since May 2001.

The Committee welcomes the steps taken by the Department that led to the reconstitution of the Audit Committee in a manner that, should the reasons recur that led to it being non-functional, the Audit Committee would continue to remain functional and ensure continuity.

The Committee recommends:

1. That since the inaugural meeting had been scheduled towards the end of April 2002, the Department furnish the Committee with a report on the meeting by 31 July 2002

2. That the Department furnish the Committee with the date of the Audit Committee's next meeting, so as to satisfy the terms of the PFMA that the Audit Committee meet at least twice a year.

I. Internal auditors

The Committee welcomes the assurance by the Secretary for Defence that not only is the independence of internal auditors guaranteed, but that in addition no limitation whatsoever has been placed on the scope of their work.

J. Revenue manager

The Committee expresses its serious concern at the Department's failure to organise itself along the lines of an efficient revenue collection system, which failure has resulted in the under-collection of revenue over several years.

The Committee welcomes:

1. The appointment of a Revenue Manager

2. The Department's decision to assess itself; to determine whether targets set for revenue collection are being met monthly; and that it will be reporting actual revenue against budget on a monthly basis from 1 April 2002

PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA

3. The Department's written assurance to submit a formal report to the Committee on 1 July 2002 regarding an assessment of the impact of the Revenue Manager's work and functioning in the Department.

The Committee recommends that:

(a) The Department include in the above assessment a schedule outlining the extent to which set targets for revenue collection have been met for the three-month period from 1 April to 30 June 2002, and that the above assessment be submitted to the Committee by 1 September 2002

(b) The matter be followed up by the Auditor-General and reported on during the next audit.

K. Unauthorised expenditure—R1 535 000

The Committee is concerned about the recurring problem of the Department's use of State funds to finance the expenditure of military museums without authorisation, hence the unauthorised expenditure.

The Committee welcomes the fact that legislation is currently under review to provide for the expenditure on military museums to be financed by State funds.

The Committee therefore defers its recommendation to Parliament for the approval or otherwise of the unauthorised expenditure until the legislative process in respect of the Defence Bill has been finalised.

L. Unauthorised expenditure not yet finalised

For a variety of reasons beyond its control, the Committee was unable to finalise its recommendations on the following unauthorised expenditure relating to a number of previous financial years:

Year	Amount in '000
1994-95	R 24,772
1995-96	R 13,665
1996-97	R 2,084
1997-98	R428,226
1998-99	R 9,764
1999-00	R 8,053
	R486,564

The Committee plans to finalise all outstanding recommendations on unauthorised expenditure by the end of the current financial year.

M. Irregular expenditure—R2,148 million

The Committee is concerned that various incidents of irregular expenditure had occurred at the Department, amounting to R2,148 million during the year under review. The Committee notes that the five cases of irregular expenditure related to repairs to buildings—R15 613; health care and hygiene services—R29 526; procurement of chemicals—R26 999; lease agreement—R44 480; and irregular hiring of photocopiers—R2 031 million.

The Committee strongly emphasises the following:

1. The attitude that the State would not suffer any loss must not be exploited as a loophole by the Department's personnel to by-pass procurement procedures

2. Disciplinary step such as warnings and letters of warning/ reprimand are often insufficient to enforce compliance with procurement procedures.

The Committee therefore recommends that, in addition to further stepping up its efforts to ensure compliance with procurement procedures, the Department take more harsh and appropriate disciplinary measures against those responsible.

The Committee further recommends that the Department, in consultation with the National Treasury, report to Parliament, via the 2001-2002 annual report of the Department, on each of the instances of irregular expenditure reported, on whether:

(a) The accounting officer reported in writing each instance of the irregularity to National Treasury immediately upon its discovery, as required by section 38(1)*(g)* of the PFMA, and in the monthly report as required by Treasury Regulation 9.1.2

(b) The National Treasury or the Tender Board investigated each of the instances, and condoned the non-compliance with Treasury or Tender Board Regulations

(c) In cases where non-compliance was not condoned, the appropriate disciplinary action was taken as required by section 38(I)*(h)* of the PFMA, and/or whether the amount was recovered in terms of Treasury Regulation 12.7

(d) In any of the instances, the amount in question was regarded as irrecoverable, and was written off by the accounting officer in terms of Treasury Regulation 11.4

(e) The amount(s) were properly disclosed in the relevant financial statements.

N. Alleged irregularities

The Committee notes that the Department investigated two cases of alleged irregularities, and that the Department needs to inform the Committee of the outcomes of those investigations, as well as the nature of the disciplinary measures to be instituted against those responsible.

The Committee accepts the Department's request for an extension of time until 1 July 2002 to provide it with an update on the matter due to the unavailability of the investigator in question.

O. Leave credits and leave administration

The Committee expresses its deep concern about the shortcomings in the Department's leave administration system.

The Committee welcomes the Department's corrective measures to address some of the shortcomings, notes that since September 2001 no incidents were found or reported in relation to non-adherence to leave

policies and prescripts, and welcomes the Department's undertaking that non-adherence will result in firm disciplinary action against those responsible.

The Committee recommends that the Chief Director of Human Resources furnish the Committee with a report by 31 August 2002 regarding the extent of the errors found since September 2001, if any, and the total financial value of such errors.

P. Medical benefit overpayments

The Committee expresses its dissatisfaction with the situation where various members who had retired and had received the medical benefit lump-sum, also became members of the Medical Continuation Fund.

The Committee notes that the names of those members who have been identified as having received double benefits will be submitted to the Finance Division to institute the necessary steps to recover the overpayments.

The Committee accepts the Department's written undertaking to submit a final report to the Committee by 1 August 2002 regarding the number of members involved and the monetary value of overpayments.

The Committee expects that the Department's final report will also include an update on the actual steps taken by the Finance Division to recover the overpayments, as well as the extent of recovery, if any.

Q. Advances

An audit of the advance accounts, particularly those relating to foreign currency, revealed that internal control over and the review of advances were inadequate and unsatisfactory.

Since the Committee considers this aspect a high-risk area, it welcomes the Department's efforts to develop and establish a computerised system to manage foreign currency advances, and that it is on track for the system to become operational by 30 June 2002.

The Committee notes the Department's written undertaking to submit a formal report to the Committee on 1 July 2002, confirming the successful implementation of the system. It is recommended that the matter be followed up by the Auditor-General and reported in the next audit report.

R. Service corps

The Committee is concerned that little has been done to address the shortcomings in respect of operations, performance and outputs of the Service Corps since its inception in January 1995, and that the institution is not performing at optimum level.

The Committee is extremely disturbed to note that, whereas in terms of the hearing, senior management has taken the decision to convert the Service Corps into a settlement agency and that its Centre for advanced training should migrate to reside under the Department of

Labour, in terms of the post-hearing submission by the Secretary for Defence, the future and direction of the Service Corps is still under scrutiny by means of numerous workshops.

The Committee recommends:

1. That the Department clarify the contradiction between the decisions already taken and the workshops currently being held
2. That the final outcomes of these workshops be reported to the Committee on 1 July 2002
3. That the Auditor-General follow up and report thereon during the next audit.

S. Environmental policy

The Committee expresses its grave concern about the inadequate and inappropriate manner in which the Department handled and stored chemicals, managed the disposal of waste, the overall handling of old and new oil, and the monitoring of potential leakages.

The Committee is equally concerned with the minimal impact of corrective measures, which are done in a random way without achieving consistency.

The Committee notes that a formal report will be submitted to the Committee on 1 October 2002, confirming the successful promulgation and implementation of the environmental policy.

The Committee recommends that the Auditor-General follow up and report on the above during the next audit.

T. Staff debt

The Committee notes with concern the disturbing trend of an increase in staff debt at the Department, especially in relation to salary overpayments and motor vehicle accidents.

The Committee notes that the Department will only be able to provide an age analysis of the staff debt once the computerised system has been implemented. However, it is the view of the Committee that a more concerted effort can be made to provide an age analysis.

The Committee recommends that:

1. Based on the indication that the successful implementation of the computerised debtors system has been envisaged for August 2002, it be provided with the age analysis of staff debt at that time
2. The Department manage down its staff debt by vigorously implementing its lines of recovery of staff debts through the staff's accumulated leave pensions, and through monthly salary deductions, where applicable.

U. TAMS

The Committee welcomes the Department's confirmation of the final closure of the Trading Account for Medical Stock, as well as the repayment of the loan of R10,5 million to the National Treasury.

The Committee notes that the Office of the Auditor-General met with officials of the Department to discuss and plan the final audit of this account, and that the closure of TAMS will be audited this year.

V. Special Defence Account

As long ago as November 1997, the then Standing Committee on Public Accounts had recommended that the Special Defence Account be separated from the General Defence Account.

The Committee notes that the Department and the Office of the Auditor-General deliberated on the matter during April 2002, that it was decided to subdivide the bills payable account between the General Defence Account (GDA) and the Special Defence Account (SDA), that it was envisaged that the amended PFMA would list the SDA under schedule A as a fund of the Department, and that the accounting standard might change from GAAP to GRAP, in which event the Department will request approval to retain the GAAP accounting standards from the Accountant-General.

The Committee recommends:

1. That the Department furnish the Committee with a progress report on the matter on a regular basis

2. That it review or reaffirm the previous Standing Committee on Public Accounts' original recommendation regarding the separation of the SDA from the GDA on the basis of a final report on the matter from the Department.

W. Commission on sale of Puma helicopters

The Committee notes that Armscor had been contacted, and that follow-ups on the case are made on a continuous basis.

The Committee recommends that the Department, together with Armscor, seek clarification from the Director of Public Prosecutions about the reasons why prosecution was still pending, and by when prosecution was likely to take place.

X. Commission on purchase of Pilatus training aircraft

The Committee welcomes the confirmation by the Directorate of Special Operations that the target date for finalising the report was 30 April 2002.

The Committee recommends that the Department keep the Committee updated on all the details and progress made once the case has been finalised.

Y. Persol transactions not cleared

The Committee is concerned that the outstanding Persol transactions, which are not cleared in good time, numbered 6 145 as determined by the 2000-01 audit.

The Committee notes the reported dramatic decrease in transactions not cleared to 2 158 as at 6 april 2002. it further notes this various categories in which the uncleared transactions are located.

The Committee therefore:

* looks forward to a confirmation of this decrease in the department's next report

* recommends that every effort be made by the department to clear all uncleared persol transactions by 31 october 2002.

Z. Conclusion

The Committee records its appreciation to the Department for the user-friendly manner in which it responded to the Committee's written preliminary questions, as well as for the timeous submission of responses and undertakings made at the hearing.

Finally, the Committee wishes to record that during its review of the Department audit reports over the last number of years, the Committee has noted an improvement in several areas of financial management for which it commends the Department. The Committee looks forward to the Department seriously considering the recommendations made by the Committee so that the Auditor-General will not express qualified audit opinions in future.

Report to be considered.

5. **Report of the Portfolio Committee on Safety and Security on visit to North West and Northern Province, dated 15 May 2002:**

The Portfolio Committee on Safety and Security, having conducted oversight visits to the North West and the Northern Province from 21 to 24 January 2002, reports as follows:

I. INTRODUCTION

South Africa is in the process of consolidating its democracy. To achieve this, the country needs to provide a safe and secure environment for its citizens. The Committee sees its role as pivotal in this regard. To execute this responsibility from an informed position, the Committee, at times, undertakes provincial as well as international study tours.

Provincially, the Committee visits various police stations. The ultimate purpose of such visits is to ascertain the operations of those police stations and identify problem areas, with a view to recommending necessary remedies. It is in this spirit that a multiparty delegation of the Committee visited the provinces from 21 to 24 January 2002. The provinces visited were North West and Northern Province.

In North West, the Committee visited Potchefstroom, Ikageng and Klerksdorp police stations. In the Northern Province, the Committee visited Messina, Thohoyandou and Mutale police stations. In both provinces, the delegation tackled the following topics: Plans of action; community policing forums; the crime situation and crime-combating strategies; women and child abuse; number of vehicles; infrastructure; corruption in the SAPS; the conviction rate; escapes from police cells; and the distribution of police personnel.

II. DELEGATION

Mr M E George (ANC) (Leader of the delegation)
Mr M S Booi (ANC)
Mr O J Kgauwe (ANC)
Mr A M Maziya (ANC)
Mr A J Botha (DP)
Mr E T Ferreira (IFP)
Ms A van Wyk (UDM)
Rev K R J Meshoe (ACDP)
Mr N Lala (Committee Secretary)

III. NORTH WEST

A. Provincial picture

The delegation had fruitful discussions with the SAPS provincial management at Potchefstroom, who gave a brief overview on the state of the province. The delegation was told that North West is divided into three areas, namely Mooi River, Marico and Molopo. (All the police stations visited, however—Potchefstroom, Ikageng and Klerksdorp—fell within the Mooi River Area.)

