

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

Parliament of the Republic of South Africa

Report on Violence against Women

May 2002

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The Joint Monitoring Committee on the
Improvement of Quality of Life and Status of
Women's: Overview of the work the Committee has
done to date with regard to Violence Against Women

May 2002

Introduction

This Parliamentary Committee (hereinafter called the Committee) was established as an Ad Hoc Committee in 1996 and at the end of 1998 became a Standing Committee. The specific role of this committee is to monitor and oversee Government's implementation of the United Nations Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and the Beijing Platform for Action. One of the priorities set by the committee was to address itself to their oversight function regarding the monitoring of violence against women. In this regard, the Committee has undertaken several activities, which are discussed below.

Activities of the Committee

1. Violence Against Women Hearings during 1997 and 1999

The Portfolio Committee on Justice and the Ad Hoc Committee held hearings during 1997 and 1998 on Violence Against Women. A report¹ was tabled in this regard. Part of the 1998 hearings also focused on other aspects relating to gender and justice. These include Domestic Violence, the legal system, spousal killings, sexual offences and sexual offence pilot courts.

At the time of these hearings, the Committee made a call that the Justice Ministry and other role-players accelerate the introduction of the proposed legislation on Domestic Violence and comprehensive legislation on sexual offences against women. To date, the Domestic Violence Act (Act 116 of 1998) has been enacted but the Sexual Offences legislation has still not come before Parliament.

2. Violence Against Women Hearings - November 1999

The Committee held hearings from the 8th to the 17th of November 1999. Written and oral submissions were made. The objective of the hearings were to:

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

The report emanating from the hearings thematically categorises the information under the following headings:

¹ Violence Against Women Hearings. Report. June 1998.

- 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-operation and co-operative governance.
- Co-operation between Government and civil society.
- The need for statistical databases.

Although the hearings were held before the Domestic Violence Act 116 of 1998 came into operation, it highlighted difficulties anticipated with the implementation of the legislation. Many of these difficulties also emerged later in a workshop held by the Committee after the implementation of the Act. The Committee furthermore makes very specific recommendations with regards to the different thematic areas.

In addition to the detailed report on the hearings, a summary report (July 2001) is also available.

3. Provincial visits

Delegations from the Committee visited Nelspruit, Mpumalanga, Port -Elizabeth and Pietersburg from April to June 2000. They visited Magistrates, the South African Police Service (SAPS) Commissioners and Prosecutors. These meetings formed part of the Committee's investigation into the difficulties experienced by these officials in the implementation on the Domestic Violence Act and Maintenance Act 99 of 1998.

4. A Joint 2-day workshop between the Committee and the Public Participation Unit (PPU) of Parliament, 25 – 26 July 2001.

The Parliamentary Public Participation Unit (PPU) and the Committee convened a National Conference on enhancing the participation of women in the law making process.

The objectives of the conference were to:

- Audit the experiences of civil society with respect to how women have experienced participation in the legislative processes.
- Audit the obstacles which impede the participation of women.
- Elicit information on how the participation of women can be improved.

- Gather and collate information on problems experienced with respect to the implementation of the Domestic Violence Act.
- Gather and collate information on problems experienced with respect to the implementation of the Maintenance Act.
- Reflect on methodologies for making gendered impact on how budgets are drawn up and how public sector resources are allocated (at national, provincial and local levels).
- Gather and collate information on women's legislative needs with respect to issues of inheritance and succession.

Some of the specific problems that emerged from the presentations on the implementation of the Domestic Violence Act included:

- Inadequate resources being allocated to the implementation of the Act.
- Sexual abuse often not seen as abuse.
- When SAPS are called, the onus is often placed on women to say what they want SAPS to do with the perpetrator.
- The forms are difficult to complete.

A detailed report entitled "Strengthening Women's Voices through Participation: Consultative Conference on engaging Women in Parliament" is available.

5. Rural workshops

The PPU and the Committee hosted capacity building workshops for rural women in four provinces during 2001. The provinces were Mpumalanga, North-West, Limpopo and Kwa-Zulu Natal. These workshops constituted the pilot Rural Women's Project.

The objectives of the workshops were to:

- Create an understanding amongst rural women about Parliament and the law making process.
- Create an understanding of how to participate in the legislative process.
- Obtain submissions on the implementation of the Domestic Violence Act and the proposals for the proposed Inheritance and Succession legislation.

It was evident from the workshops that there is a need for public education around the Domestic Violence Act. Many of the women who attended the workshops thought that only physical violence constituted domestic violence. It was only after the Act was explained to them that they understood that there were different types of domestic violence.

Whilst the workshops were a success, there were incidents which nearly disrupted this process. The incidents were discussed in the National Assembly to make sure that this type of incident does not occur again, because it may hinder the performance of the public representatives to cascade the important message to rural women in South Africa.

6. Committee report commissioned from the Center for the Study of Violence and Reconciliation (CSV) on Budgets and Violence Against Women

The Committee commissioned the Centre for the Study of Violence and Reconciliation to investigate the extent of government financial aid to non-profit organisations (NPOs) providing support services to women experiencing violence.

The aims of the study were to:

- Quantify government departments' financial aid and support to organisations providing some kind of support to girls and women aged fifteen years and older who have experienced gender-based violence.
- Identify factors enhancing and/or constraining organisations' ability to access government funds for this work.
- Describe the type of activities for which organisations receive government support.

The research findings will be used to assist members of the Parliamentary Committee to undertake a range of activities aimed at ensuring that future budgets allocate sufficient funds to address the needs of women who are experiencing gender violence.

Recommendations

The Committee, in fulfilment of its oversight role, has undertaken several informative initiatives in respect to violence against women. The reports resulting from the various initiatives are rich with information and recommendations to various Government Departments. It is thus recommended that:

- Questions emanating from the various forums be posed to the different departments with regard to the implementation of the Act, resources available and budgetary requirements.
- The various reports should be disseminated to the various departments and they should be asked to formally respond to it.
- A huge public education initiative be undertaken by GCIS to ensure that the Domestic Violence Act becomes more accessible to women, especially rural women.

- We ensure that the criminal justice system is more gender sensitive, especially in terms of sentencing, sensitivity of court officials, and women's access to justice.
- More shelters be provided for women who experience domestic violence, because women often have to return home to perpetrators of violence, because there is not an adequate number of shelters.
- Customary law be revised, because rural women still suffer the effects of customary law.
- The rural workshops be continued in the provinces not covered in 2001 rural workshops and the 2000 provincial visits.
- A debate on Domestic Violence be held in the National Assembly and the National Council of Provinces.

Attached to this report are the following appendixes:

1. Report on Violence Against Women in South Africa based on the public hearings held in November 1999. Compiled in February 2001.
2. Addendum to the Violence Against Women report of February 2001.
3. Summary report on Violence Against Women. July 2001.
4. Summary report on Violence Against Women. October 2001.

Acknowledgements

The Committee wishes to thank the following people who helped to compile this report:

1. Melissa Fourie, who as a volunteer undertook the mammoth task of collating and compiling the report on the hearings on Violence Against Women that took place in November 1999.
2. Shereen Dawood, researcher for the ANC Study Group of the Committee, who assisted in compiling the July and October summary reports of the hearings.
3. Carmine Rustin, of the Parliamentary Research Unit, who assisted in compiling the final report on the work undertaken by the Committee on Violence against Women.

.....
Ms. P. Govender

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

Date:

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

**Report on Violence Against Women in South
Africa based on the public hearings held in
November 1999**

February 2000

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“We cannot say we are moving faster towards the attainment of complete liberation from the legacy of the past unless the women of our country live without fear in their houses and walk freely through the streets and villages of our land.” – President Thabo Mbeki²

▪ INTRODUCTION

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

² Address to the Nation on National Women's Day, 9 August 1999

³ Article 1 of Annex F to CEDAW

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

⁴ Article 2 of Annex F to CEDAW

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

New and proposed legislation and its implementation

- CEDAW stipulates that government should “develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence; women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered; States should also inform women of their rights in seeking redress through such mechanisms.”⁵
- Significant progress has been made in the amendment of existing legislation and the promulgation of new legislation relating to violence against women and children. The most important of these are:
 - the Domestic Violence Act (DVA)⁶, which comes into operation on 15 December 1999 and replaces the Prevention of Family Violence Act⁷. Difficulties anticipated with the implementation of the DVA are described elsewhere;

⁵ Article 4(d) of Annex F to CEDAW

⁶ Act 116 of 1998

⁷ Act 133 of 1993

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

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

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

⁸ Criminal Procedure Amendment Act 75 of 1995

⁹ Criminal Procedure Amendment Act 105 of 1997

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

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

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

guardian or caregiver who allows commercial sexual exploitation.