1. Plan of action for Province

The SAPS Provincial Management Team reported about their participation in the national co-coordinated "Operation Tshipa", whose vision is to crack down on crime in an organised approach.

2. Crime situation

The period of comparison here are the months of October and November 2000 and 2001. Also included is the information for the first three quarters of these two years.

The SAPS reported that there are three categories of crime:

* Policeable crimes like armed robbery, common robbery, housebreaking, etc.
* Less policeable crimes like rape, shoplifting, etc.
* Crimes that are heavily dependent on police action for detection, for example, illegal possession of firearms.

The first three quarters of 2001 depicted a decrease in the more policeable crimes. However, the police reported that during October and November 2001, housebreaking, vehicle theft and theft out of or from vehicles showed a slight increase. In total, there is still a decrease of -2% in cases of more policeable crimes.

Regarding less policeable crimes like rape and shoplifting, the delegation heard that there has been no improvement. Rape, for instance, was reported to be on the increase by 7% for the two-month period, while shoplifting stayed at 16% (unchanged in the same period).

Driving under the influence of liquor, as well as illegal possession of firearms, showed a decrease. The delegation was reminded, however, that this is only a two-month period; therefore, this picture could change if statistics for December could be added. In the province at large, the delegation was told that there is a 2% decrease in the crime situation, and the police view this as significant.

After the discussions with the provincial management, the delegation visited police cells.

Level of Crime by Area

(a) Marico Area

(i) More policeable crimes Records show an increase in

the reporting of common robbery and housebreaking, but it remains a cause for concern, as it is still at an unacceptable level.

(ii) Less policeable crimes

Murder, rape and shoplifting are reported to have increased.

(iii) All crimes dependent on police action

The SAPS has reported a decrease in these crimes.

In total, the delegation was told that there is a decrease of 4% in crime in the Marico Area.

(b) Mooi River Area

Armed robbery and common robbery are still on the increase. Stock theft, and theft out of or from motor vehicles, also depicted an increase, while vehicle theft dropped by 5%.

In the less policeable category, murder, theft and fraud decreased, while rape, assault and shoplifting increased. There is a registered decrease in the possession of firearms.

In total, the Mooi River Area shows a 2% increase in crime.

(c) Molopo Area

This area only shows an increase in housebreaking, rape and shoplifting. However, the delegation was told that in total, this area registers a decrease of -11% in respect of crime.

3. Number of vehicles in Province

The total vehicle strength is 2 517. Of this number, 1 866 are serviceable vehicles on record, 304 are in the garage for repairs and 10 are boarded.

(a) Vehicles by Area

(i) Mooi River Area—total vehicle strength is 803. Of this number, 616 are serviceable on record, 68 are in the garage and three are boarded.

(ii) Marico Area—total vehicle strength is 1 003. Of this, 709 are serviceable, 137 are in the garage and seven are boarded.

(iii) Molopo Area—total vehicle strength is 608. Of this number, 449 are serviceable, 92 are in the garage and none are boarded.

In addition to those vehicles allocated to these areas, 103 vehicles are allocated to the Provincial Commissioner. Of this number, 92 are serviceable, seven are in the garage and four are boarded.

In percentage terms for the whole province, 74,94% are serviceable vehicles, 12.07% are in the garage and 12.99% are boarded.

4. Total number of police in Province

The actual number of police personnel in the province is 8 926, and the granted number is 9 327. However, ideally the province would like to have 10 424 police officers. The difference between the ideal number and the actual number of police officers is 1 498.

Number of reservists in province	893
Number of reservists needed	1 409

B. Local picture

1. Klerksdorp Police Station

The delegation met with the Station Management, led by the Station Commissioner, and was told that the mission of the Klerksdorp police station is to create a safe and secure environment for all in the policing area of Klersdorp. The population of the Klerksdorp policing area is 53 486.

(a) Plan of action

The Station Commissioner reported that the station is focusing on fighting crime, and on delivering a service in such a way that the partnership between the police and the community is restored to a level where the team established can focus on reducing the priority crimes, such as theft, theft out of motor vehicles, housebreaking, and common robbery.

To fulfil the mission that the station has set itself, the management of the station proposes to give attention to internal functioning and quality.

Internal functioning

* Low productivity
  They seek to eradicate low productivity and encourage managers to recognise good work and take action against unproductive members.

* Human resource management
  Human resource management aims at controlling working days lost through absenteeism and ensuring manpower allocation according to needs.

* Logistical management
  They seek to monitor the misuse of State vehicles. This will be done through regular inspections of vehicles.

* Low morale of members
  This will be addressed by creating a friendly atmosphere at work.

Quality

* Docket quality in cases
  This involves improving the number of dockets opened correctly by 25%.

* Investigation quality (conviction rate)
The plan is to increase the conviction rate by 2%.

(b) Community Policing Forums (CPFs)

The Klerksdorp SAPS reported that they have a cordial relationship with the CPF structure. CPF leaders confirmed this, saying in addition that the CPF and the SAPS in the area have developed a working relationship. The CPF reported that it has conducted numerous projects like Youth Month, Service with a Smile and Quiz for Secondary Schools.

(i) Youth Month

Numerous events were planned, such as the "Youth Day" in Alabama, drug awareness addresses at secondary schools and presentations of healthy hints for learners at primary schools.

(ii) Service with a Smile

A project was launched to request nominations for the friendliest police official, and the winner was announced on 27 August 2001.

(iii) Quiz for Secondary Schools

An annual quiz for secondary schools are held and will be expanded to include primary school learners.

(c) Crime statistics

Crime statistics are as follows:

Theft	5 036 cases
House breaking and theft	1 282 cases
Theft out of vehicles	1 001 cases
Theft of motor vehicles	333 cases
Common robbery	333 cases

The above are the 2001 statistics, and only reflect the number of reported cases.

(d) Women and child abuse

The Klerksdorp police reported that between June and December 2001 a total of 61 cases in connection with child abuse had been reported. Of those 61, 46 were assault, 11 rape, three indecent assault and one abuse.

A total of 32 cases have been reported in respect of women—15 rape, 10 assault, three domestic violence, two attempted rape and two indecent assault.

Thus a total of 93 cases relating to women and child abuse have been reported.

(e) Vehicle strength

The total vehicle strength for uniformed police at Klerksdorp is 22. Of this number, only one is in the garage, thus leaving 21 serviceable vehicles available for use.

In respect of detectives, the vehicle strength is 28. Of these 28, 25 are serviceable, one in the garage and two boarded. In addition to these motor vehicles, there are eight motorbikes.

Ideally, the Klersdorp SAPS want to have 75 vehicles, instead of the current 58.

(f) Infrastructure

The police station accommodates uniformed and detective units. There is a planned maintenance project to repair and upgrade the existing buildings in poor condition. Repair and upgrading of the cells was in process and were to be completed before April 2002.

2. Ikageng

Ikageng Police Station is responsible for policing 400 000 people (the population of Ikageng). This service is rendered by 72 police officers. To the astonishment of the delegation, the Acting Station Commissioner reported that two police officers had been transferred to Mafikeng. The reason for the amazement was that, according to the delegation, Mafikeng had a number of police officers who did not have anything to do most of the time. The delegation registered its displeasure with this, saying Ikageng had a dire shortage of police officers, and that it could therefore not understand the rationale behind transferring members to a station where there was even a "surplus". Upon further explanation, the Acting Station Commissioner pointed out that they could not even make cross-transfers because of a shortage of houses. However, there was a plan to build a new police station, but they were still waiting for the Public Works time schedule.

Of 72 the police officers, 23 are detectives, who handle approximately 60 dockets per detective per month. These investigating officers are using 10 vehicles that are available at the station, but would like to have 18 (the ideal number). With these 18, they envisage a ratio of two investigating officers per vehicle. Ideally, Ikageng Police Station would like to have 40 investigating officers.

(a) Prevalent crimes

Assault, house-breaking, theft and rape are the most prevalent crimes in the area of Ikageng. According to statistics provided by the police, more than 10 cases of rape are reported every month. For 2001 alone, 162 cases of rape were reported.

The community leader in the area disputed the numbers provided by the acting station commissioner, saying it could be more, as record-keeping at the police station is poor. She cited, for example, that the station does not have records of molested children. In addition, she sensitised the delegation to a shortage of women in the station, propounding further that even cases of women and child abuse, including rape, are handled by men.

(b) Number of vehicles

The station has 18 vehicles in total. The number needed is 52. There is only one vehicle per shift, others being in different units like crime prevention and child abuse.

(c) Number of police personnel

The total number of police officers is 72; the ideal number is 300. This figure of 72 should be compared with the 145 granted. According to the Area Commissioner, Ikageng is running with 72 members because the national office has not given them a mandate to appoint new officers. Questions arose as to what criterion is used to distribute personnel and who decides on the number of officers per police station. Regarding criteria, the response was that population, the crime situation and other factors are used as criteria. As to who decides regarding the distribution of personnel per station, the delegation was told that the national office decides. This scenario did not go down well with the delegation, who retorted that the National Commissioner always gives them a different picture. The delegation said if this is what really takes place, it is wrong, as it is not possible for somebody in Pretoria to know the different needs of police stations at grass roots level.

(d) Corruption in SAPS

The delegation heard that three members had been charged with corruption. Of these three, one was sentenced and therefore automatically discharged. The second case is pending, while the third one was found to be medically unfit, and is appealing against the case.

(e) Unions

Unions present are SAPU and POPCRU, and the relationship between them and the management is very good.

(f) Attitude of community in general

The Acting Station Commissioner claimed that the relationship between the SAPS and the people is very good. This was disputed by the community leader, who claimed that the SAPS there do not provide a good service.

(g) Conviction rate

The conviction rate is between 6% and 7%. The leader of the delegation commented that if there was a good relationship between the SAPS and the community, the conviction rate would not be that low, so something needed to be done.

3. Potchefstroom

The population of Potchefstroom is about 68 000. 113 police personnel service this population.

(a) Distribution of police personnel

Potchefstroom has 113 uniformed police officers. The station reported that to be effective, it needed an additional

40 members. Of the 113, 24 are female. There are also 49 detectives, two of whom are female. Each detective handle about 35 dockets per month.

The question as to who decides on the number of police personnel and on what basis, arose again. The response was that figures, recruitments (and when to recruit) and who goes where in the station were determined by the National Office. It was said that such decisions are arrived at on the basis of the level of crime and the population.

This response again begged a question from the delegation as to what the Provincial Commissioner is being paid for if the National Office is running the province and its programmes. According to the delegation, the criteria used are wrong, as the Provincial Commissioner is supposed to determine the needs of his province.

(b) Vehicle strength

(i) Uniformed police

The Potchefstroom Police Station has 26 vehicles. Of the 26, 24 are serviceable, whilst two are in the garage.

(ii) Detectives

The detectives have 24 vehicles, of which 19 are serviceable, two are in the garage and three are boarded. This brings the total serviceable vehicle strength to 48.

(iii) Accidents and damages

A Vehicle Accident and Damage Board was implemented at area level on 1 August 2001. Commanders and drivers involved in accidents appear before this Board, which sits weekly. The Board is chaired by the Deputy Area Commissioner: Support Services. This has had positive effects in reducing accidents by determining responsibility, suspend drivers' licences and instituting civil claims and disciplinary actions.

(c) Prevalent crimes

Prevalent crimes are house-breaking, pick-pocketing and stealing of copper cables. The Provincial Commissioner reported that rape and murder are not rife, but all the same the rate of murder has gone up. Domestic violence is also low.

(d) Escapes from prison

The delegation heard that Potchefstroom never had escapes from cells, except in transit to court or in community services (but even in these circumstances, such incidents were very rare).

(e) Corruption in SAPS

Over the previous 12 months, it was reported that only one police officer had been charged, a branch commander. This officer is currently suspended.

(f) Trauma centres

A centre for traumatised children and women is currently under construction. Traumatised children and women are being housed, for the time being, in hospitals.

(g) Infrastructure

New three-storey buildings and cellblocks were built in 2001. The existing old police station is being upgraded and is used by detectives and as a mortuary. The building of a safehouse for victims of crime, which is a CPF project funded by the community, is being planned, and architect plans have already been approved by Public Works.

IV. NORTHERN PROVINCE

A. Provincial picture

The delegation proceeded from North West to the Northern Province, where they met the SAPS top management in Pietersburg. The Northern Province has four areas—Bushveld, Far North, Central and Giyani.

The total number of police stations is 90. There are 30 police stations in the Bushveld Area, 19 in the Central Area, 21 in the Far North and 20 in Giyani. The stations visited were Thohoyandou, Messina and Mutale, all in the Far North Area. However, before the delegation could visit them, the provincial team, led by Provincial Commissioner Sengani, briefed them on the provincial "picture". The following topics were touched on:

1. Population

The province has 5 200 000 inhabitants, 12,1% of the national population. 541 301 (11%) live in urban areas, while 4 388 067 (89%) live in rural areas. 81% of the population is between nought and 39 years of age.