- Provisions not included in the Proposed Bill include cultural and religious practices considered harmful to children¹⁰, sexual harassment¹¹, the criminalisation of harmful behaviour of people with HIV and the HIV testing of sexual offenders.
- The proposed legislation, and in particular the move away from *without consent* to include *coercive circumstances* is considered by many organisations as very progressive. Women's organisations, in particular Rape Crisis, have expressed support for the new definition of rape.¹²
- The SALC is also in the process of producing a discussion paper on the procedural aspects of the prosecution of sexual offences, which will also deal with the evidentiary rules, which operate against the complainant in rape cases. Such evidentiary rules, which are arguably based on common assumptions that women's evidence in rape trials should be treated with caution since women are thought to lie in sexual offence cases out of jealousy, spite and revenge, include:-
 - the cautionary rule, in terms of which certain types of evidences are treated with caution in a criminal trial, such as where the complainant is the only witness;
 - evidence of the previous sexual history of the complainant, which can only be admitted with the consent of the presiding officer on the basis of its relevance. This rule appears to be based thereon that, if a woman has had sexual intercourse

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

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

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

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

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

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

¹³ Submission H

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

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

- The head of the Family Court also raised the following concerns about the implementation of the DVA:
 - The DVA provided for 13 new forms, for which the printing by the Government Printer had not yet commenced at the time of the hearings.
 - The DVA provided that an application for a protection order would be heard after hours only if the complainant would suffer “undue hardship” if the matter was not heard. Concern was raised about how this hardship would be determined if the complainant was not given an after hours hearing.
- The Department of Justice made certain general comments¹⁴ regarding difficulties with implementation of new legislation:
 - The consultation process with all roleplayers (some independent) is time-consuming.
 - The delay in implementing new legislation is caused by a lack of policy statement and implementation strategy for such legislation: an implementation strategy and the funding thereof must be discussed from the outset of development of policy and drafting of new legislation.
 - New policies, legislation and the expectations created thereby increase the existing case load and need for funding, which causes bad service delivery, which means that, as before, victims do not approach courts with gender and gender violence disputes.

Functioning of existing courts and establishment of special courts

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

¹⁴ Submission Y

gender violence, clogged-up court rolls¹⁵ and unnecessary postponements of matters¹⁶, a shortage of regional magistrates and more qualified prosecutors, intermediaries and interpreters.¹⁷

- The Masimanyane Women's Support Centre reported to the Committee on a study on domestic violence and rape using police dockets¹⁸ and court files.

Mdantsane Court: 1997 to April 1999

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

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

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

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

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

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

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

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

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

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

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

- The Department of Justice reported to the Committee²¹ on two programmes for implementation of specialised courts.
 - Specialised family courts, already operating as pilot courts in CT, PE, Durban, JHB and LebowaKgomo, handled *inter alia* domestic violence matters, with the Family Advocate, Department of Welfare and various NGO's working at these centres to provide counselling, mediation and investigation. The Department of Justice indicated that it was intended that new Family Courts would be established in Mafikeng, Nelspruit, Umtata, George, Bloemfontein and Kimberley, with satellite centres at Magistrate's Courts around the main centres.
 - However, the head of Family Courts reported²² to the Committee that there was little infrastructure and support services available for the Family Courts, even though they had been in existence for six years. The courts were badly underfunded (for example, stationery and photocopiers were not available), which causes unnecessary delays, for example in the granting of interdicts. There were also no waiting rooms for women.
 - A serious security problem was also experienced at the Family Courts and there were instances of assault on the premises. Often women were too scared to leave the offices since they knew that the alleged perpetrator would be waiting outside.
 - There are presently four sexual offences courts, which are better placed to deliver higher quality service to the victims of violence against women and children. The Department of Justice told the Committee that it planned to roll out 20 new Sexual Offences Courts in the next two years.
 - The four existing Sexual Offences Courts are all situated in urban areas, which means that complainants from rural areas have to travel long distances to attend the trial. Due to lack of transport, such a complainant may even find herself in the same vehicle as the accused.²³ The Department of Justice reported that 20 new Sexual Offences Courts would be established within the next two years. The pilot project for Family Courts would also be expanded to other centres.

²¹ Submission X

²² Submission BB

²³ Reported by the President of the Regional Court for the Western Cape

- The Regional Magistrate’s Commission²⁴ presented the Committee with statistics for the Sexual Offences Court in Wynberg:

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

- Two of the permanent magistrates in the Sexual Offences Court in Wynberg raised the following concerns²⁵ with the Committee:
 - There is a need to reconsider the adversarial system in sexual offence cases. Such a system assumes that both parties were equal, while such equality had to be questioned where the one party is a little girl, and the other an elderly man with a senior advocate. Much of the outcome of a case depended on the ability, wit, energy, ruthlessness and even permissible rudeness, which a cross-examiner might display. The selfish and partial manner with which parties are allowed to present evidence results often in procedural and formal truth being promoted at the expense of material truth.
 - There was also a need to re-examine the strict rules of evidence applicable in sexual offence cases, and in particular the cautionary rules of evidence.
 - There should be a general rule that children should testify through an intermediary, and only in exceptional circumstances should there be deviated from this rule. Consideration should be given to an amendment to Section 170A of the Criminal Procedure Act to include mentally impaired persons with a mental age of less than eighteen. It was also difficult for magistrates to determine when a witness would suffer “undue mental stress” as is required by Section 170A.
 - Difficulties have arisen in the interpretation of Section 51(3) of the Criminal Procedure Amendment Act²⁶ regarding

²⁴ Submission BB

²⁵ Submission BB

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

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

Court clerks, interpreters and prosecutors

- Two important functions of clerks of the court were emphasised during the hearings: their role as organisers and facilitators of case rolls at courts, and their role as primary assistants to applicants for protection orders in terms of the DVA.
 - The President of the Regional Court for the Western Cape²⁷ told the Committee that the organisation of court rolls was one of the major difficulties faced by Magistrates. A system of “court nags” has recently been introduced, with the court nag’s task to ensure that cases set to run will in fact run, mainly by phoning witnesses and other role players two weeks prior to the trial date to ensure that all will be available on that day.
 - The Tswaranang Legal Advocacy Centre to End Violence Against Women²⁸ told the Committee that, since clerks were the first entry point for a woman at court, they need to give better technical assistance and support. GAP²⁹ also emphasised the need for proper training of clerks of the court, since the treatment women receive from clerks often result in women not returning with application forms for interdicts.
- The lack of experienced prosecutors trained in dealing with crimes of violence against women emerged as a major impediment to criminal justice. Often prosecutors are the survivor’s only ally in the criminal justice system, and these prosecutors are not equipped to

²⁶ Act 105 of 1997

²⁷ Submission BB

²⁸ Submission CC

²⁹ Submission H

deal sensitively³⁰ with the traumatised complainant or to provide an equal opponent to experienced defence attorneys.

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

³⁰ Reported by Ilitha Labantu in the context of rural Transkei

³¹ Submission CC

³² Submission Z

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

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

Magistrates

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

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

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

The judiciary

- The Committee has on various occasions expressed concern about inappropriate statements made by High Court judges and what appears to be inappropriately light sentences handed down in judgements in cases of rape and other violence against women³³. To date, the Committee's efforts to engage in discussion with the judiciary on issues of violence against women has been hampered by incorrect and sensationalist media reporting. However, the Committee remains of the view that such discussion could be beneficial to both the Committee and the judiciary.
- Many of the submissions expressed concern about statements made in recent judgements of High Court judges in cases of rape, especially in the context of the minimum sentence amendment to the Criminal Procedure Act³⁴. Numerous calls were made for the education of judges on issues relating to discrimination and violence against women. For example, concern was expressed about views on women taken by the judiciary which reveal a reliance on stereotypes and which suggest that women collaborate in crimes against them.³⁵
- This issue came to the fore in the interpretation of the recent amendment to the Criminal Procedure Act dealing with the imposition of a minimum sentence of life imprisonment where the victim is under the age of 16, is raped more than once, is raped by more than one person where such person is acting with a common

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

³⁴ Criminal Procedure Amendment Act 105 of 1977.

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

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

- The Committee was furnished with a submission by the UWC's Community Law Centre's Gender Project³⁶ which examines disparities in recent cases.
 - In the case of *S v Zitha*³⁷, a six-year-old girl was raped in her home by three men who had entered the house (armed with a panga) for purposes of robbery. Despite the girl's pleas that they take whatever they want but just leave her alone, the three men raped her in turn on her own bed, one of them raping her twice. All three men were convicted of rape.