2. Integration

The Provincial Change Team was appointed in November 1994 to facilitate the transformation and amalgamation process. 3 384 staff members were integrated from the former SAP, 2 777 from the former Lebowa, 2056 from former Venda, 1135 from former Gazankulu, and 44 from MK.

3. Crime-combating strategy—operational policing priorities

(a) Priority one: Serious and violent crimes

The objective here is to combat serious and violent crimes like murder, attempted murder and armed robbery.

(b) Priority two: Organised crime

(c) Priority three: Crime against women and children

The objective is to combat crimes against women and children, like rape and assault with intent to do grievous bodily harm.

(d) Priority four: Property-related crimes

The objective is to combat the following prioritised property-related crimes: House-breaking in businesses, house-breaking in residences, theft of motor vehicles, theft from motor vehicles, and common robbery.

(e) Budget and resource management

The objective is to utilise the budget within acceptable parameters, to manage provincial logistical resources to the benefit of all, to implement specified programmes to institutionalise performance management, to address skills shortages, to optimise personnel utilisation in accordance with crime priorities, to address affirmative action, and to assist employees with problems that might influence their work.

(f) Improve basic service delivery to all communities

The objective is to improve the quality of service through the SDIP and implement information technology systems at all police stations in the province. In addition, they seek to improve emergency services to the community.

4. Stabilisation and normalisation of areas

A Crime-Combating Task Team (CCMT) was formed, and its goal was to serve as a high-impact multi-disciplinary team that would reduce crime at the following crime-combating zones:

Central Area	Far North Area
Pietersburg	Thohoyandou
Sehego	Louis Trichard
Mankweng	
Lebowakgomo	Giyani Area
Nebo	
Motetema	Bushbuck Ridge
	Giyani
Bush Veld Area	Bolobedu
	Tzaneen
Warmbath	Ritavi
Potgietersrus	Calcutta
Mokopane Maake	

5. Normalisation of policing

This has to do with crime management and addressing the causes of crime. Normalisation, the delegation was told, is a long-term and an ongoing process. The approach of this long-term goal is:

(a) Crime analysis

(b) Human resource utilisation

(c) Deployment of resources

(d) Crime prevention

(e) Investigation

(f) Community partnership policing

(g) Community service centre performance

6. Logistics—motor vehicles

Number of boarded vehicles	879
Number of vehicles not replaced	632
Total running vehicles	1 676

The Provincial Commissioner reported that the disadvantage with most of these vehicles is that they are small, which makes it difficult to use them in rural areas.

7. Current personnel strength

The province has 8 977 police personnel, and a population of 5 200 000. This translates to one police official for every 731 citizens (the national ratio is 1:443). Females constitute 16.9% (1 524) of the personnel. Of 8 977 police officers, 1 400 are detectives who each handle about 130 dockets per month. The provincial management reported that they were happy with the work of the detectives and did not need more. Ideally, the province would like to have 11 977 police personnel. The strength per area is:

Provincial Commissioner	399
Bushveld Area	1 370
Giyani Area	2 111
Central Area	2 707
Far North Area	2 410

The delegation was told that the National office determines the number of police per province, per area and per police station. Also determined by the National office is the downgrading or upgrading of police stations, and which police station is to be closed. The criteria used in downgrading are size of police stations and the crime situation.

The delegation commented that the role of the National Office should be the monitoring of adherence to national standards and not to determine what is right for each province. Provincial offices, because of their intimate knowledge of provincial situation, should take the lead on the issue of personnel distribution and downgrading or upgrading of police stations in the province.

8. Border policing

There are seven border posts. In addition, there are landing strips on every farm. So far, 34 landing strips have been identified. Publiche porder police do most of the border policing. They are used in operations on borders and in conflict in the transport sector, and they are also very much instrumental in crime prevention. To look at this "border problem", the province has established borderline task teams. About 150 members are permanently placed at the border posts.

The National Office is also running a programme called "Operation Attachment" along the border. This programme seeks to root out corruption at border posts.

9. Crime against women and children and places of trauma

There are many rape cases in the province. 12 to 15 cases of rape

of children are reported every week, and in many instances the culprit is known. In all these instances, the culprit gets arrested. The age group of the survivors is between four and 16 years.

The province plans to establish two units for traumatised women and children in each area. There are six to eight victim empowerment centres in priority police stations. One of them is in Thohoyandou.

10. Community Policing Forums (CPFs)

The relationship between the SAPS and the people is very good, the Provincial Management said, and leaders of CPFs confirmed this. It was also reported that CPF structures in all areas are very representative and that all areas are represented in the provincial structure.

11. Infrastructure

The delegation heard that SAPS members are accommodated in appalling conditions, not good for a person expected to deliver. The Provincial Management reported that the Housing MEC promised to accommodate police in RDP houses. However, this idea was shot down by the delegation, saying it was not a solution to the housing problem in the SAPS.

In the majority of police stations, there are no Telkom facilities. Of 90 police stations, for instance, 52 do not have Telkom facilities. However, the Provincial Commissioner promised that 20 of these 52 will have Telkom facilities installed and that 32 will still be outstanding. Such police stations are currently using manual systems.

12. Farm attacks

There is a Commission for Rural Safety—members of the SAPS are sitting down with farmers to deal with the issue of farm attacks. In the research conducted, which was a joint venture between the SAPS and the University of the North, it has been found that there is no correlation between farm attacks and politics. More often, it has been found that former farm employees regroup and launch attacks. It has especially been seen to be the case with people from Zimbabwe and Mozambique—it is them who often launch these attacks.

13. Escapes from prison

In 54 of the 90 police stations, prisoners managed to escape.

14. Corruption in SAPS

Up to 2001, 155 cases of police corruption were reported. Most of them were in connection with bribery and the selling of dockets.

B. Local picture—station profile

1. Thohoyandou

Thohoyandou Police Station serves more than three towns and 123 rural villages, all of which are densely populated. The population of Thohoyandou is approximately 1,2 million.

(a) Distribution of personnel

Thohoyandou Police Station has about 378 police officials. Of this number, 30 are female. The number of uniformed police is 320, whilst that of detectives is 58.

(b) Station structure

The station has one director, two senior superintendents, eight superintendents (one female), seven captains, 336 inspectors, 11 sergeants, three constables and 34 civilians. This totals up to 402 personnel.

(c) Satellite stations

The station has five satellite stations, at Phipidi, Shayandima, Makumbane, Sibasa and Matatshe.

Each satellite station has one satellite commander, 16 members and one vehicle.

(d) Crime overview—problematic crimes

A comparison between the 2000 and 2001 statistics shows an increase in the most problematic crimes: Rape—181 vs 202; house-breaking *(residence)*—1 153 vs 958; house-breaking *(business)*—220 vs 289; assault with intent to do grievous bodily harm—1 486 vs 1 287; common robbery—492 vs 461; theft from motor vehicles—316 vs 362. There is also an increase in the following crimes: Stock theft -17 vs 26; witchcraft—129 vs 180; child abuse—9 vs 16); attempted rape—32 vs 94).

(e) CPF activities and community involvement

Active CPFs and subforums exist in the station area. CPF meetings are held on a monthly basis. Community policing projects are being implemented at the station on a continuous basis. The following projects have been implemented:

(i) Youth Against Crime

(ii) Pator Adopt a Station

(iii) Break the Silence

(iv) Women and Child Abuse

(v) Drama Against Crime

(f) Victim empowerment programme

This programme has already been established at the station. The Trauma Centre is based at Tshilidzini Hospital and has been in use since 1 October 2001, operating 24 hours per week. Members are posted on a relief basis and about 60 trained volunteers are also working on relief day and night, assisting in counselling victims.

(g) Vehicles

Uniform police serviceable	27
Detectives serviceable	22
Vehicles in the garage	5
Vehicles boarded	7
Total	61

The ideal number of vehicles needed is 70, and there is a dire need for 4x4 vehicles for off-road terrain work.

(h) Crime prevention operations

(i) Operation Crackdown

Four task teams have been established to address the priority crimes: House-Breaking Task Team, Robbery Task Team, Theft out of and from Motor Vehicle Task Team; and Rape Task Team. All these teams are composed of members from different units—Detectives, CIG, Crime Prevention and Crowd Management Unit.

(ii) Gococ operation

This operation focuses on flashpoints areas.

(iii) Month-end operation

This focuses on common robbery and theft of cellular phones in the CBDs.

(iv) Day-to-day crime prevention operation

This is conducted daily by the Crime Prevention Unit, focusing on crime prevention in general.

(v) Mobile community service centre project

This project was launched by the MEC for Safety, Security and Liason, Me Magadzi, on 2 November 2001. Two specially built vehicles have been handed over to the Station Commissioner for that purpose and are manned by two members from the Detectives Unit and two from the Crime Prevention Unit.

According to the Thohoyandou SAPS, crime in general has decreased by 7% from the year 2000.

2. Mutale

The Mutale Police Station has about 148 police personnel. Of this number, there is one superintendent, six captains, 113 inspectors and 28 police reservists. There are also 14 detectives. They service about 110 765 residents.

(a) Priority crimes

Prioritised crimes are rape, theft, murder and assault. From 1998 to 2000, all these priority crimes have been on the increase. [No statistics available for 2001, except for rape statistics.] In 1998, 26 cases of rape have been reported, in 1999, 49 cases, in 2000, 30 cases, and in 2001 57 cases. Theft cases: 1998 -58; 1999—109; and 2000—127 cases. Murder: 1998—four; 1999—three; and 2000—four. Assault: 1998—488; 1999—679; and 2000—825. In summary, in 1998, 576 priority crimes were reported; 840 were reported in 1999; and 986 in 2000. Mutale SAPS themselves said that crime is increasing at an alarming rate in the area.

(b) Station goals

(i) Crime

To reduce the level of crimes like theft and assault from 2 286 to 1 138 crimes within a period of six months

(ii) Phone calls

To respond immediately to phone calls and complaints

(iii) Time to be served

To arrive immediately at the crime scene

(iv) Training

To train detectives and uniform members in CAS and SWAT

(v) Absenteeism

To reduce the level of absenteeism

(vi) Morale

To build morale among uniform and detective members

(c) Vehicle strength

Vehicles

Serviceable vehicles	6
Vehicle in the garage	1
Boarded vehicles	12
Total	19

The ideal number of vehicles is 25.

(d) Unions

Unions represented in the station are POPCRU and SAPU, and their relationship with the management is good. This was confirmed by the representatives of these two unions.

(e) Public perception of SAPS

The public perception is positive (75%). This is also confirmed by the number of reservists, whom the Station Commander claimed to be learned people like teachers.

3. Messina

The Messina Police Station has about 108 police personnel. The granted number is 122, and the ideal number is 150.

(a) Vehicle strength

There are 16 running vehicles. The ideal number of running vehicles for this station is 25

(b) Women and Children Protection Unit

The Station Commissioner reported that there is a victim support centre and a constant female police member to

whom complaints connected with children and women abuse can be referred.

(c) Unions

Unions represented in the station are POPCRU and SAPU, and their relationship with the management is cordial. This was confirmed by the representatives of the two unions.

(d) CPF

The CPF leader reported that the relationship between the community and the police is very good. The CPF has organised events like Mr and Miss Messina Police Station, with great success. It has also been reported that the response of the community in respect of reservist duty is good.

(e) Conviction rate

The conviction rate is 33%. The delegation reasoned that this low conviction rate defeats the earlier view presented that the community is supportive. The Provincial Commissioner, in turn, attributed this low conviction rate to the quality of detective work. In other instances, he pointed out, the truthfulness of the complainant was doubted and the dockets went missing.

(f) Public perception of SAPS

The delegation was told that the public perception of the SAPS is positive and that most people are very supportive. However, it was pointed out that some white people in the community still insist on being served by white police officials, and that the station should be managed by white officers. Black officers, at times, find themselves being instructed by white officers who take cases from white people while they (white officers) are in their homes.

The leader of the delegation urged the SAPS to deal with those SAPS members who take complaints from their homes instead of directing the complainants to the police station. He appealed to the police to close ranks, irrespective of where anyone comes from. He also pointed out that due to the problem of Zimbabwe immigrants, it is important that the station is equipped optimally.

After these discussions, the delegation was escorted by SAPS members to view the cells, where most of the Zimbabwe immigrants are kept. SAPS members in Messina reported that it cost R4 000 per week to feed and deport these immigrants. Most of them enjoy this R4 000 four times per month, as they return immediately after they have been deported. The temptation for them to return is reinforced by the fact that it takes them 12 km to return to Messina against the 500 km they are expected to travel to return to their respective homes. As a result, most of these people return on the same day they were deported.