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

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

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

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

³⁷ 1999 JDR 0410 (W) dated 10 June 1999
³⁸ 1999 JDR 0336 (W) dated 6 May 1999

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

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

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

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

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

³⁹ 1999 JDR 0473 (O) dated 11 August 1999

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

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

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

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

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

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

⁴⁰ 1999 (1) SACR 502 (W)

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

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

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

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

Appeals from the Regional Court and the Sexual Offences Courts

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

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

Appointment of judges and disciplinary proceedings

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

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

Black judges who are heads of divisions (Chief Justice of Supreme Court of Appeal, Judge President of High Court in Transkei and President of the Land Claims Court)	3
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- UWC's Community Law Centre pointed out in their submission that a demographically representative judiciary does not guarantee race and gender sensitivity. The ideal is that every person on the bench must be sensitive to race and gender issues, irrespective of their own race and gender.
- The Chief Justice has formulated the criteria for the appointment of judges as follows⁴²:
 - Is the applicant an appropriately qualified person?
 - Is she or he a fit and proper person?
 - Would her or his appointment help to reflect the racial and gender composition of South Africa?
 - Is the proposed appointee a person of integrity?
 - Is the proposed appointee a person with the necessary energy and motivation?
 - Is the proposed appointee both technically competent and able to give expression to the values of the Constitution?
 - Has the proposed appointee the appropriate potential?
 - What message is given to the community at large by a particular appointment?
- It is apparent from the aforesaid that there is no specific requirement for knowledge on and sensitivity to issues relating to women and violence against women.
- The President of the Regional Court in the Western Cape expressed the view to the Committee that judges were mostly drawn from a pool of senior advocates, usually men, whose

⁴² Summarised

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

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

Education of judges

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

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

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

▪ LAW ENFORCEMENT

Previous commitments and recommendations

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

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

- In the 1998 report of the ICD⁴⁵ on the conduct of members of the SAPS made, *inter alia*, the following recommendations⁴⁶:
 - The SAPS should embark on an extensive training programme, aimed at improving the member's understanding of the nature and consequences of violence against women, the context within which such violence occurs and is aimed at enhancing the member's capacity to respond appropriately to such complaints.
 - Suitably trained officers should be attached to each police station. Complainants should be offered a choice of a male or female member to assist in the initial stages of the investigation.
 - Each police station should have a list of organisations that deal with violence against women.
 - The SAPS should review its mechanisms regarding the release of information to the media so as not to discriminate against women and not to invade their privacy.
- The Committee urgently requires a response from the SAPS and the ICD as to whether any of the above recommendations have been implemented.

Present experiences of the SAPS

- Numerous submissions to the Committee indicated that the SAPS remains inaccessible, insensitive⁴⁷ and ineffective⁴⁸ in preventing violence against women and assisting victims of violence, thereby decreasing the reporting of the crime and prosecution of attackers. The difficulties can roughly be categorised as problems of attitude and abuse and operational problems.

Attitudes and abuse

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

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

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

⁴⁷ Reported by National Network on Violence against Women

⁴⁸ Reported by Ilitha Labantu

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

- Police were accused of trying to dissuade women from laying charges against perpetrators by stressing negative outcomes/consequences for women if they insist on the arrest of the offender.⁵⁰
- Women also complained of poor police service in cases of domestic violence, and two thirds of those who had gone to the police had difficulty in convincing the police that they were in need of protection or were not treated seriously: in 80% of cases, police arrived hours later or the next day when called to the scene; 34% of women were told to "stop wasting police time", 26% were accused of provoking the violence, 39% were accused of lying; 74% were expected to give statements in not their first language; 43% were told that charges could not be laid due to lack of evidence; police also failed to inform women on procedure, to update them, or to investigate the complaint properly; 55% of complainants were told to "find their attacker" before the police would arrest him.⁵¹
- The Commission on Gender Equality complained of the SAPS's failure to take complainants seriously, even ridiculing complainants, failure to provide sanctuary to complainants, failure to attempt to apprehend abusers where warrants have been issued, and demanding that survivors accompany police to point out perpetrators.
- Police, on the other hand, complained of women withdrawing charges, lack of resources & transport, non-cooperation of victims in investigations, "false complaints", and laws which limit police's right to enter the respondent's home.
- Various allegations were also made about sexual advances by police officers.⁵² It was also reported to the Committee that many policemen are vulnerable to bribery by offenders⁵³, resulting in case

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

⁵⁰ Reported by the National Network on Violence against Women

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

⁵² Reported by the Commission on Gender Equality and the National Network on Violence Against Women

⁵³ Reported by Nisaa

files going missing, thus hampering the investigation and ultimately justice.⁵⁴

- It is a requirement of CEDAW that government should take measures to ensure that law enforcement officers receive training to sensitise them to the needs of women.⁵⁵
- The National Network on Violence Against Women reported that, while it is recognised that training will facilitate the development of more humane treatment of women by police and other officials, gender-sensitive training has in the past not resulted in gender-sensitive practices in the police workplace. There is thus a need to evaluate the outcome of training, and its application in the workplace.
- Tswaranang Legal Advocacy Centre to End Violence Against Women made the point that the mainly military training of police does not equip them to deal sensitively with issues of violence against women.
- In a written submission, the National Police Commissioner advised the Committee that a training programme had been developed to equip members with basic knowledge and skills in this area and all SAPS members would be trained in this over the next two years.
- The Department of Safety and Security reported⁵⁶ to the Committee the following efforts to address crimes against women and children:-
 - the SAPS has declared crimes against women and children a policing priority for the third consecutive year;
 - a "national instruction" has been issued with regard to the support of sexual offences and crucial aspects of the investigation thereof. A video-recording of this national instruction was made and distribute countrywide;
 - basic training, detective training and specialised training courses (on, for example, the investigation of sexual offences, family violence and child protection) are in place for members of the SAPS, with special attention to dealing with women survivors;

⁵⁴ Reported by National Network on Violence Against Women

⁵⁵ Article 4(i) of Annex F to CEDAW

⁵⁶ An "information note" prepared for Director Heunis

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

Operational problems

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

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

⁵⁸ Reported by National Network on Violence Against Women

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

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

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

- Concern was also expressed about the SAPS's compliance with the Domestic Violence Act, which comes into operation on 15 December 1999.⁶¹ By way of example, the DVA makes provision for the complainant to receive a notice of her rights in her official language and to have the contents thereof explained to her. Most police stations are understaffed and no more than three official languages are spoken. It did not appear as if additional personnel had been allocated to stations for the implementation of the DVA, nor had strategies to address this issue been developed.
- The National Police Commissioner advised the Committee that SAPS national instructions have been compiled in preparation for the implementation of the DVA and that all SAPS members must be trained in terms of these instructions.
- The Department of Safety and Security also reported to the Committee the efforts of the SAPS to transform its existing Child Protection Units into specialised Family Violence, Child Protection and Sexual Offences Units.
 - These FCS units are responsible for policing the crimes of assault with the intention to do grievous bodily harm and attempted murder of a victim older than 18 years where the crime is committed in the context of a family. The units also have jurisdiction over sexual offences (where the victim is 18 and older) including rape, indecent assault, incest and violation of the Sexual Offences Act⁶² with regard to the sexual exploitation of adults. The FCS units are also responsible to police the following crimes where the victim is under the age of 18: rape, indecent assault, sodomy, incest, attempted murder, assault with the intention to do grievous bodily harm, common assault (where three or more incidents occur in the context of a family), kidnapping, abduction, violation of the Sexual Offences Act with regard to the sexual exploitation of children, the Child Care Act⁶³ and the Films and Publication Act⁶⁴ relating to child pornography.
 - Fourteen of these FCS units are already operational. There are 27 Child Protection Units and four Indecent Crime Units situated in the main centres, while specialised SAPS

⁶¹ Expressed by, *inter alia*, the Gender Advocacy Programme

⁶² Act 23 of 1957 (as amended)

⁶³ Act 74 of 1983 (as amended)

⁶⁴ Act 65 of 1996 (as amended)

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

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

▪ **WELFARE SERVICES AND SHELTERS**

- The February 1996 Beijing Cabinet commitments relating to violence against women include:-
 - the provision of shelters and relief support to women and girls⁶⁵;
 - increasing the understanding of policymakers and implementers of the impact of violence on women and girls; and
 - encouraging the media to present positive images of women.

Counselling and shelters

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

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

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

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

need for more and better domestic violence counselling and shelters.

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

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

Transport

- Various submissions described the difficulties experienced by especially rural women in accessing health care and legal services due to inaccessibility of transport.
- UCT's Institute of Criminology's Gender, Law & Development Project reported⁶⁹ to the Committee that, in a study conducted among rural women in the Southern Cape, almost 35% of women travel to or from work in the dark in rural areas. It was also found that 54% of historically disadvantaged groups walk to and from work on foot.
- The Department of Transport was not requested by the Committee to participate in the hearings. The Committee intends requesting the Department to furnish it with its formal response to the following issues⁷⁰, with reference to its White Paper on National Transport Policy of 1996:-

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

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

⁷⁰ These questions were raised by the Committee with the Parliamentary Transport Committee in August 1997.