6. **Report of the Portfolio Committee on Minerals and Energy on Petition of East Rand Mine Dust Eradication Committee, dated 20 March 2002:**

The Portfolio Committee on Minerals and Energy, having considered the Petition of the East Rand Mine Dust Eradication Committee (ERMDEC) concerning dust problems caused by gold mine slime dumps, reports as follows:

A. Introduction

The petition was referred to the Committee on 6 June 2001. The Committee was instructed to confer with the Portfolio Committees on Environmental Affairs and Tourism and on Provincial and Local Government before reporting its findings.

The Committee has been aware of the problems experienced by Gauteng communities for some time. In this regard its predecessor, the Portfolio Committee on Mineral and Energy Affairs, undertook a study tour of the region in 1998 (a copy of that committee's report can be found in the Announcements, Tablings and Committee Reports document, No. 46 of 1998). Furthermore, the Committee has written several letters to ERMDEC and to MEC Mary Metcalfe in this regard, requesting them to co-operate to resolve the problems experienced by residents in affected areas.

B. Problem statement

While mines and tailing activities were originally developed away from residential areas, township development has breached these buffer zones and communities now reside close to these mine dumps. The most common environmental problems experienced are mine dust and run-off water, which pose a severe risk to the health and safety of residents.

Many of the areas where problems now arise, were mined over a century ago when environmental concerns were not prominent, and no legal obligation in this regard was placed on mines. Subsequently, the mines in question have been abandoned and may now be classified as ownerless or derelict mines. In terms of the Minerals Act, 1991, all working mines are responsible for rehabilitation of the surface of land disturbed by their mining activities. In the case of ownerless or derelict mines, the State, in the absence of the responsible person or company and subject to the availability of funds, acts in the interest of the community by addressing the environmental risks associated with those mines. Although the Department of Minerals and Energy (the Department) has a directorate for mine rehabilitation, the capacity to monitor and oversee the effective rehabilitation of mine dumps is still lacking and under-resourced. The problem faced by the State in rehabilitating these mine dumps is also further impacted upon by the use of the dumps for 4x4 and motorbike off-road racing, as cross-country tracks, for the establishment of walkways and footpaths across the dumps and for the small-scale reworking of dumps.

C. Briefing—12 September 2001

The Committees had a meeting on the Petition on 12 September 2001. They were briefed by Mr Tony Bradford, Chairperson of ERMDEC, Mr Sakkie Blanché, MP, in his capacity as member of ERMDEC, and

Ms Mary Metcalfe, MEC for Agriculture, Conservation, Environment and Land Affairs, Gauteng, in her capacity as chairperson of the Gauteng Mining Pollution Forum Steering Committee. Other members of the steering committee present at the meeting were:

* Mr Pule Malefane—Chairperson of the Agriculture, Conservation, Environment and Land Affairs Standing Committee in the Gauteng Legislature
* Mr Mandla Mentoor—Environmental Justice Network Forum
* Mr John Kilani of the Chamber of Mines
* Mr Sandy Clark of the Department of Minerals and Energy.

Mr Bradford's primary concern during the meeting was that a solution be found for the dust, fires, run-off water and radiation emanating from abandoned mine dumps. ERMDEC had been formed specifically to combat the problem of dust pollution caused by the unrehabilitated mine dumps of ERPM in the Boksburg region. In an effort to make Parliament aware of the problems being experienced by residents of the area, ERMDEC submitted their petition to the Speaker of the National Assembly.

Ms Metcalfe informed the Committees that, although the provincial government had no legal or administrative responsibility as minerals and energy was a national competency, the concurrent function of environmental protection and monitoring was shared between national and provincial governments. Furthermore, there had been enormous public concern about the problems arising from abandoned mine dumps. In view of this, the Gauteng Mining Pollution Steering Committee was established. That committee is divided into the following working groups:

* Steering Committee and Funding, responsible for the overall strategy and planning
* Technology Working Group, to look into the status of water reclamation purification projects, rehabilitation technologies, waste reduction strategies, etc
* Information Working Group, to gather information on ownerless/derelict mines in Gauteng and details of actual rehabilitation work necessary, based on Environmental Management Programme requirements, the status of rehabilitation funds and the determination of shortfall funds, integrated development plans of local government in so far as these impact on land use patterns in proximity to slime dams and disposal and co-disposal information. The Information Working Group was also responsible for communication with all stakeholders.

D. Conclusion

The ERMDEC petition raises a problem which is not restricted to Boksburg residents, but which stretches from the East Rand to the West Rand.

The approach to be followed by the Committee in seeking a resolution to the problem, is that:

* The Department and other government departments must support and participate in the rehabilitation programme as a collective effort to avoid duplication
* The Department has to accept its obligation to remedy the pollution from mines classified as ownerless or derelict. The process of tracing owners should, however, be continued
* The mining industry must realise its ongoing legal responsibility to rehabilitate these dumps, and the "polluter-pays" principle should be seen as the main point of departure for the rehabilitation of mine dumps
* There should be ongoing community consultation and communication on progress, and communities must be encouraged to render support and become involved in resolving the problem
* ERMDEC should join the Gauteng Mining Pollution Forum Steering Committee.

The Committee will continue to monitor the situation and offer support where necessary, and will accommodate in its programme updates from stakeholders and particular affected communities for as long as the problem persists.

The Committee will also request regular updates from the Department. The issues raised in the ERMDEC Petition are fully accommodated in the programme of the Gauteng Mining Pollution Forum Steering Committee. The ERMDEC, being part of the aforementioned committee, therefore needs to be a primary point of departure for it in seeking resolution to the issues raised in the Petition. The Committee (and the Portfolio Committees on Provincial and Local Government and on Environmental Affairs and Tourism) fully support the process undertaken by the Steering Committee.

Report to be considered.

7. **Report of the Portfolio Committee on Transport on Draft White Paper on National Commercial Ports Policy, dated 20 March 2002:**

The Portfolio Committee on Transport, having conducted public hearings on the Draft White Paper on National Commercial Ports Policy, reports as follows:

1. The national Department of Transport briefed the Committee on 13 March 2002 on the Draft White Paper on National Commercial Ports Policy. This briefing followed Committee hearings on an earlier draft and submissions made to the Committee by a range of stakeholders in the course of 2001. In this context, the Committee has also conducted oversight visits to the ports of Cape Town, Durban and Richards Bay.
2. The Committee welcomed the opportunity for further engagement on the Draft White Paper. It also welcomed many amendments that reflect concerns raised by the Committee, and by stakeholders in earlier hearings of the Committee.
3. The Committee believes, however, that further amendments are required in the following four significant respects:

(a) There is vagueness about the end-state institutional location of the National Ports Authority (NPA). Given the largely regulatory, landlord and strategic policy-making role envisaged for the NPA, we believe that the White Paper must unambiguously state that the NPA should, in its end-state, be answerable to the national Department of Transport.

(b) The present draft makes a number of proposals on port operations restructuring. The Committee believes that any such restructuring must be based on in-depth research into the sustainability of any proposal, and that this restructuring must involve effective negotiations within the context of the National Framework Agreement on the restructuring of state-owned enterprises.

(c) The present draft introduces the notion of inter-port competition. The Committee believes that the White Paper must make it clear that any inter-port competition should be strictly within the framework of an overall, emerging South African growth and development strategy.

(d) In general, the White Paper should more clearly emphasise the critical and overarching necessity of aligning port policy with an emerging national growth and development strategy.

8. **Report of the Portfolio Committee on Agriculture and Land Affairs, dated 4 June 2002:**

The Portfolio Committee on Agriculture and Land Affairs, having considered the application by the National Agricultural Marketing Council (NAMC) for the implementation of statutory measures on potatoes, reports, in terms of section 15 of the Marketing of Agricultural Products Act, 1996, that it has not approved the recommendations of the Council.

The Committee further reports that, during the course of its deliberations on the application, it was noted that there was a lot of mismanagement of funds and that the Potato Trust lost about R22 million as a result thereof.

The Committee, in view of the above, is of the opinion that a full forensic audit of the financial books and assets of Potato SA, pertaining to the levies collected by Potato SA, should be conducted by the NAMC, and that a subsequent report should be presented to the Committee.

While the Committee in principle agrees on the importance of the research component raised in the application, the Ministry and the Department of Agriculture should in the meantime engage in negotiations with the industry to establish a new Deeds of Trust in line with other commodity groups.

National Council of Provinces:

1. Report of the Select Committee on Labour and Public Enterprises on the ***Electronic Communications and Transactions Bill*** [B 8B—2002] (National Assembly—sec 75), dated 18 June 2002:

The Select Committee on Labour and Public Enterprises, having considered the subject of the ***Electronic Communications and Transactions Bill*** [B 8B—2002] (National Assembly—sec 75), referred to it, reports that it has agreed to the Bill.

2. Report of the Select Committee on Security and Constitutional Affairs on the ***Private Security Industry Levies Bill*** [B 11—2002] (National Assembly—sec 77), dated 19 June 2002:

> The Select Committee on Security and Constitutional Affairs, having considered the subject of the ***Private Security Industry Levies Bill*** [B 11—2002] (National Assembly—sec 77), referred to it, reports that it has agreed to the Bill.

No 45—2002] FOURTH SESSION, SECOND PARLIAMENT

REPUBLIC OF SOUTH AFRICA

MINUTES OF PROCEEDINGS

OF

NATIONAL ASSEMBLY

THURSDAY, 20 JUNE 2002

1. The House met at 14:00.

2. The Chairperson of Committees took the Chair and requested members to observe a moment of silence for prayers or meditation.

3. [14:02] Notices of motion.

4. [14:16] The Chief Whip of the Majority Party moved without notice: That the House—

   (1) notes that today, 20 June 2002, is World Refugee Day;

   (2) recognises that 2002 marks the 51st anniversary of the adoption of the 1951 United Nations Convention Relating to the Status of Refugees, which together with its 1967 Protocol are the most broadly accepted foundation instruments of the international protection regime;

   (3) notes with alarm the expanding number of refugees around the world and their terrible plight; and

   (4) affirms its continued commitment to addressing the plight of refugees.

   Agreed to.

5. FIRST ORDER [14:17]

   Introduction—***Taxation Laws Amendment Bill*** [B 26—2002] (National Assembly—sec 77).

   The Minister of Finance delivered his introductory speech and introduced the Bill.

   Bill, together with the introductory speech, referred for consideration and report to the Portfolio Committee on Finance.

6. SECOND ORDER [14:18]

   Decision of Question on Votes and Schedule—***Appropriation Bill*** [B 4—2002] (National Assembly—sec 77).

Vote No 1—The Presidency—put.

Declarations of vote made on behalf of Democratic Party and African National Congress.

Vote agreed to (Democratic Party and Federal Alliance dissenting). [14:24] Decision of Question on Votes and Schedule—***Appropriation Bill*** [B 4—2002] (National Assembly—sec 77) interrupted.

The Speaker made an announcement concerning the publication and implementation of the "Crossing-the-Floor" legislation and further announced that the initial 15-day window period during which members and parties may change their status would extend from 21 June to 5 July 2002.

[14:27] Decision of Question on Votes and Schedule—***Appropriation Bill*** [B 4—2002] (National Assembly—sec 77) resumed.

Vote No 2—Parliament—put.

Declarations of vote made on behalf of African Christian Democratic Party, Inkatha Freedom Party and African National Congress.

Vote agreed to.

Vote No 3—Foreign Affairs—put.

Declarations of vote made on behalf of Democratic Party, African Christian Democratic Party and African National Congress.

Vote agreed to.

Vote No 4—Home Affairs—put.

Declarations of vote made on behalf of Inkatha Freedom Party, African Christian Democratic Party and African National Congress.

Vote agreed to.

Vote No 5—Provincial and Local Government—put.

Declarations of vote made on behalf of African Christian Democratic Party, Freedom Front and African National Congress.

Vote agreed to (African Christian Democratic Party, Democratic Party and Freedom Front dissenting).

Vote No 6—Public Works—put.

Declarations of vote made on behalf of African Christian Democratic Party and African National Congress.

Vote agreed to.

Vote No 7—Government Communication and Information System—put.

Vote agreed to (Democratic Party and Federal Alliance dissenting).

Vote No 8—National Treasury—agreed to.

Vote No 9—Public Enterprises—put.

Declarations of vote made on behalf of Democratic Party, New National Party, African Christian Democratic Party, Pan Africanist Congress of Azania and African National Congress.

Vote agreed to (Democratic Party and Federal Alliance dissenting)

Vote No 10—Public Service and Administration—agreed to.

Vote No 11—Public Service Commission—agreed to.

Vote No 12—South African Management Development Institute—agreed to.

Vote No 13—Statistics South Africa—agreed to.

Vote No 14—Arts, Culture, Science and Technology—put.

Declarations of vote made on behalf of Freedom Front, Minority Front and African National Congress.