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

Medico-legal examinations

- Various submissions to the Committee reported on practical difficulties experienced with the required medico-legal examination of the victims of sexual assault and rape:
 - Health care services are disproportionately concentrated in historically white and urban centres. Most district surgeons in the rural areas work part-time, combining their official duties with private practice.⁷¹
 - A concomitant lack of access, mainly transport, especially for rural women. UCT's Institute of Criminology's Gender, Law and Development Project reported that rural women were severely affected by the lack of operational telephones, long distances to travel to police stations (which are often inaccessible and poorly resourced) and to clinics and hospitals.⁷² Police are supposed to transport women to district surgeons, but seldom do so, partly as a result of shortage of police vehicles.⁷³
 - Lengthy waiting periods⁷⁴ between reporting the crime to the police and the medical examination, which not only compounds the victim's trauma, but is also a deterrent to proceeding with criminal charges. One research report

⁷¹ Reported by UCT's Institute of Criminology's Gender, Law & Development Project

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

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

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

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

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

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

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

⁷⁷ Reported by Women's Health Project

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

Physical and psychological aspects of treatment of victims of violence

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

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

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

problem of violence against women and intends to develop programmes, there is no institutionalised training at present in the medical or nursing curriculum or in-service training to prepare health workers to deal with violence against women. This is borne out by the fact that only 10% of health workers routinely ask clients about domestic violence: the reasons for not inquiring about abuse were feeling professionally and personally ill-equipped to deal with such problems (40%), perceptions that it is unnecessary (47%) and being too busy (13%).

- 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 issues⁸⁰ 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, including infertility, sexually transmitted diseases and especially violence against women; and
 - training and education of health care workers in domestic violence as a mainstream health issue.

HIV / AIDS and violence against women

- Women and children who have been the victims of sexual abuse and violence face special risks of contracting sexually transmitted diseases (STDs), and in particular HIV/AIDS.
- The violence and coercion involved in the sexual relationships of so many men and women in South Africa limit especially young women's capacities to protect themselves against HIV/AIDS.⁸¹ In research conducted among women in three South African provinces⁸², CERSA reported that many women indicated that their partner openly brought girlfriends home or boasted about them, and that even more women indicated that they did not perceive that they were able to refuse sex with their husbands. Given the pattern

⁸⁰ These issues were raised by the Committee with the Parliamentary Health Committee in August 1997

⁸¹ CERSA in Submission N

⁸² Submission O

of gender relations described in this research, it is likely that women would not be in a position to insist on condom use, even if they wanted to, and in relationship characterised by physical violence they faced further abuse.

- 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. In 1990, a document appeared calling on African men in the Durban area to acquire “the AIDS antibody” by raping Indian women. Even though the flyer was believed to be the work of a “third force” intent on aggravating conflict in and between black communities, it still succeeded in increasing the fear surrounding the disease. There is also a well-circulated myth that sex with a child virgin will cure oneself of the virus.⁸³
- Lisa Vetten writes⁸⁴ that, although it is extremely hard to show a correlation between the incidence of rape and suspected or confirmed HIV positivity, the desire to spread the disease to ensure one does not die alone, coupled with anecdotes like those above, does suggest that HIV/AIDS needs to be seriously considered in trying to understand factors giving rise to rape in South Africa. Certainly, it would seem that rapists may be targeting younger girls and children in the belief that, being less sexually active, they are also less likely to be HIV positive.
- Government funding of the controversial anti-retroviral drug AZT - widely used in the treatment of AIDS - for rape survivors has received much attention in the media and from the public during the last months.
- In an address to the National Assembly on 16 November 1999, the National Minister of Health, Dr M E Tshabalala-Msimang, indicated that it is conservatively estimated that up to four million South Africans, approximately 10% of our population, have been infected with the HIV virus. The Department of Health reported in 1999 that young women in their 20s have the highest infection rates. 26,1% and 26,9% of pregnant women aged 10-14 and 25-29 respectively are HIV positive.⁸⁵
- The Minister further stated in her address that the government does not supply AZT (which is generally used in conjunction with other drugs) to people infected with HIV/AIDS (including pregnant

⁸³ As recorded by Lisa Vetten in Submission 1G

⁸⁴ Submission 1G

⁸⁵ As reported by CERSA in Submission O, page 21.

mothers) and people who may have been infected through needle-pricks or through rape, on two grounds:-

- Affordability. In her address to Parliament, the Minister stated “We simply cannot afford AZT. At current market prices the cost of the triple therapy drugs alone, for the treatment of four million South Africans, would be ten times the total South African health care budget, and 140 times what we spend on pharmaceuticals in the public sector.”
 - The absence of proper research on the possible harmful side-effects of AZT, in particular its toxic profile.
- With regard to the treatment of rape survivors, the Minister said the following:

“I must draw your attention to the fact that AZT is not registered for this particular use in South Africa, or to the best of my knowledge, anywhere else in the world.⁸⁶

“It is extremely unusual to expose healthy adults or children to a drug like AZT, that was developed for use in chemotherapy, and that is known to have caused cancer in animal studies. Few drugs on our market are known carcinogens in animal models, and those that are, are mainly used to treat patients with established serious conditions such as cancer, where their effects have been carefully studied in clinical trials, and where their use is strictly controlled.

“We have absolutely no idea of what the effects are, either short-term or long-term, of using AZT, a known carcinogen, on healthy people. The use of AZT is, at the present time, illegal, aside from it being dangerous.”

▪ **INCARCERATION OF OFFENDERS**

- The Department furnished the Committee with the following relevant statistics⁸⁷ about prisoners presently in the care of the Department:-
- There are 12 034 prisoners convicted of sexual offences – 11% of the total sentenced prisoner population.

⁸⁶ The Minister also stated that South Africa is the only country in the world in which the use of AZT to treat health care workers, following needle-prick injuries, is registered.

⁸⁷ Submission 1H

- There are 4 111 sentenced and unsentenced female prisoners: 871 (21,1%) have been convicted of murder, 516 (12,6%) of assault, 347 (8,4%) of narcotics-related crimes, and 326 (7,9%) of fraud.
 - The average age of female prisoners was 30,77 years, and the average sentence of those already sentenced was 36,38 months. There are 315 infants in prison in the care of female prisoners.
 - As at 30 April 1999, the number of HIV-positive prisoners was 1 789, a 25,46% increase from the number of 1 426 in May 1998.
- The Department of Correctional Services presented a submission⁸⁸ to the Committee describing their extensive education and rehabilitative counselling programmes for inmates⁸⁹, and in particular perpetrators of sexual violence. Convicted rapists receive counselling and treatment from psychologists as they have been identified as a priority target group. The Department conceded that their rehabilitative efforts were difficult to measure due to a lack of statistical support.
- 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, and stress and anger management, alcohol and drug abuse). The Department also makes use of NGO's, such as People Opposed to Women Abuse who hold workshops on violence for female offenders who have committed violent crimes.
- Departmental policy stipulates that mothers with infants and young children⁹⁰ must be kept in a separate Mother and Child Unit, where surrounding and facilities are complementary to sound physical, social and mental care and development of the child.
- It was also reported that the Department now had a programme in place by which all reasonable efforts were made to notify victims of the parole hearings, release or escape of prisoners. Victims may make oral representations at parole hearings without the prisoner being present, or written representations. The victim may also

⁸⁸ Submission 1C

⁸⁹ In its 1998 report, the Department of Justice reported back on a Canadian study tour on dealing with violence against women, and in the lessons drawn from the tour listed the need for rehabilitation for offenders. This issue was also raised by UWC's Community Law Centre.

⁹⁰ A female prisoner may, subject to prescribed conditions, be permitted to have her child with her until the child is five years of age.

request to have certain conditions included in the prisoner's parole conditions, especially in rape and child abuse cases, such as that the offender is restricted from certain public or residential areas.

- 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, changes of address, and costs incurred to attend the parole board hearing.
- The Department also attempts to assist prisoners about to be release 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

- Several research reports were presented to the Committee at the hearings. The findings, which appear important to the Committee, are summarised below. The Committee requests that these summaries should not be used without reference to the entire research reports, copies of which are available from the Committee clerk. It is always necessary to take into account the limitations of such research, which were all conducted in specific geographic areas, and to recognise the danger of generalisation. These difficulties only highlight the dire need for a proper statistical database on issues relating to violence against women and children and gender attitudes.
- UNISA's Institute for Social and Health Sciences presented a research report on rape surveillance through district surgeon offices in Johannesburg from January 1996 to December 1998. Some of their findings on an analysis of 1401 rape cases reported at the Hillbrow, Lenasia South and Chris Hani Baragwanath medico-legal clinics during this period were the following:
 - 51% of survivors were between ages 15 and 25;
 - 80% of survivors were African, 10,2% Coloured, 8,1% White and 1,8% Asian;
 - 88,3% of rapes were perpetrated by a person of the same race group as the survivor;

- 58,2% of rapes occurred over the weekend, and 43,7% took place between 18h01 and 0h00, i.e. most rapes took place after working hours and after dark;
 - 44,7% of survivors were acquainted with their attacker in some way: 21,9% of victims knew their attacker by sight, 5,7% were “friends”, 4,2% were relatives, 3,4% were ex-boyfriends, 3,1% neighbours, 1,5% family acquaintances, 1,2% boyfriends and 0,8% co-workers⁹¹;
 - Younger victims were more likely to know their attackers: offenders were known to 57,4% of victims between ages 1 to 12, 53,8% of victims between 13 to 19 years (the perpetrator was unknown to 61,6% of victims between 20 to 30, 64% of 31 to 40, and 83,3% of those older than 50);
 - 31% of rapes were committed in open fields, 29,1% in the rapist’s home, and 14,2% in the victim’s home. 32 cases occurred in Hillbrow, 70 in the Johannesburg CBD, 60 in Lenasia, 50 each in Berea, Orange Farm, Soweto, and 46 in Joubert Park;
 - A single perpetrator committed 73% of rapes, while 27% involved multiple attackers (two attackers – 13,6%, three attackers – 6,4% and four attackers – 7%);
 - Where a single perpetrator was involved, 51,5% of perpetrators were known to their victims, and 48,2% of rapes occurred in homes (32,3% in the rapist’s home and 15,9% in the victim’s home);
 - Where multiple attackers were involved, 75,1% of the perpetrators were strangers to the victims, and 50,8% of the attacks occurred in public areas;
 - Weapons were used in 54,9% of attacks: mostly knives (50,9%) and firearms (35,3%). In 85,5% of cases the weapon was used to threaten only.
- UCT’s Institute of Criminology’s Gender, Law and Development Project presented a submission on research undertaken in rural areas in the Southern Cape⁹², which found that the statistics and dynamics

⁹¹ The research report points out that, when interpreting these statistics, one should bear in mind that the sample only represents reported rapes.

⁹² “Violence Against Women in the Southern Cape: Exploring Access to Justice Within a Feminist Jurisprudence Framework”

of rape are similar in rural areas to those in urban centres, but significant differences are identified in access to justice & support after the attack. Participating women estimated that 80% of women, on average, are victims of ongoing domestic violence.

- Rural women experienced and witnessed injuries ranging from burns from boiling water to severe head injuries, resulting in loss of hearing and sight. Steel pipes, sticks, knives, furniture, boiling water, fists, pieces of timber and kitchen utensils were all used on women in their communities. 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”.
- One participant described the domestic sexual abuse of a family member as follows:

“What can she do if he comes home, drunk, kicking the door, the children and everything has gone mad? When she is sleeping, he turns up the music loud and come to her and makes her sleep with him. And she only wants to please her husband but she does not like it. He is very aggressive in their bed with . She does not believe it’s really rape when it is her husband. Neither does he. He says ‘you’re my wife, I can do what I want to do’.

“Even if she says no, her husband gets cross and hits her and keeps doing what he wants to do. It is very painful, but she cannot scream because her children are there. That is why he turns on the music. But, she says her children know what is happening. She can hear them crying.

“She reports him to his family. His family says ‘what’s wrong with you that you don’t want to please your husband’ or ‘what are we supposed to do... you must have sex with your husband’.

“Sometimes husbands listen but they mostly say it is nonsense and if the women do not like it, they must leave the house. What must we do? Go to the police? Even if you are raped by a stranger they don’t believe you and now you must tell them your husband is raping you? They are just as bad as the husbands. They ridicule you too and tell you that you are full of shit and you are wasting their time. You can have scars on your face... bleeding... and the

police will send you home to 'sort it out with him'. Rape by your husband is only real in the law."

- Participants listed domestic violence, alcoholism, under- and unemployment, the rape of women and property crime as major problems in their communities. Participants reported a link quantified at 75% to 100% between alcohol and violence in their communities: Women reported that the highest levels of crime against women and children, particularly sexual assault and rape, occurred in close proximity to shebeens. It also appeared that age restrictions for buying alcohol were almost non-existent.
- Rape and the sexual molestation of children were seen as the biggest threats to women and girl children in the communities, not only due to the violation of women's physical and sexual integrity, but also due to other consequences of rape, such as death, injury, impregnation and STD's.
- Economic abuse was a notable feature of the research, and included withholding money, stealing money earned by her, throwing the victim and her children out of the home (or threatening to do so) or the practice of giving money to the eldest son (no matter how old he is). But most commonly, men gave money irregularly to the women to provide for their families, and women were subsequently beaten if the husband found meals or the home unsatisfactory.
- Women listed the following causes of domestic violence: Lack of respect for women, problems with children (misbehaviour or neglect), unemployment and alcohol abuse, suspicion or jealousy, and culture (with special reference to lobola).
- The report lists the following reasons for the limited access to justice for rural women:
 - Economic disempowerment (as a result of lack of education and unemployment) was mentioned as being the single factor, which prevent women from removing themselves from the domestic violence. Most women who participated in the research had no credit rating or no cash to draw on in an emergency. These financial restrictions resulted in isolation and domestic "confinement", and dictated their physical mobility, access to education, recreation, where they could shop, what they could buy and also access to each other.

- 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. Distances to basic public services are great and child care is a problem if travel is necessary. There are no or limited taxi and bus services and if they do exist they are expensive.
 - 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.
 - Women in rural areas have little option but to remain in the home with the offender because there are no accessible safe houses or shelters. Rural women remain in abusive relationships because they have little access to economic resources.
 - Women in small rural communities articulate fears of community gossip or alienation from their communities if they seek assistance.
 - Women remain powerless over alcoholism within their communities.
 - 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 law contains systemic inequalities, state legal structures are inherently discriminatory against women and, more specifically, do not meet the needs of rural women.⁹³
 - The Medical Research Council's Centre for Epidemiological Research in SA ("CERSA") presented three research reports at the hearings, which will be dealt with in turn below.
 - CERSA presented a research report on domestic violence based on the first major community-based prevalence study conducted among women in Eastern Cape, Mpumalanga & the Northern Province.⁹⁴ Its main findings were the following:-

⁹³ During the course of the hearings, the Committee's Chairperson suggested that future hearings of the Committee be held in rural areas such as Transkei.

⁹⁴ "He must give me money, he mustn't beat me" – Violence against women in three South African provinces

- 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.
- The report's findings on the prevalence of violence against women is demonstrated in the following table:-

	Eastern-Cape	Mpumalanga	Northern Cape
Abuse by a current or ex-partner in the past	26,8%	28,4%	19,1%
Abuse by a current or ex-partner in the last year	10,9%	11,9%	4,5%
Rape	4,5%	7,2%	4,8%
Physical abuse during pregnancy	9,1%	6,7%	4,7%

- The study shows that considerable mental distress is associated with abuse. Of the women who reported being abused in the past year, 27,9% (Eastern Cape), 24% (Mpumalanga) and 14,3% (Northern Province) indicated that they have suicidal thoughts.
- When asked about women's perceptions of culturally accepted gender relations, there was considerable agreement with patriarchal gender relations (including subservience of women to her husband, punishment of her by him in some situations, male ownership of women and the interpretation of beating as a sign of love), but women also indicated that the prevailing gender attitudes in their culture was much more patriarchal than their personal

views, and a considerable number of women disagreed with notions they conceded to be “culturally accepted”, such as “if a man pays lobola for his wife she must have sex when he wants it”. Only 57% (Eastern Cape), 40,4% (Mpumalanga) and 40,9% (Northern Cape) of women believed that a woman can refuse to have sex with her husband. 80,1% (Eastern Cape), 91,4% (Mpumalanga) and 86,8% (Northern Cape) of women indicated that a man hitting his wife or girlfriend was never acceptable.

- The report also mentions that there was considerable disagreement amongst the women about the meaning attached by 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 Khayelitsha⁹⁵, initially intended to focus on contraception, bodily knowledge and pregnancy, found that male violence dominated the sexual relationship of these women. Conditions and timing of sex were entirely defined by their male partners through the use of violence and through the circulation of certain constructions of love, intercourse and entitlement to which the women were expected to submit. The research report also states that violence against young women within their sexual relationship has been particularly neglected in the spheres of health and education. Some of the findings are the following:
 - First sexual encounters were mostly reported to have occurred at a young age, often 12 years, with a male partner about 5 years older.
 - Many participants indicated that sex was a strategy to avoid peer ostracism, and the mystifying of sex and its mechanics emerged repeatedly through a lack of input by sexually experienced female peers.
 - Women were therefore initiated into the sexual matters by men, who repeatedly refused to explain what was about to take place. Most participants reported that they had been deceived or coerced into sex, and that attempted resistance was met with violence or threats of violence.
 - 22 of the 24 participants reported having been beaten by their partners on multiple occasions, and the remaining two had been threatened with assault. The assault occurred primarily when women attempted to refuse sexual

⁹⁵ “Sex, violence and construction of love among Xhosa adolescents: putting violence on the sexuality education agenda”

intercourse, which the women stated signified, in men's eyes, that the women had other sexual partners. Assault was perceived to be male strategy for "getting you to love him".