Vote agreed to.

Vote No 15—Education—put.

Declarations of vote made on behalf of Democratic Party, Inkatha Freedom Party, New National Party, African Christian Democratic Party, Freedom Front and African National Congress.

Division demanded.

The House divided:

AYES—242: Abram, S; Ainslie, A R; Asmal, A K; Balfour, B M N; Baloyi, M R; Baloyi, O S B; Bekker, H J; Benjamin, J; Bhengu, F; Blanche, J P I; Bloem, D V; Booi, M S; Botha, N G W; Buthelezi, M G; Buthelezi, M N; Cachalia, I M; Carrim, Y I; Chalmers, J; Chauke, H P; Chiba, L; Chikane, M M; Chiwayo, L L; Chohan-Kota, F I; Cindi, N V; Coetzee-Kasper, M P; Cronin, J P; Cwele, S C; Davies, R H; De Lange, J H; Diale, L N; Didiza, A T; Dithebe, S L; Ditshetelo, P H K; Dlali, D M; Douglas, B M; Duma, N M; Dyani, M M Z; Erwin, A; Fankomo, F C; Fazzie, M H; Ferreira, E T; Fihla, N B; Fraser-Moleketi, G J; Frolick, C T; Gandhi, E; Gcina, C I; George, M E; Gerber, P A; Gillwald, C E; Gomomo, P J; Goniwe, M T; Goosen, A D; Gumede, D M; Hajaig, F; Hanekom, D A; Hendrickse, P A C; Hlaneki, C J M; Hlengwa, M W; Hogan, B A; Jassat, E E; Jeffery, J H; Joemat, R R; Jordan, Z P; Kalako, M U; Kannemeyer, B W; Kasienyane, O R; Kasrils, R; Kati, J Z; Kekana, N N; Kgarimetsa, J J; Kgauwe, Q J; Kgwele, L M; Komphela, B M; Koornhof, G W; Kota, Z A; Kotwal, Z; Lamani, N E; Landers, L T; Lekgoro, M K; Lekota, M G P; Lishiva, T E; Lobe, M C; Lockey, D; Louw, J T; Louw, S K; Lucas, E J; Lyle, A G; Mabe, L; Mabena, D C; Madlala-Routledge, N C; Magashule, E S; Magazi, M N; Magubane, N E; Magwanishe, G; Mahlangu, M J; Mahlawe, N; Mahomed, F; Maimane, D S; Maine, M S; Makanda, W G; Makasi, X C; Malebana, H F; Maloney, L; Malumise, M M; Manuel, T A; Maphalala, M A; Mapisa-Nqakula, N N; Martins, B A D; Masala, M M; Maserumule, F T; Mashimbye, J N; Masithela, N H; Masutha, M T; Mathibela, N F; Matsepe-Casaburri, I F; Maunye, M M; Mayatula, S M; Mbadi, L M; Mbete, B; Mbombo, N D; Mdladlana, M M S; Mfundisi, I S; Mguni, B A; Middleton, N S; Mkono, D G; Mlangeni, A; Mnandi, P N; Mnumzana, S K; Modise, T R; Modisenyane, L J; Moeketse, K M; Mofokeng, T R; Mohamed, I J; Mohlala, R J B; Mokoena, D A; Molebatsi, M A; Molewa, B G; Moloi, J; Moloto, K A; Mongwaketse, S J; Montsitsi, S D; Moonsamy, K; Moosa, M V; Moropa, R M; Morutoa, M R; Morwamoche, K W; Moss, M I; Mothoagae, P K; Mpahlwa, M; Mpaka, H M; Mpontshane, A M; Mthembi-Mahanyele, S D; Mthembu, B; Mtsweni, N S; Mufamadi, F S; Mutsila, I; Mzizi, M A; Mzondeki, M J G; Nair, B; Nash, J H; Ncinane, I Z; Ndlovu, V B; Ndzanga, R A; Nel, A C; Nene, N M; Newhoudt-Druchen, W S; Ngaleka, N E; Ngcengwane, N D; Ngculu, L V J; Ngubane, H;

Ngubeni, J M; Nhleko, N P; Nhlengethwa, D G; Njobe, M A A; Nkabinde, N C; Nobunga, B J; Nqakula, C; Nqodi, S B; Ntombela, S H; Ntshulana-Bhengu, N R; Ntuli, B M; Ntuli, S B; Nzimande, L P M; Olifant, D A A; Oosthuizen, G C; Pahad, A G H; Pahad, E G; Phadagi, M G; Pheko, S E M; Phohlela, S; Pieterse, R D; Rabinowitz, R; Radebe, J T; Rajbally, S; Ramakaba-Lesiea, M M; Ramgobin, M; Ramotsamai, C M P; Rasmeni, S M; Reid, L R R; Ripinga, S S; Roopnarain, U; Saloojee, E; Schneeman, G D; Schoeman, E A; Scott, M I; Seaton, S A; Sekgobela, P S; September, C C; September, R K; Shilubana, T P; Shope, N R; Sigcau, S N; Sigcawu, A N; Sigwela, E M; Sikakane, M R; Sisulu, L N; Sithole, D J; Skhosana, W M; Skosana, M B; Skweyiya, Z S T; Slabbert, J H; Smith, V G; Solo, B M; Sonjica, B P; Sosibo, J E; Sotyu, M M; Tinto, B; Tolo, L J; Tshabalala-Msimang, M E; Tsheole, N M; Twala, N M; Vadi, I; Van den Heever, R P Z; Van der Merwe, S C; Van Wyk, A (Annelize); Van Wyk, J F; Van Wyk, N; Vos, S C; Xingwana, L M T; Zita, L; Zondo, R P; Zulu, N E.

Noes—63: Andrew, K M; Bakker, D M; Bell, B G; Beukman, F; Blaas, A; Blanché, J P I; Borman, G M; Botha, A J; Bruce, N S; Camerer, S M; Clelland-Stokes, N J; Cupido, P W; Da Camara, M L; Delport, J T; Dowry, J J; Dudley, C; Durand, J; Ellis, M J; Farrow, S B; Geldenhuys, B L; Gous, S J; Green, L M; Greyling, C H F; Grobler, G A J; Groenewald, P J; Heine, R J; Jankielsohn, R; Kalyan, S V; Kasrils, R; Le Roux, J W; Lowe, C M; Madasa, Z L; Maluleke, D K; Meshoe, K R J; Moorcroft, E K; Morkel , C M; Mulder, C P; Mulder, P W A; Nel, A H; Ntuli, R S; Odendaal, W A; Olckers, M E; Opperman, S E; Pillay, S; Pretorius, I J; Rabie, P J; Redcliffe, C R; Schalkwyk, P J; Schippers, J; Schmidt, H C; Selfe, J; Semple, J A; Simmons, S; Smuts, M; Sono, B N; Southgate, R M; Swart, P S; Swart, S N; Taljaard, R; Van der Merwe, A S; Van Deventer, F J; Van Jaarsveld, A Z A; Waters, M.

Vote accordingly agreed to.

Vote No 16—Health—put.

Declarations of vote made on behalf of Democratic Party, Inkatha Freedom Party, New National Party, African Christian Democratic Party, Freedom Front, Minority Front and African National Congress.

Division demanded.

The House divided:

Ayes—252: Abram, S; Ainslie, A R; Asmal, A K; Bakker, D M; Balfour, B M N; Baloyi, M R; Baloyi, O S B; Benjamin, J; Beukman, F; Bhengu, F; Blaas, A; Bloem, D V; Booi, M S; Botha, N G W; Buthelezi, M N; Cachalia, I M; Camerer, S M; Carrim, Y I; Cassim, M F; Chalmers, J; Chauke, H P; Chiba, L; Chikane, M M; Chiwayo, L L; Chohan-Kota, F I; Cindi, N V; Coetzee-Kasper, M P; Cronin, J P; Cwele, S C; Davies, R H; De Lange, J H; Diale, L N; Didiza, A T; Dithebe, S L; Ditshetelo, P H K; Douglas, B M; Dowry, J J; Duma, N M; Durand, J; Dyani, M M Z; Erwin, A; Fankomo, F C; Fazzie, M H; Fihla, N B; Fraser-Moleketi, G J; Frolick, C T; Gandhi, E; Gcina, C I; Geldenhuys, B L; George, M E; Gerber, P A; Gillwald, C E; Gomomo, P J; Goniwe, M T; Goosen, A D; Gous, S J; Greyling, C H F; Gumede, D M; Hajaig, F; Hanekom, D A; Hendrickse, P A C; Hlaneki, C J M; Hogan, B A; Jassat, E E; Jeffery, J H; Joemat, R R; Jordan, Z P; Kalako, M U; Kannemeyer, B W; Kasienyane, O R; Kasrils, R; Kati, J Z; Kekana, N N; Kgarimetsa, J J; Kgauwe, Q J; Kgwele, L M; Komphela, B M; Koornhof, G W; Kota, Z A; Kotwal, Z; Lamani, N E; Landers, L T; Le Roux, J W; Lekgoro, M K; Lekota, M G P; Lishiva, T E; Lobe, M C; Lockey, D; Louw, J T; Louw, S K; Lucas, E J; Lyle, A G; Mabe, L; Mabena, D C; Madlala-Routledge, N C; Magashule, E S; Magazi, M N; Magubane, N E; Magwanishe, G; Mahlangu, M J; Mahlawe, N; Mahomed,

F; Maimane, D S; Maine, M S; Makanda, W G; Makasi, X C; Malebana, H F; Maloney, L; Malumise, M M; Manuel, T A; Maphalala, M A; Mapisa-Nqakula, N N; Martins, B A D; Masala, M M; Maserumule, F T; Mashimbye, J N; Masithela, N H; Masutha, M T; Mathibela, N F; Matsepe-Casaburri, I F; Maunye, M M; Mayatula, S M; Mbadi, L M; Mbete, B; Mbombo, N D; Mdladlana, M M S; Mfundisi, I S; Mguni, B A; Mkono, D G; Mlangeni, A; Mnandi, P N; Mnumzana, S K; Modise, T R; Modisenyane, L J; Moeketse, K M; Mofokeng, T R; Mohamed, I J; Mohlala, R J B; Mokoena, D A; Molebatsi, M A; Molewa, B G; Moloi, J; Moloto, K A; Mongwaketse, S J; Montsitsi, S D; Moonsamy, K; Moosa, M V; Morkel, C M; Moropa, R M; Morutoa, M R; Morwamoche, K W; Moss, M I; Mothoagae, P K; Mpahlwa, M; Mpaka, H M; Mthembi-Mahanyele, S D; Mthembu, B; Mtsweni, N S; Mufamadi, F S; Mutsila, I; Mzizi, M A; Mzondeki, M J G; Nair, B; Nash, J H; Ncinane, I Z; Ndlovu, V B; Ndzanga, R A; Nel, A C; Nel, A H; Nene, N M; Newhoudt-Druchen, W S; Ngaleka, N E; Ngcengwane, N D; Ngculu, L V J; Ngubane, H; Ngubeni, J M; Nhleko, N P; Nhlengethwa, D G; Njobe, M A A; Nkabinde, N C; Nobunga, B J; Nqakula, C; Nqodi, S B; Ntombela, S H; Ntshulana-Bhengu, N R; Ntuli, B M; Ntuli, M B; Ntuli, S B; Nzimande, L P M; Olckers, M E; Olifant, D A A; Oosthuizen, G C; Pahad, A G H; Pahad, E G; Phadagi, M G; Pheko, S E M; Phohlela, S; Pieterse, R D; Pretorius, I J; Rabie, P J; Radebe, J T; Rajbally, S; Ramakaba-Lesiea, M M; Ramgobin, M; Ramotsamai, C M P; Reid, L R R; Ripinga, S S; Saloojee, E; Schneeman, G D; Schoeman, E A; Scott, M I; Seaton, S A; Seeco, M A; Sekgobela, P S; September, C C; September, R K; Shilubana, T P; Shope, N R; Sigcau, S N; Sigcawu, A N; Sigwela, E M; Sikakane, M R; Simmons, S; Sisulu, L N; Sithole, D J; Skhosana, W M; Skosana, M B; Skweyiya, Z S T; Smith, V G; Solo, B M; Sonjica, B P; Sosibo, J E; Sotyu, M M; Tinto, B; Tolo, L J; Tshabalala-Msimang, M E; Tsheole, N M; Twala, N M; Uys, P; Vadi, I; Van den Heever, R P Z; Van der Merwe, A S; Van der Merwe, S C; Van Deventer, F J; Van Jaarsveld, A Z A; Van Wyk, A (Annelize); Van Wyk, J F; Van Wyk, N; Vos, S C; Xingwana, L M T; Zondo, R P; Zulu, N E.