- Women said that the forced intercourse they experienced with their partners could never be termed rape.
 - Many women continued intercourse and did not attempt to end the relationship because they feared more violence. Despite the violence, the men demonstrated material generosity in the form of clothes, food and money. One participant said "it is alright as long as he doesn't beat me every day."
 - Most participants stated that they felt unable to discuss sexual matters and contraception with their male partners, and for some contraception appeared to be completely non-negotiable in view of angry responses by their male partners when the issue was raised.
 - Out of 24 adolescent women, only two mentioned that they ever actively wanted to have sex now, but emphasises that women were not allowed to demonstrate desire or initiate sex. Many women stated a desire to be in a non-sexual relationship characterised by co-operation until they were older.
- CERSA also reported on research conducted among young people in Umtata⁹⁶. Some of their key findings were the following:-
- Many participants reported physical assault and rape or coercive sex. Out of the thirty 16-26 year olds who participated, 16 out of 22 girls reported assault by at least one male partner, and 6 out of 8 boys admitted to having beaten their girlfriends on more than one occasion.
 - Violence was used by boys as a way of imposing the rules of a relationship and was particularly associated with girls' rejections of "proposals of love", attempts to end relationships, refusals of sex and their actual or suspected infidelity. Relationships were characterised by extreme suspicion around partners' activities with others, and it appeared to be a common assumption that a refusal to have sex implied that the girl had another sexual partner.

⁹⁶ "Love is a dangerous thing': micro-dynamics of violence in sexual relationships of young people in Umtata" (Submission N)

- 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 girlfriends were overwhelming preoccupations for these young people.
 - Neither teachers nor parents made any effort to promote safe dating or to interfere in the violent activities. Sexual relationships between girls and male teachers were commonly reported, and often involved coercion and even violence on the part of the teachers.
- A research report amongst male municipal workers in Cape Town aimed at establishing the prevalence of abuse as reported by men, as well as risk factors associated with woman abuse. Some of the findings were the following:-
- 44% of men reported having physically or sexually abused a partner within the last 10 years – 8% reported physically abusing a partner in the last year.
 - One third of the 44% said they had raped (more often) or attempted to rape their partner.
 - Men who reported physical and sexual abuse was five times more likely to use psychological abuse, four times more likely to use verbal abuse and twice as likely to use economic abuse.
 - 75% of the abusers said it was “OK” to hit a woman, and another 25% of those who didn’t report abuse also agreed. The circumstances given by the men when it is “OK” to hit a woman were “when she neglects her responsibilities”, “when there are no clean clothes”, “when she come home late”, “when she don’t listen” and “when she is cheeky”.
 - The sample consisted of 64,7% Coloured men, 25,2% African, 8,6% white and 1,5% Asian men. From this sample, abusers were more likely to be young and Coloured men, likely to have been in jail, to have been arrested, to have belonged to a gang; non-abusers were likely to have had education beyond standard 8 and likely to be active in religion.
 - Abusers acknowledged that their use of alcohol and marijuana was a problem.

- Witnessing abuse of their mothers by their fathers as a child was associated with being an abuser. 34,2% of men who reported abuse reported witnessing their mothers' abuse by their father or a boyfriend, while only 15,9% of men who did not report abuse witnessed such behaviour. 38,5% of men who reported abuse also reported witnessing their sisters' abuse by her husband or a boyfriend, while 21,2% of men who did not report abuse witnessed such behaviour. An average of 86,1% of the entire sample reported receiving physical punishment as a child – men related stories of severe discipline and bizarre punishment in which their fathers had a central role.
 - The report mentions that, during their interviews, many of the men became emotional when talking about their childhood and the abuse of their mothers, and many said they had never had the opportunity to talk about it before.
 - It is apparent from the study that men's attitudes towards women and their perceived roles influenced the reasons for conflict with partners in abusive relationships. In relationships where there was less expectation that a woman should obey her partner, less of belief in male sexual entitlement, less fear of infidelity, much less conflict was experienced. Men reported "she sits on his head" or "she answered him back" or "talking to other men" as reasons for conflict.
 - Many men reported being frustrated at work where they have to "accept the shit of the bosses". One explained his frustration of not being able to provide adequately for his family as "it is one of the things to be a man".
 - Most of the men did not think shouting and swearing at or humiliating a woman was a form of violence.
- The Centre for Rural Legal Studies furnished the Committee with a research report on the plight of women farm workers in the Western Cape. The report recounts attitudes of violence and abuse among male farmworkers, reinforced by extreme financial dependence of women:
 - 67% of all employers stated that domestic violence occurs on their farms.
 - 50,9% of employers agreed that they tacitly include a male worker's female partner in his employment agreement, while

- 60% of employers insist that a male worker's partner must be available to work on the farm.
- 52,4% of women report that the house is linked to their male partner's contract. 48,6% of employers stated that, should a male worker leave or die, his female partner would have to leave the farm.
 - Only 21,1% of women stated that they had access to legal aid, and more than half of women said it was extremely difficult to access these services during working hours.
- The 1998 South Africa Demographic and Health Survey⁹⁷ reported statistics on violence against women that were significantly lower than those reported by other studies:-
 - 13% of women reported having been beaten by a partners, of which half reported abuse in the last year.
 - 43% of those who reported abuse in the last year reported needing medical attention as a result of such beatings.
 - Only 4% of women who had ever been pregnant reported physical abuse during pregnancy.
 - Only 4% of all women reported ever having been raped.
 - The Survey mentions that the under-reporting of gender violence is well-recognised and should be taken into account in interpreting its results, especially in view of other research by the MRC:

“The usual explanations for under-reporting are concern about recrimination, fear of identifying oneself as an abused woman due to a socialisation that encourages women to accept chastisement as a male prerogative, feelings of shame about the assault and having provoked it, perceptions that it is a private matter and loyalty to the abuser.”
 - 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

⁹⁷ Compiled by, *inter alia*, the Medical Research Council and the Department of Health

- It emerged strongly from the hearings that rape, sexual assault and domestic violence are more prevalent in South African society than ever recognised⁹⁸, and that fear and expectation of violence is a way of life for many South African women.

“It’s always present. You never know when it is coming. There are times when you do and you have to just wait until he gets home and just does it. Then it is over and you are relieved. The waiting is the worst part.”⁹⁹

“We know the cycle well. No one has to explain it to us. You see his mood rising ... he is anxious or angry or drunk or just showing his manliness to his friends ...it can be anything. You are never prepared for it and you are always prepared for it. You never believe it when it happens even if it happens everyday. He says he is sorry and will not do it again and you feel relief, but you know the calm before another storm.”¹⁰⁰

- The hearings also shattered the common myth that the rapist is a stranger who lurks in dark alleys. Research reports presented to the committee clearly showed that most violence against women is perpetrated by a person with whom the victim or survivor is acquainted in some or other way. Especially younger victims are much more likely to know their attackers, with 57,4% of offenders known to victims between ages 1 to 12, and 53,8% if victims between ages 13 to 19.¹⁰¹
- Submissions repeatedly 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

⁹⁸ The MRC’s CERSA found in research conducted amongst women in the Eastern-Cape, Mpumalanga and the Northern Cape that between 19% and 28% of women had experienced abuse by a current or ex-partner.

⁹⁹ “Access to Justice for Rural Women” - Research Report by the Gender, Law and Development Project, Institute of Criminology, University of Cape Town, page 22.

¹⁰⁰ “Access to Justice for Rural Women” - Research Report by the Gender, Law and Development Project, Institute of Criminology, University of Cape Town, page 22.

¹⁰¹ Finding of a research report conducted by the University of South Africa’s Institute for Social and Health Sciences on rape surveillance at the Hillbrow, Lenasia South and Chris Hani Baragwanath medico-legal clinics. This report also found that, in cases of multiple attackers, the attack was more likely to be perpetrated by strangers to the victim, and in open spaces; single perpetrators were more likely to attack victims they knew and 48,2% of such attacks occurred in homes. These findings are echoed in the research findings among rural women in the Southern Cape by UCT’s Institute of Criminology’s Gender, Law and Development Project, which records that, in 55% of the rapes reported in their study, victims knew the offender by name or by sight.

the present mindset of individuals, communities and society as a whole. There is a need to acknowledge the pain of the past and the influence this has on the entire nation. The fragmentation existing within communities is indicative of the fragmentation of identity of individuals; violence against women is just one of the effects of such fragmentation.

“We believe that one of the reasons why we are not seeing a change in attitude of the judiciary or why rape and domestic violence is almost condoned at community level, is because we have not created adequate space in the transformation process for the acknowledgment of our past traumas and a lack of adequate and appropriate mechanisms for healing the pain which every single citizen in this country has been subjected to.”¹⁰²

It was also argued that the division of the people of this country according to race contributed to the prevalence of violence against women: notions of racial superiority and separation led to forced removals, states of emergency and the artificial creation of “homelands”, thereby breaking up traditional family structures.¹⁰³

- In her submission¹⁰⁴ to the Committee, Lisa Vetten explored the following factors contributing to violence against women in South Africa:-
 - Imbedded patriarchy:
 - Vetten describes this ideology of granting men power and privilege over women as the one factor unifying South Africa’s various cultural and ethnic groups. Culturally imbedded patriarchal gender identities of women as receptive, caring, emotional, passive and submissive and men as self-assertive, competitive, rational and aggressive have resulted in the treatment of women of all colours as second class citizens, and women’s confinement to the private sphere of the home while men are engaged in the public sphere of work, community affairs and politics.
 - These patriarchally determined gender identities manifests itself in contemporary understandings of lobola. Since cash payments can now be made to the

¹⁰² Submission by the Masimanyane Women’s Support Centre

¹⁰³ Lisa Vetten in submission 1G, page 7

¹⁰⁴ Submission 1G

family, some men regard marriage as a financial transaction of “buying” a wife.