Noes—40: Andrew, K M; Bell, B G; Blanche, J P I; Borman, G M; Botha, A J; Bruce, N S; Clelland-Stokes, N J; Cupido, P W; Da Camara, M L; Delport, J T; Dudley, C; Ellis, M J; Farrow, S B; Gore, V C; Green, L M; Grobler, G A J; Groenewald, P J; Heine, R J; Jankielsohn, R; Kalyan, S V; Lowe, C M; Madasa, Z L; Maluleke, D K; Meshoe, K R J; Moorcroft, E K; Mulder, C P; Ntuli, R S; Opperman, S E; Pillay, S; Schalkwyk, P J; Schmidt, H C; Selfe, J; Semple, J A; Smuts, M; Sono, B N; Southgate, R M; Swart, P S; Swart, S N; Taljaard, R; Waters, M.

Vote accordingly agreed to.

Vote No 17—Housing—agreed to.

Vote No 18—Social Development—put.

Declarations of vote made on behalf of Democratic Party and African National Party.

Vote agreed to.

Vote No 19—Sport and Recreation South Africa—put.

Declaration of vote made on behalf of African National Congress.

Vote agreed to (Democratic Party, Federal Alliance and Freedom Front dissenting).

Vote No 20—Correctional Services—put.

Declarations of vote made on behalf of Democratic Party, African Christian Democratic Party, Inkatha Freedom Party and African National Congress.

Division demanded.

The House divided:

AYES—267: Abram, S; Ainslie, A R; Asmal, A K; Balfour, B M N; Baloyi, M R; Baloyi, O S B; Bekker, H J; Benjamin, J; Beukman, F; Bhengu, F; Blaas, A; Bloem, D V; Booi, M S; Botha, N G W; Buthelezi, M G; Buthelezi, M N; Cachalia, I M; Camerer, S M; Carrim, Y I; Cassim, M F; Chalmers, J; Chauke, H P; Chiba, L; Chikane, M M; Chiwayo, L L; Chohan-Kota, F I; Cindi, N V; Coetzee-Kasper, M P; Cronin, J P; Cwele, S C; Davies, R H; De Lange, J H; Diale, L N; Didiza, A T; Dithebe, S L; Ditshetelo, P H K; Dlali, D M; Doidge, G Q M; Douglas, B M; Dowry, J J; Dudley, C; Duma, N M; Durand, J; Dyani, M M Z; Erwin, A; Fankomo, F C; Fazzie, M H; Fihla, N B; Fraser-Moleketi, G J; Frolick, C T; Gandhi, E; Gcina, C I; Geldenhuys, B L; George, M E; Gerber, P A; Gillwald, C E; Gomomo, P J; Goniwe, M T; Goosen, A D; Gous, S J; Green, L M; Greyling, C H F; Groenewald, P J; Gumede, D M; Hajaig, F; Hanekom, D A; Hendrickse, P A C; Hlaneki, C J M; Hogan, B A; Jassat, E E; Jeffery, J H; Joemat, R R; Jordan, Z P; Kalako, M U; Kannemeyer, B W; Kasienyane, O R; Kasrils, R; Kati, J Z; Kekana, N N; Kgarimetsa, J J; Kgauwe, Q J; Kgwele, L M; Komphela, B M; Koornhof, G W; Kota, Z A; Kotwal, Z; Lamani, N E; Landers, L T; Le Roux, J W; Lekgoro, M K; Lekota, M G P; Lishiva, T E; Lobe, M C; Lockey, D; Louw, J T; Louw, S K; Lucas, E J; Lyle, A G; Mabe, L; Mabena, D C; Madasa, Z L; Madlala-Routledge, N C; Magashule, E S; Magazi, M N; Magubane, N E; Magwanishe, G; Mahlangu, M J; Mahlawe, N; Mahomed, F; Maimane, D S; Maine, M S; Makanda, W G; Makasi, X C; Malebana, H F; Maloney, L; Malumise, M M; Manuel, T A; Maphalala, M A; Mapisa-Nqakula, N N; Martins, B A D; Masala, M M; Maserumule, F T; Mashimbye, J N; Masithela, N H; Mathibela, N F; Matsepe-Casaburri, I F; Maunye, M M; Mayatula, S M; Mbadi, L M; Mbete, B; Mbombo, N D; Mbuyazi, L R; Mdladlana, M M S; Meshoe, K R J; Mfundisi, I S; Mguni, B A; Mkono, D G; Mlambo-Ngcuka, P G; Mlangeni, A; Mnandi, P N; Mnumzana, S K; Modise, T R; Modisenyane, L J; Moeketse, K M; Mofokeng, T R; Mohamed, I J; Mohlala, R J B; Mokoena, D A; Molebatsi, M A; Molewa, B G; Moloi, J; Moloto, K A; Mongwaketse, S J; Montsitsi, S D; Moonsamy, K; Moosa, M V; Morkel, C M; Moropa, R M; Morutoa, M R; Morwamoche, K W; Moss, M I; Mothoagae, P K; Mpahlwa, M; Mpaka, H M; Mpontshane, A M; Mthembi-Mahanyele, S D; Mthembu, B; Mtsweni, N S; Mufamadi, F S; Mulder, C P; Mutsila, I; Mzizi, M A; Mzondeki, M J G; Nair, B; Nash, J H; Ncinane, I Z; Ndlovu, V B; Ndzanga, R A; Nel, A C; Nene, N M; Newhoudt-Druchen, W S; Ngaleka, N E; Ngcengwane, N D; Ngculu, L V J; Ngubane, H; Ngubeni, J M; Nhleko, N P; Nhlengethwa, D G; Njobe, M A A; Nkabinde, N C; Nobunga, B J; Nqakula, C; Nqodi, S B; Ntombela, S H; Ntshulana-Bhengu, N R; Ntuli, B M; Ntuli, M B; Ntuli, S B; Nzimande, L P M; Olifant, D A A; Oosthuizen, G C; Pahad, A G H; Pahad, E G; Phadagi, M G; Pheko, S E M; Phohlela, S; Pieterse, R D; Pretorius, I J; Rabie, P J; Radebe, J T; Rajbally, S; Ramakaba-Lesiea, M M; Ramgobin, M; Ramotsamai, C M P; Rasmeni, S M; Reid, L R R; Ripinga, S S; Saloojee, E; Schippers, J; Schneeman, G D; Schoeman, E A; Schoeman, R S; Scott, M I; Seaton, S A; Seeco, M A; Sekgobela, P S; September, C C; September, R K; Shilubana, T P; Shope, N R; Sibiya, M S M; Sigcau, S N; Sigcawu, A N; Sigwela, E M; Sikakane, M R; Simmons, S; Sithole, D J; Skhosana, W M; Skosana, M B; Skweyiya, Z S T; Smith, V G; Solo, B M; Sonjica, B P; Sosibo, J E; Sotyu, M M; Southgate, R M; Swart, S N; Tinto, B; Tolo, L J; Tshabalala-Msimang, M E; Tsheole, N M; Twala, N M; Uys, P; Vadi, I; Van den Heever, R P Z; Van der

Merwe, A S; Van der Merwe, S C; Van Deventer, F J; Van Jaarsveld, A Z A; Van Wyk, A (Annelize); Van Wyk, J F; Van Wyk, N; Vos, S C; Xingwana, L M T; Zita, L; Zondo, R P; Zulu, N E.

NOES—33: Andrew, K M; Bell, B G; Blanché, J P I; Borman, G M; Botha, A J; Bruce, N S; Clelland-Stokes, N J; Cupido, P W; Da Camara, M L; Ellis, M J; Farrow, S B; Gore, V C; Grobler, G A J; Heine, R J; Jankielsohn, R; Kalyan, S V; Lee, T D; Lowe, C M; Maluleke, D K; Moorcroft, E K; Ntuli, R S; Opperman, S E; Pillay, S; Schalkwyk, P J; Schmidt, H C; Selfe, J; Semple, J A; Seremane, W J; Smuts, M; Sono, B N; Swart, P S; Taljaard, R; Waters, M.

Vote accordingly agreed to.

Vote No 21—Defence—put.

Declarations of vote made on behalf of Democratic Party, Inkatha Freedom Party, Freedom Front and African National Congress.

Division demanded.

The House divided:

AYES—263: Abram, S; Ainslie, A R; Asmal, A K; Balfour, B M N; Baloyi, M R; Baloyi, O S B; Benjamin, J; Beukman, F; Bhengu, F; Blaas, A; Bloem, D V; Booi, M S; Botha, N G W; Buthelezi, M G; Buthelezi, M N; Cachalia, I M; Camerer, S M; Cassim, M F; Chalmers, J; Chauke, H P; Chiba, L; Chikane, M M; Chiwayo, L L; Chohan-Kota, F I; Cindi, N V; Coetzee-Kasper, M P; Cronin, J P; Cwele, S C; Davies, R H; De Lange, J H; Diale, L N; Didiza, A T; Dithebe, S L; Ditshetelo, P H K; Dlali, D M; Doidge, G Q M; Dowry, J J; Dudley, C; Duma, N M; Durand, J; Dyani, M M Z; Erwin, A; Fankomo, F C; Fazzie, M H; Fihla, N B; Fraser-Moleketi, G J; Frolick, C T; Gandhi, E; Gcina, C I; Geldenhuys, B L; George, M E; Gerber, P A; Gillwald, C E; Gomomo, P J; Goniwe, M T; Goosen, A D; Gous, S J; Green, L M; Greyling, C H F; Groenewald, P J; Gumede, D M; Hajaig, F; Hanekom, D A; Hendrickse, P A C; Hlaneki, C J M; Hogan, B A; Jassat, E E; Jeffery, J H; Joemat, R R; Jordan, Z P; Kalako, M U; Kannemeyer, B W; Kasienyane, O R; Kasrils, R; Kati, J Z; Kekana, N N; Kgarimetsa, J J; Kgauwe, Q J; Kgwele, L M; Komphela, B M; Koornhof, G W; Kota, Z A; Kotwal, Z; Lamani, N E; Landers, L T; Le Roux, J W; Lee, T D; Lekgoro, M K; Lekota, M G P; Lishiva, T E; Lobe, M C; Lockey, D; Louw, J T; Louw, S K; Lucas, E J; Lyle, A G; Mabe, L; Mabena, D C; Madasa, Z L; Madlala-Routledge, N C; Magashule, E S; Magazi, M N; Magubane, N E; Magwanishe, G; Mahlangu, M J; Mahlawe, N; Mahomed, F; Maimane, D S; Maine, M S; Makanda, W G; Makasi, X C; Malebana, H F; Maloney, L; Manuel, T A; Maphalala, M A; Mapisa-Nqakula, N N; Martins, B A D; Masala, M M; Mashimbye, J N; Masithela, N H; Masutha, M T; Mathibela, N F; Matsepe-Casaburri, I F; Maunye, M M; Mayatula, S M; Mbadi, L M; Mbete, B; Mbombo, N D; Mbuyazi, L R; Mdladlana, M M S; Meshoe, K R J; Mfundisi, I S; Mguni, B A; Middleton, N S; Mkono, D G; Mlambo-Ngcuka, P G; Mlangeni, A; Mnandi, P N; Mnumzana, S K; Modise, T R; Modisenyane, L J; Moeketse, K M; Mofokeng, T R; Mohamed, I J; Mohlala, R J B; Mokoena, D A; Molebatsi, M A; Molewa, B G; Moloi, J; Moloto, K A; Mongwaketse, S J; Montsitsi, S D; Moonsamy, K; Moosa, M V; Morkel, C M; Moropa, R M; Morutoa, M R; Morwamoche, K W; Moss, M I; Mothoagae, P K; Mpahlwa, M; Mpaka, H M; Mpontshane, A M; Mthembi-Mahanyele, S D; Mthembu, B; Mtsweni, N S; Mufamadi, F S; Mulder, C P; Mutsila, I; Mzizi, M A; Mzondeki, M J G; Nair, B; Nash, J H; Ncinane, I Z; Ndlovu, V B; Ndzanga, R A; Nel, A C; Nene, N M; Newhoudt-Druchen, W S; Ngaleka, N E; Ngcengwane, N D; Ngculu, L V J; Ngubane, H; Ngubeni, J M; Nhleko, N P; Nhlengethwa, D G; Njobe, M A A; Nkabinde, N C; Nobunga, B J;

Nqakula, C; Nqodi, S B; Ntombela, S H; Ntshulana-Bhengu, N R; Ntuli, B M; Ntuli, M B; Ntuli, S B; Nzimande, L P M; Olifant, D A A; Oosthuizen, G C; Pahad, A G H; Pahad, E G; Phadagi, M G; Pheko, S E M; Phohlela, S; Pieterse, R D; Pretorius, I J; Radebe, J T; Rajbally, S; Ramakaba-Lesiea, M M; Ramgobin, M; Ramotsamai, C M P; Rasmeni, S M; Reid, L R R; Ripinga, S S; Saloojee, E; Schippers, J; Schneeman, G D; Schoeman, E A; Schoeman, R S; Scott, M I; Seeco, M A; Sekgobela, P S; September, C C; September, R K; Shilubana, T P; Shope, N R; Sibiya, M S M; Sigcau, S N; Sigcawu, A N; Sigwela, E M; Sikakane, M R; Simmons, S; Sithole, D J; Skhosana, W M; Skosana, M B; Skweyiya, Z S T; Smith, V G; Solo, B M; Sonjica, B P; Sosibo, J E; Sotyu, M M; Southgate, R M; Swart, S N; Tinto, B; Tolo, L J; Tshabalala-Msimang, M E; Tsheole, N M; Twala, N M; Uys, P; Vadi, I; Van den Heever, R P Z; Van der Merwe, A S; Van der Merwe, S C; Van Deventer, F J; Van Jaarsveld, A Z A; Van Wyk, A (Annelize); Van Wyk, J F; Van Wyk, N; Vos, S C; Xingwana, L M T; Zita, L; Zondo, R P; Zulu, N E.

Noes—33: Andrew, K M; Bell, B G; Blanche, J P I; Borman, G M; Botha, A J; Bruce, N S; Clelland-Stokes, N J; Cupido, P W; Da Camara, M L; Ellis, M J; Farrow, S B; Gore, V C; Grobler, G A J; Heine, R J; Jankielsohn, R; Kalyan, S V; Lee, T D; Lowe, C M; Maluleke, D K; Moorcroft, E K; Ntuli, R S; Opperman, S E; Pillay, S; Schalkwyk, P J; Schmidt, H C; Selfe, J; Semple, J A; Seremane, W J; Smuts, M; Sono, B N; Swart, P S; Taljaard, R; Waters, M.

Vote accordingly agreed to.

Vote No 22—Independent Complaints Directorate—put.

Declarations of vote made on behalf of New National Party and African National Congress.

Vote agreed to.

Vote No 23—Justice and Constitutional Development—put.

Declarations of vote made on behalf of Democratic Party, Inkatha Freedom Party, New National Party, African Christian Democratic Party and African National Congress.

Vote agreed to.

Vote No 24—Safety and Security—put.

Declarations of vote made on behalf of Democratic Party, Inkatha Freedom Party, African Christian Democratic Party, Freedom Front and African National Congress.

Vote agreed to (Democratic Party, African Christian Democratic Party, Federal Alliance and Freedom Front dissenting).

Vote No 25—Agriculture—agreed to.

Vote No 26—Communications—put.

Declarations of vote made on behalf of Democratic Party, African Christian Democratic Party and African National Congress.

Division demanded.

The House divided:

Ayes—251: Abram, S; Ainslie, A R; Asmal, A K; Bakker, D M; Balfour, B M N; Baloyi, M R; Benjamin, J; Blaas, A; Bloem, D V; Booi, M S; Botha, N G W; Buthelezi, M G; Buthelezi, M N; Cachalia, I M; Camerer, S M; Carrim, Y I; Cassim, M F; Chalmers, J; Chiba, L; Chikane, M M; Chiwayo,

L L; Chohan-Kota, F I; Cindi, N V; Coetzee-Kasper, M P; Cronin, J P; Cwele, S C; Davies, R H; De Lange, J H; Diale, L N; Didiza, A T; Dithebe, S L; Ditshetelo, P H K; Dlali, D M; Doidge, G Q M; Dowry, J J; Duma, N M; Durand, J; Dyani, M M Z; Erwin, A; Fankomo, F C; Fazzie, M H; Ferreira, E T; Fihla, N B; Fraser-Moleketi, G J; Gandhi, E; Gcina, C I; Geldenhuys, B L; George, M E; Gerber, P A; Gillwald, C E; Gomomo, P J; Goniwe, M T; Goosen, A D; Gous, S J; Greyling, C H F; Gumede, D M; Hajaig, F; Hanekom, D A; Hlaneki, C J M; Hogan, B A; Jassat, E E; Jeffery, J H; Joemat, R R; Jordan, Z P; Kalako, M U; Kannemeyer, B W; Kasienyane, O R; Kasrils, R; Kati, J Z; Kekana, N N; Kgarimetsa, J J; Kgauwe, Q J; Kgwele, L M; Komphela, B M; Koornhof, G W; Kota, Z A; Kotwal, Z; Lamani, N E; Landers, L T; Le Roux, J W; Lekgoro, M K; Lishiva, T E; Lobe, M C; Lockey, D; Louw, J T; Louw, S K; Lucas, E J; Lyle, A G; Mabe, L; Mabena, D C; Madasa, Z L; Madlala-Routledge, N C; Magashule, E S; Magazi, M N; Magubane, N E; Magwanishe, G; Mahlangu, M J; Mahlawe, N; Mahomed, F; Maimane, D S; Maine, M S; Makanda, W G; Makasi, X C; Malebana, H F; Maloney, L; Malumise, M M; Manuel, T A; Maphalala, M A; Mapisa-Nqakula, N N; Martins, B A D; Masala, M M; Maserumule, F T; Mashimbye, J N; Masithela, N H; Masutha, M T; Mathibela, N F; Matsepe-Casaburri, I F; Maunye, M M; Mayatula, S M; Mbadi, L M; Mbombo, N D; Mbuyazi, L R; Mdladlana, M M S; Mfundisi, I S; Mguni, B A; Middleton, N S; Mkono, D G; Mlambo-Ngcuka, P G; Mlangeni, A; Mnandi, P N; Mnumzana, S K; Modise, T R; Modisenyane, L J; Moeketse, K M; Mofokeng, T R; Mohamed, I J; Mohlala, R J B; Mokoena, D A; Molebatsi, M A; Molewa, B G; Moloi, J; Moloto, K A; Mongwaketse, S J; Montsitsi, S D; Moonsamy, K; Moosa, M V; Morkel, C M; Moropa, R M; Morutoa, M R; Morwamoche, K W; Moss, M I; Mothoagae, P K; Motubatse, S D; Mpahlwa, M; Mpaka, H M; Mpontshane, A M; Mthembu, B; Mtsweni, N S; Mufamadi, F S; Mutsila, I; Mzondeki, M J G; Nair, B; Nash, J H; Ndlovu, V B; Ndzanga, R A; Nel, A C; Nel, A H; Nene, N M; Newhoudt-Druchen, W S; Ngaleka, N E; Ngcengwane, N D; Ngculu, L V J; Ngubane, H; Ngubeni, J M; Nhleko, N P; Nhlengethwa, D G; Njobe, M A A; Nkabinde, N C; Nobunga, B J; Nqakula, C; Nqodi, S B; Ntombela, S H; Ntshulana-Bhengu, N R; Ntuli, B M; Ntuli, M B; Ntuli, S B; Nzimande, L P M; Olifant, D A A; Oosthuizen, G C; Pahad, A G H; Pahad, E G; Phadagi, M G; Pheko, S E M; Phohlela, S; Pieterse, R D; Pretorius, I J; Rabie, P J; Radebe, J T; Rajbally, S; Ramakaba-Lesiea, M M; Ramgobin, M; Ramodike, M N; Ramotsamai, C M P; Rasmeni, S M; Reid, L R R; Ripinga, S S; Roopnarain, U; Saloojee, E; Schippers, J; Schneeman, G D; Schoeman, E A; Schoeman, R S; Scott, M I; Seaton, S A; Sekgobela, P S; September, C C; September, R K; Shilubana, T P; Shope, N R; Sigcau, S N; Sigcawu, A N; Sigwela, E M; Sikakane, M R; Simmons, S; Sithole, D J; Skhosana, W M; Skosana, M B; Skweyiya, Z S T; Smith, V G; Solo, B M; Sonjica, B P; Sosibo, J E; Sotyu, M M; Tinto, B; Tolo, L J; Tshabalala-Msimang, M E; Tsheole, N M; Twala, N M; Vadi, I; Van den Heever, R P Z; Van der Merwe, A S; Van der Merwe, S C; Van Jaarsveld, A Z A; Van Wyk, J F; Van Wyk, N; Vos, S C; Xingwana, L M T; Zita, L; Zondi, K M; Zondo, R P; Zulu, N E.

NOES—36: Andrew, K M; Bell, B G; Blanche, J P I; Borman, G M; Botha, A J; Bruce, N S; Clelland-Stokes, N J; Cupido, P W; Da Camara, M L; Dudley, C; Ellis, M J; Farrow, S B; Gore, V C; Green, L M; Grobler, G A J; Groenewald, P J; Heine, R J; Jankielsohn, R; Kalyan, S V; Lowe, C M; Maluleke, D K; Moorcroft, E K; Mulder, C P; Ntuli, R S; Opperman, S E; Pillay, S; Schalkwyk, P J; Semple, J A; Seremane, W J; Smuts, M; Sono, B N; Southgate, R M; Swart, P S; Swart, S N; Taljaard, R; Waters, M.

Vote accordingly agreed to.

Vote No 27—Environmental Affairs and Tourism—put.

Declaration of vote made on behalf of Inkatha Freedom Party.

Vote agreed to (Democratic Party dissenting)

Vote No 28—Labour—put.

Declarations of vote made on behalf of Democratic Party, New National Party, African National Congress and African Christian Democratic Party.

Vote agreed to (Democratic Party dissenting)

Vote No 29—Land Affairs—put.

Declarations of vote made on behalf of Democratic Party and African National Congress.

Vote agreed to.

Vote No 30—Minerals and Energy—put.

Declarations of vote made on behalf of African Christian Democratic Party, Freedom Front and African National Congress.

Vote agreed to (Democratic Party, Freedom Front and Federal Alliance dissenting)

Vote No 31—Trade and Industry—put.

Declarations of vote made on behalf of Democratic Party, Inkatha Freedom Party, African Christian Democratic Party and African National Congress.

Vote agreed to (Democratic Party and Federal Alliance dissenting).

Vote No 32—Transport—put.

Declarations of vote made on behalf of Democratic Party, African Christian Democratic Party and African National Congress.

Vote agreed to (Democratic Party, African Christian Democratic Party and Federal Alliance dissenting)

Vote No 33—Water Affairs and Forestry—agreed to.

Question put: That the Schedule be agreed to.

Division demanded.

The House divided:

AYES—206: Abram, S; Asmal, A K; Balfour, B M N; Baloyi, M R; Baloyi, O S B; Bekker, H J; Benjamin, J; Bhengu, F; Blaas, A; Bloem, D V; Botha, N G W; Cachalia, I M; Carrim, Y I; Cassim, M F; Chalmers, J; Chiba, L; Chikane, M M; Chiwayo, L L; Cindi, N V; Coetzee-Kasper, M P; Cronin, J P; Cwele, S C; Davies, R H; Diale, L N; Didiza, A T; Dithebe, S L; Ditshetelo, P H K; Dlali, D M; Doidge, G Q M; Dowry, J J; Dudley, C; Duma, N M; Durand, J; Dyani, M M Z; Erwin, A; Fankomo, F C; Fazzie, M H; Ferreira, E T; Fihla, N B; Fraser-Moleketi, G J; Frolick, C T; Gandhi, E; Geldenhuys, B L; Gerber, P A; Gomomo, P J; Goniwe, M T; Goosen, A D; Green, L M; Greyling, C H F; Gumede, D M; Hajaig, F; Hanekom, D A; Hendrickse, P A C; Hlaneki, C J M; Hogan, B A; Jassat, E E; Jeffery, J H; Joemat, R R; Jordan, Z P; Kasienyane, O R; Kasrils, R; Kati, J Z; Kekana, N N; Kgarimetsa, J J; Komphela, B M; Koornhof, G W; Kota, Z A; Lamani, N E; Landers, L T; Lekgoro, M K; Lishiva, T E; Lobe, M C; Lockey, D; Louw, J T; Louw, S K; Lucas, E J; Lyle, A G; Mabena, D C; Madasa, Z L; Madlala-Routledge, N C; Magashule, E S; Magubane, N E;

Magwanishe, G; Mahlangu, M J; Mahlawe, N; Mahomed, F; Makanda, W G; Malebana, H F; Maloney, L; Malumise, M M; Manuel, T A; Maphalala, M A; Maserumule, F T; Mashimbye, J N; Mathibela, N F; Matsepe-Casaburri, I F; Maunye, M M; Mayatula, S M; Mbadi, L M; Mbombo, N D; Mbuyazi, L R; Mdladlana, M M S; Mfundisi, I S; Mguni, B A; Middleton, N S; Mkono, D G; Mlambo-Ngcuka, P G; Mnandi, P N; Mnumzana, S K; Modisenyane, L J; Moeketse, K M; Mohamed, I J; Mokoena, D A; Molebatsi, M A; Molewa, B G; Moloi, J; Moloto, K A; Mongwaketse, S J; Montsitsi, S D; Moonsamy, K; Moropa, R M; Morutoa, M R; Morwamoche, K W; Mothoagae, P K; Motubatse, S D; Mpahlwa, M; Mpaka, H M; Mpontshane, A M; Nair, B; Nash, J H; Ndlovu, V B; Ndzanga, R A; Nel, A C; Nel, A H; Ngcengwane, N D; Ngculu, L V J; Ngubane, H; Nhleko, N P; Nhlengethwa, D G; Njobe, M A A; Nkabinde, N C; Nqakula, C; Nqodi, S B; Ntombela, S H; Ntuli, B M; Ntuli, M B; Ntuli, S B; Olifant, D A A; Oosthuizen, G C; Pahad, E G; Phadagi, M G; Pheko, S E M; Phohlela, S; Pieterse, R D; Rabie, P J; Radebe, J T; Rajbally, S; Ramakaba-Lesiea, M M; Ramgobin, M; Ramodike, M N; Rasmeni, S M; Reid, L R R; Ripinga, S S; Roopnarain, U; Saloojee, E; Schippers, J; Schoeman, E A; Scott, M I; Seaton, S A; Seeco, M A; Sekgobela, P S; September, C C; September, R K; Shilubana, T P; Shope, N R; Sibiya, M S M; Sigcau, S N; Sigcawu, A N; Sigwela, E M; Sithole, D J; Skhosana, W M; Skosana, M B; Slabbert, J H; Smith, V G; Solomon, G; Sonjica, B P; Sosibo, J E; Sotyu, M M; Southgate, R M; Swart, S N; Tolo, L J; Tshabalala-Msimang, M E; Tsheole, N M; Twala, N M; Vadi, I; Van der Merwe, A S; Van der Merwe, S C; Van Wyk, A (Annelize); Van Wyk, J F; Van Wyk, N; Vos, S C; Xingwana, L M T; Zita, L; Zondi, K M; Zondo, R P; Zulu, N E.