- Patriarchy 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. Women’s financial dependence on men was repeatedly cited in submissions as the main reason for women’s inability to remove herself and her children from a violent domestic situation.
- Submissions also mentioned deepening levels of poverty and inequality in post-apartheid South Africa, which most closely affects women as the major component of the unemployed in South Africa. Masimanyane said in their submission to the Committee that economic deprivation and other political factors have destroyed people’s identities and eroded their self-esteem and self-worth.¹⁰⁵ Poverty also directly affects women’s access to health care, the police and the criminal justice system.
- 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 fathers or communities, as a factor in the scourge of violence against women. Authors have also argued that violent practices are deployed by men against women in attempts to maintain particular self-images and social evaluation in the face of real or imagined threats, i.e. to prove that they are “real men” and their women are under their control. In particular situations, the use of certain forms of violence by men to control and punish women is perceived as socially acceptable to both men and women of all ages.¹⁰⁶
- Gendered constructions of male and female sexuality have created the idea that men should be sexually active and women passive and without sexual desire, which cultural prohibition implies to some men that women need to be forced to have sex in a context

¹⁰⁵ Submission Z

¹⁰⁶ This submission is contained, inter alia, in the introduction to CERSA’s submission O.

where it is not acceptable for women to indicate her consent. It is this cultural belief, which leads to the dangerous practice of dry sex, where women go to great lengths to avoid the natural vaginal lubrication of sexual arousal (believed to be a sign of promiscuity), a practice that pose serious risks for women's health by increasing her susceptibility to STD's and HIV/AIDS.

- Research has shown a vast discrepancy in attitudes to the fidelity required from men and women: where it is acceptable for a man to have many sexual partners, a woman is required to be faithful to one partner. This practice obviously as dire consequences for women's health.

- 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, and in 180 years of slavery in the Cape not one man was convicted of raping a woman slave.
 - The discriminatory construction of sexuality for men and women has been compounded on a racial level in South Africa, where black women's bodies have been violated throughout its history. Where perpetrator of violence against a black woman was a white man, his acts were often ignored, while black men who assaulted or raped white women were often given the death penalty.¹⁰⁷

- 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. This culture, combined with the general psychological consequences of violence and war, has had a destructive effect on the lives of many South African men.
 - Professor Jacklyn Cock¹⁰⁸ similarly blamed the legacy of militarisation, which involves "a proliferation of weaponry and ideas which link violence to masculinity. This militarised masculinity puts women and children at risk. This risk is amplified in situations of poverty, unemployment and inequality were the

¹⁰⁷ Rob Turrell, in submission V, gave the Committee an historical overview of the circumstances in which the death penalty was handed down for rape in South Africa.

¹⁰⁸ Submission 11

human needs for identity and security are not met. These two factors combine to make women and children the shock absorbers of violence and frustration.”¹⁰⁹

▪ Changes in the social order

- Research has shown that an increase in violence against women, and especially sexual violence, often occurs in response to changes in the social order. Very obvious examples hereof can be found in the Ma Rashea gangs formed by Basotho men after the Second World War to “control” and punish women who were becoming increasingly independent, as a result of, inter alia, migration by men to South Africa in search of work, and in “jackrolling”, a practice prevalent in the late 1980s whereby young men too old to return to school and unable to find jobs abducted and raped schoolgirls in the hope of impregnating them and ending their education.
- Violence against women is often also intended to communicate messages of victory over other men, which manifests itself in the phenomenon of raping women in the presence of men perceived to be the rapists’ enemies.
- Rape is also used as a means of punishing sexually active women, and girls suspected of or known to have other partners are sometimes gang-raped by their male partner’s acquaintances as a form of punishment.¹¹⁰

▪ Legitimising violence against women: Vetten points out the difficulties created by African traditional and customary law, and mentions, by way of example, the following customs oppressive to women:

- the levirate: the continuation of the deceased husband’s marriage through a brother or other male relative;

¹⁰⁹ Submission by Professor Jacklyn Cock, Department of Sociology, University of the Witwatersrand, page 1.

¹¹⁰ This phenomenon was raised at the hearings in various submissions.

- the sororate: requiring the younger sister of an apparently barren wife to take her place and produce children on her behalf;
 - polygamy: taking more than one wife;
 - child betrothal and forced marriages;
 - inheritance laws, by which the family's property and wealth is passed down from father to son, which may leave women destitute on the death of their husbands;
 - women's minor status;
 - lobola (or bohali or bogadi): the practice of consolidating marriage through the exchange of women and cattle (or cash) by the father of the bride and the prospective husband.
- Nisaa made the submission that government inaction is a factor, which contributes to the high level of gender violence in societies. Despite the legal system's role as an institution for censure of socially unacceptable acts, it often appears to tolerate acts of violence against women, particularly so when the violence occurs in the home. The failure of the legal system to prosecute alleged rapists and batterers and to secure convictions with hefty sentences sends a powerful message to men that their violence is acceptable, and women internalise the message that their lives and safety are not worthy of protection. The law also does not name violence against women, and it has been left to the women's movement to coin terms such as "domestic violence", "sexual harassment", "date rape", "femicide", "forced prostitution", "sex-selective abortions" and "genital mutilation". Many abuses women suffer have remained invisible in mainstream legal culture.
- Submissions also complained 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. The Commission on Gender Equality (CGE) made the following submissions in this regard to the Committee:
- Reporting on rape is characterised by sensationalism in reporting on extreme and sadistic violence; stereotypes about the myth of rape by a deranged stranger (while in reality the rapist is much more likely to be the man next

door)¹¹¹, and the “blameworthiness” of sexually experienced victims; media reports differ substantially when the accused exhibits other criminal behaviour (like being a gang member) than when the accused is businessman or a sport celebrity (such as in the case of Makhaya Ntini); CGE is concerned that the recent voluntary disclosure of the identities of rape victims may lead to the violation of the survivor’s right to privacy where she does not choose to do so.

- The reporting of femicide is often done in a manner, which obscures the nature of the crime, such as “Woman dies after row” or “Policeman among 3 killed as lovers’ tiff ends in tragedy.”
- Domestic violence has received very little attention from the media, and tends only to do so in the cases of celebrities. The nuclear family is often depicted as the norm in South Africa's media, despite the reality that more South Africans belong to extended family units, blended households or female-only households.
- The attitudes of radio presenters can serve to reinforce prejudices, especially in a country where illiteracy levels are so high and more people have access to radio than to television.
- The importance of regulatory bodies such as the IBA, ASA and Press Ombudsman was emphasised, as well as the need for clear guidelines and disciplinary procedures.
- The destructive potential of inaccurate media reporting was illustrated in the reporting of the Committee’s attempts to engage members of the judiciary in constructive discussions about issues relating to violence against women. Such attempts were irresponsibly and inaccurately portrayed as a “summons” by the Committee to Judge John Foxcroft, thereby creating imaginary conflict between the Committee and the judiciary.¹¹²
- The Commission for Gender Equality also mentioned that the media has played an important role in putting issues such as rape on the national agenda.
- Both government submissions and those of NGO’s reported an enormous lack of understanding of violence against women by the

¹¹¹ Also reported by Nisaa

¹¹² This statement was supported in a submission by Judith Smith of Women’s Media Watch (B), Beauty Ntuli, WACA Advice Centre (D)

public. Both men and women are ignorant of women's rights to be free of violence, especially domestic violence. For example, many men and women still do not recognise marital rape as a crime.

- 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 act to protect themselves, and to provide information and support to other young women.¹¹³
- Various submissions stressed the importance of involving men in programmes on eradicating violence against women. It was suggested that all people involved in men's programmes should attend a national forum to discuss violence against women. Men must develop a partnership with women's groups in addressing the problems which men and women face; it is necessary to acknowledge that men too suffer from the traumas of the past.¹¹⁴
- Although they did not participate in the hearings, the Committee Chair has addressed shopstewards in the COSATU campaign against violence against women in conjunction with their campaign against HIV/AIDS. COSATU has produced a guide for shopstewards on these issues, and is also in the process of holding training workshops for its shop stewards. The campaign encourages the shopstewards to do the following:
 - Educate their members about violence against women;
 - Take up sexual harassment cases on behalf of their members;
 - Ensure that there are sexual harassment grievance procedures in the terms and conditions of employment at their workplace;
 - Develop a code of conduct on sexual harassment together with the employer;
 - Talk to known abusers among their members about their abuse;

¹¹³ In its submission, UCT's Institute of Criminology's Gender Law and Development Project reported that women who were victims of violence received little or no support from family or the community; women were often too scared of retaliation to help other women, and the survivor feared public humiliation and ostracism by family and friends should she speak out.

¹¹⁴ Submission by the Masimanyane Women's Support Centre

- Assist any woman member who is being abused and ensure that she is given time off to go to court or to move her children and belongings to a safe place;
 - Help abused women to negotiate a transfer to a different town to escape the violence;
 - Ensure that women are able to reach their transport safely after work;
 - Invite women leaders to speak at the workplace so that workers will understand and stop violence against women;
 - Ensure that the Employment Equity Act is implemented;
 - Negotiate with their employer to provide childcare.
- The South African education system, which ought to be the main channel of promoting awareness of gendered violence among the youth, has been and remains in a state of transition. Not only is the Department of Education burdened with the task of reconstructing an education system ravaged by apartheid, but also our schools are staffed by teachers who are products of an apartheid education system themselves.
 - CEDAW requires government to “adopt all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary practices and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women.”¹¹⁵
 - 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 single sex schools;
 - sexism in curricula, textbooks, teaching and guidance;

¹¹⁵ Article 4(j) of Annex F to CEDAW

- the poor representation of women in management positions; and
 - sexism, sexual harassment and violence throughout the education system.
- The GETT report also lists the following recommendations ¹¹⁶:-
- 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. Such legislation should also define gendered and sex based harassment and should be made unlawful in all contexts in educational settings.
 - 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 Department of Education participated in the hearings and the Minister of Education delivered an oral submission to the Committee regarding the Minister and the Department's efforts to address violence against women.
- The Department of Education's 1997 report on Gender Equity in Education dealt with sex based violence in schools, and states *inter alia* that "the sheer dimension of sex or gender based violence and harassment in education in SA subverts the right of women and girls, and many boys, to participate in education on the same basis as most men and boys."
- 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. This problem had abated somewhat, and it was hoped that the issue could be more appropriately addressed under the auspices of Curriculum 2005.

¹¹⁶ As reported in the Committee's November 1998 report on Government's implementation of CEDAW and the BPA.

- The Minister of Education reported to the Committee that a Gender Equity Directorate had been established in April 1999, which liaises with Gender Focal Persons in Provincial Departments through the National Gender Coordination Committee. An Interim Gender Coordinating Committee from the four branches of the Department had also been established.
- The Department of Education was also preparing gender-training programmes for all officials, both national and provincial, as well as a Mainstreaming Handbook for use by gender officers.
- A school-based project on sex-based & gender-based violence & harassment (McGill University in Canada) was being developed, and a successful and well-attended seminar on sexual harassment in schools was held in May 1999.
- The Committee would like to receive a formal response from the Department of Education on the following issues¹¹⁷:-
 - the Department's efforts to ensure that gender issues are not isolated to the Gender Equity Unit;
 - what programmes the Department is planning to raise awareness in both educational institutions and the general public to raise awareness of sexism and violence against women, and in particular the pre-service and in-service training of teachers regarding these issues;
 - the provision of extended day care facilities for younger children and the 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,¹¹⁸ as well as the development of comprehensive age-sensitive sex 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.

▪ THE BUDGET AND ALLOCATION OF RESOURCES

¹¹⁷ These issues were raised by the Committee with the Parliamentary Education Committee during August 1997

¹¹⁸ In accordance with government's obligations in terms of Article 10(c) of CEDAW

- CEDAW stipulates that government should include in its budgets adequate resources for its activities relating to the elimination of violence against women.¹¹⁹
- 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 1992/1993, the Department reduced expenditure on Defence from 9,1 % of total government spending to 5,7% in 1997/1998. Spending on social services increased from 43,8% in 1992/1993 to 46,9% in 1997/1998.¹²⁰
- 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 commitment to reduce military expenditure and to utilise the savings towards women's empowerment. The report further records that, in a briefing on 16 March 1998, the Minister indicated that military spending had decreased from 4,5% of GDP in 1993-1994 to 1,5% in 1999-2000, and that the main beneficiaries of this decrease had been the Departments of Health, Education and Welfare.¹²¹
- Yet in the 1999 Medium Term Budget Policy Statement, the average annual growth in present and projected proportional expenditure for Defence and Intelligence was 14,9%, more than double the figure for any of the other services, including Education, Health and Welfare. "Strong growth in protection services over the medium term largely reflects additional defence spending of R2,8 billion in 2000/01 and R3,8 billion in 2001/02 on the strategic procurement package."
- The Department of Finance was invited by the Committee to present a submission at the hearings. Although 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 also has not received a response to questions posed to Deputy Minister at the hearings.
- The Committee requires an urgent response from the Department of Finance on, amongst others:-
 - the Department's efforts to redress the unemployment of women formerly employed in the clothing and textile

¹¹⁹ Article 4(h) of Annex F to CEDAW

¹²⁰ The Committee's November 1998 report on Government's Implementation of CEDAW and the Beijing Platform for Action, page 13

¹²¹ At pages 44 and 45.

industries caused by the liberalisation of trade policy as a means of increasing international competitiveness in the manufacturing sector

- Various projects in the NCPS Victim Empowerment Programme (VEP) were intended to focus on issues relating to violence against women and children. As will appear below, 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 1998/1999 year of operation; for the 1999-2001 years, "alternate sources of funding" would be sought during 1998.¹²²
 - "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 1998/1999, with funding of R400 000 sourced from the VEP.¹²³
 - "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 1998/1999 at a cost of R510 000, funded by the VEP.¹²⁴
 - "Outreach Centres to Counter-act 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 North-West Province and the Free State. The VEP would pay R3 million for its implementation in the remaining five provinces in 2000/2001. "Alternate funding" would be sought during 1998 for the continued operation of these programmes.¹²⁵

¹²² Department of Welfare's NCPS VEP paper dated May 1998, Annexure A, Cluster Three, number 3.1, page 16.

¹²³ Department of Welfare's NCPS VEP paper dated May 1998, Annexure A, Cluster Three, number 3.2, page 17.

¹²⁴ Department of Welfare's NCPS VEP paper dated May 1998, Annexure A, Cluster Three, number 3.3, page 17.

¹²⁵ Department of Welfare's NCPS VEP paper dated May 1998, Annexure A, Cluster Three, number 3.4, page 18

- R65 000 was budgeted from the VEP for "Access to Legal Provisions to Counter-act Domestic Violence in Rural Communities", a project only intended to be operational during 1998/1999.¹²⁶
 - "Violence Prevention in Schools", a project implemented by the Department of Health (in conjunction with the US Centre for Disease Control) for the 1998/1999 year at a cost of R65 000, funded by the VEP.¹²⁷
 - "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 1998/1999.¹²⁸
 - "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 1998/1999.¹²⁹
 - 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 1998/1999; funding for 1999/2000 and 2000/2001 "to be secured in order to extend to these two years".¹³⁰
 - An information and public awareness project hosted by the Department of Welfare, funded until 2001 by the VEP.¹³¹
- 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 NCPS, such as hijacking. Similarly, departments such as Safety and Security did not have specific, separate budgetary allocations for violence against women.

¹²⁶ Department of Welfare's NCPS VEP paper dated May 1998, Annexure A, Cluster Three, number 3.5, page 18

¹²⁷ Department of Welfare's NCPS VEP paper dated May 1998, Annexure A, Cluster Three, number 3.6, page 19

¹²⁸ Department of Welfare's NCPS VEP paper dated May 1998, Annexure A, Cluster Four, number 4.1, page 22

¹²⁹ Department of Welfare's NCPS VEP paper dated May 1998, Annexure A, Cluster Four, number 4.9, page 26

¹³⁰ Department of Welfare's NCPS VEP paper dated May 1998, Annexure A, Cluster Four, number 4.12, page 27

¹³¹ Department of Welfare's NCPS VEP paper dated May 1998, Annexure A, Cluster Four, number 5.2, page 29

- The exclusion of victims of domestic violence from the Fund for Victims of Violent Crime Bill¹³².
- The Commission for Gender Equality also raised the issue of involving the private sector in programmes addressing violence against women. An example of such involvement, which is accessible and effective, the private sector could assist in establishing shelters and safe houses for victims of violence.
- Various submissions¹³³ to the Committee mentioned that the cost of violence against women in South Africa, and especially domestic violence, has never been calculated due to ineffective documentation of these incidents by the health and criminal justice sectors. Yet even with loose indicators of the frequency and extent of violence against women, it is apparent that it has a staggering economic impact on our health, welfare, policing and justice resources. A 1994 study undertaken by the Health Maintenance Organisation found that women who have been raped or beaten had medical costs two and a half times higher than those who were not victimised.
- By way of example, CERSA reported that the number of treatment episodes in one year as a result of abuse by partner or ex-partner was 121 000 in the Eastern Cape, 74 294 in Mpumalanga and 93 868 in the Northern Province.¹³⁴
- These costs are both public and private, paid for by women and their families (medical care, accommodation, travel, direct income, child care, serious injury, loss of property and non-monetary costs). Health costs carried by the state include doctors, nurses, emergency wards, clinics, mental health services, justice costs include police, courts and correctional services; in the social services sector, welfare, housing and child care. Employers also pay for violence against women in the form of high absenteeism