Noes—30: Andrew, K M; Bell, B G; Blanche, J P I; Borman, G M; Botha, A J; Bruce, N S; Clelland-Stokes, N J; Da Camara, M L; Eglin, C W; Ellis, M J; Farrow, S B; Gore, V C; Grobler, G A J; Heine, R J; Jankielsohn, R; Kalyan, S V; Lee, T D; Lowe, C M; Maluleke, D K; Moorcroft, E K; Ntuli, R S; Opperman, S E; Pillay, S; Schalkwyk, P J; Seremane, W J; Smuts, M; Sono, B N; Swart, P S; Taljaard, R; Waters, M.

Schedule accordingly agreed to.

7. THIRD ORDER [17:15]

Second Reading debate—***Appropriation Bill*** [B 4—2002] (National Assembly—sec 77).

Debate concluded.

Question put: That the Bill be read a second time.

Division demanded.

The House divided:

Ayes—236: Abram, S; Ainslie, A R; Asmal, A K; Bakker, D M; Balfour, B M N; Baloyi, M R; Baloyi, O S B; Bekker, H J; Benjamin, J; Bhengu, F; Blaas, A; Bloem, D V; Booi, M S; Botha, N G W; Buthelezi, M N; Cachalia, I M; Carrim, Y I; Cassim, M F; Chalmers, J; Chiba, L; Chikane, M M; Chiwayo, L L; Cindi, N V; Coetzee-Kasper, M P; Cronin, J P; Davies, R H; Diale, L N; Didiza, A T; Dithebe, S L; Ditshetelo, P H K; Dlali, D M; Doidge, G Q M; Dowry, J J; Du Toit, D C; Duma, N M; Durand, J; Dyani, M M Z; Erwin, A; Fankomo, F C; Fazzie, M H; Ferreira, E T; Fihla, N B; Fraser-Moleketi, G J; Frolick, C T; Gandhi, E; Gcina, C I; Geldenhuys, B L; George, M E; Gerber, P A; Gomomo, P J; Goniwe, M T; Goosen, A D; Gous, S J; Green, L M; Greyling, C H F; Gumede, D M; Hajaig, F; Hanekom, D A; Hendrickse, P A C; Hlaneki, C J M; Hogan, B A; Jassat, E E; Jeffery, J H; Joemat, R R; Jordan, Z P; Kalako, M U; Kannemeyer,

B W; Kasienyane, O R; Kasrils, R; Kati, J Z; Kekana, N N; Kgarimetsa, J J; Kgauwe, Q J; Kgwele, L M; Komphela, B M; Koornhof, G W; Kota, Z A; Lamani, N E; Landers, L T; Le Roux, J W; Lekgoro, M K; Lishiva, T E; Lobe, M C; Lockey, D; Louw, J T; Louw, S K; Lucas, E J; Lyle, A G; Mabe, L; Mabena, D C; Madasa, Z L; Madlala-Routledge, N C; Magashule, E S; Magazi, M N; Magubane, N E; Magwanishe, G; Mahlangu, M J; Mahlawe, N; Mahomed, F; Maimane, D S; Maine, M S; Makanda, W G; Makasi, X C; Malebana, H F; Maloney, L; Malumise, M M; Manuel, T A; Maphalala, M A; Martins, B A D; Maserumule, F T; Mashimbye, J N; Masithela, N H; Masutha, M T; Mathibela, N F; Matsepe-Casaburri, I F; Maunye, M M; Mayatula, S M; Mbadi, L M; Mbombo, N D; Mbuyazi, L R; Mdladlana, M M S; Mfundisi, I S; Mguni, B A; Middleton, N S; Mkono, D G; Mnandi, P N; Mnumzana, S K; Modise, T R; Modisenyane, L J; Moeketse, K M; Mofokeng, T R; Mohamed, I J; Mohlala, R J B; Mokoena, D A; Molebatsi, M A; Moloi, J; Moloto, K A; Mongwaketse, S J; Montsitsi, S D; Moonsamy, K; Moropa, R M; Morutoa, M R; Morwamoche, K W; Moss, M I; Mothoagae, P K; Motubatse, S D; Mpahlwa, M; Mpaka, H M; Mpontshane, A M; Mthembu, B; Mtsweni, N S; Mutsila, I; Mzondeki, M J G; Nair, B; Nash, J H; Ndzanga, R A; Nel, A C; Newhoudt-Druchen, W S; Ngaleka, N E; Ngcengwane, N D; Ngculu, L V J; Ngubeni, J M; Nhleko, N P; Nhlengethwa, D G; Njobe, M A A; Nkabinde, N C; Nobunga, B J; Nqakula, C; Nqodi, S B; Ntombela, S H; Ntshulana-Bhengu, N R; Ntuli, B M; Ntuli, M B; Ntuli, S B; Nzimande, L P M; Olifant, D A A; Pahad, A G H; Pahad, E G; Phadagi, M G; Phohlela, S; Pieterse, R D; Pretorius, I J; Rabie, P J; Rabinowitz, R; Radebe, J T; Rajbally, S; Ramakaba-Lesiea, M M; Ramgobin, M; Ramodike, M N; Ramotsamai, C M P; Rasmeni, S M; Reid, L R R; Ripinga, S S; Roopnarain, U; Saloojee, E; Schneeman, G D; Schoeman, E A; Scott, M I; Seaton, S A; Seeco, M A; Sekgobela, P S; September, C C; September, R K; Shilubana, T P; Shope, N R; Sibiya, M S M; Sigcau, S N; Sigcawu, A N; Sigwela, E M; Simmons, S; Sithole, D J; Skhosana, W M; Skosana, M B; Slabbert, J H; Smith, V G; Solomon, G; Sonjica, B P; Sosibo, J E; Tinto, B; Tolo, L J; Tshabalala-Msimang, M E; Tsheole, N M; Twala, N M; Vadi, I; Van der Merwe, A S; Van der Merwe, S C; Van Jaarsveld, A Z A; Van Wyk, A (Annelize); Van Wyk, J F; Van Wyk, N; Vos, S C; Xingwana, L M T; Zita, L; Zondi, K M; Zondo, R P; Zulu, N E.

Noes—32: Andrew, K M; Bell, B G; Blanche, J P I; Borman, G M; Botha, A J; Bruce, N S; Clelland-Stokes, N J; Da Camara, M L; Eglin, C W; Ellis, M J; Farrow, S B; Gibson, D H M; Gore, V C; Grobler, G A J; Heine, R J; Jankielsohn, R; Kalyan, S V; Lee, T D; Lowe, C M; Maluleke, D K; Moorcroft, E K; Ntuli, R S; Opperman, S E; Pillay, S; Schalkwyk, P J; Schmidt, H C; Seremane, W J; Smuts, M; Sono, B N; Swart, P S; Taljaard, R; Waters, M.

Question agreed to.

Bill accordingly read a second time.

8. The House adjourned at 17:41.

S MFENYANA,

Secretary to Parliament.

No 21—2002] FOURTH SESSION, SECOND PARLIAMENT

REPUBLIC OF SOUTH AFRICA

MINUTES OF PROCEEDINGS

OF

NATIONAL COUNCIL OF PROVINCES

THURSDAY, 20 JUNE 2002

1. The Council met at 14:04.
2. The Chairperson took the Chair and requested members to observe a moment of silence for prayers or meditation.
3. [14:05] Notices of motion.
4. [14:11] The Chief Whip of the Council moved without notice: That the Council—

   (1) notes that—

      (a) nation-building and reconciliation are central to the ethos and aspirations of our democratic constitutional dispensation; and

      (b) our constitution guarantees protection to all sections and sectors of our nation;

   (2) recognises that farmers, industrialists, workers and all other sectors collectively contribute directly to the development of our economy and are collectively responsible for the country's reconstruction and transformation;

   (3) further notes that, if repeated, certain slogans and utterances, including the slogan "Kill the Boer, kill the Farmer", can result in the alienation of a significant section of our nation;

   (4) resolves that such slogans and utterances are inimical to undermining nation-building and reconciliation; and

   (5) calls on all persons to desist from perpetuating such slogans and utterances in the future.

   Motion agreed to in accordance with section 65 of the Constitution.

5. [14:14] Prince B Z Zulu moved without notice: That the Council—

   (1) notes that—

      (a) King Zwelithini will celebrate 30 years on the Zulu throne co-inciding with his birthday on 26 July 2002; and

(b) for the past 30 years the King has become a symbol of peace, justice, prosperity and stability among the Zulus, and he has played a major role in keeping the nation intact and preserving its values; and

(2) hopes that through this foundation a living legacy of the King will be sustained.

Motion agreed to in accordance with section 65 of the Constitution.

6. FIRST ORDER [14:15]

Policy debate on Budget Vote No 25: Agriculture, ***Appropriation Bill*** [B 4—2002] (National Assembly—sec 77).

Debate concluded.

7. SECOND ORDER [14:15]

Policy debate on Budget Vote No 29: Land Affairs, ***Appropriation Bill*** [B 4—2002] (National Assembly—sec 77).

Debate concluded.

8. THIRD ORDER [17:26]

Consideration of ***KwaZulu Cane Growers' Association Act Repeal Bill*** [B 48B—2001] (National Assembly—sec 75) and of Report of Select Committee on Land and Environmental Affairs thereon (Announcements, Tablings and Committee Reports, 11 June 2002, p 687).

Debate concluded.

Bill agreed to in accordance with section 75 of the Constitution.

9. The Council adjourned at 17:31.

S MFENYANA,

Secretary to Parliament.

PARLIAMENT

OF THE

REPUBLIC OF SOUTH AFRICA

ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS

THURSDAY, 20 JUNE 2002

ANNOUNCEMENTS:

National Assembly and National Council of Provinces:

1. The Speaker and the Chairperson:

   (1) Assent by the President of the Republic in respect of the following Bills:

   (i) ***Performers' Protection Amendment Bill*** [B 74D—2001]—Act No 8 of 2002 (assented to and signed by President on 18 June 2002);

   (ii) ***Copyright Amendment Bill*** [B 73D—2001]—Act No 9 of 2002 (assented to and signed by President on 18 June 2002);

   (iii) ***Constitution of the Republic of South Africa Amendment Bill*** [B 16B—2002]—Act No 18 of 2002 (assented to and signed by President on 19 June 2002);

   (iv) ***Local Government: Municipal Structures Amendment Bill*** [B 22B—2002]—Act No 20 of 2002 (assented to and signed by President on 19 June 2002);

   (v) ***Constitution of the Republic of South Africa Second Amendment Bill*** [B 17D—2002]—Act No 21 of 2002 (assented to and signed by President on 19 June 2002); and

   (vi) ***Loss or Retention of Membership of National and Provincial Legislatures Bill*** [B 25B—2002]—Act No 22 of 2002 (assented to and signed by President on 19 June 2002).

   (2) The following Bill was introduced by the Minister of Finance in the National Assembly on 20 June 2002 and referred to the Joint Tagging Mechanism (JTM) for classification in terms of Joint Rule 160: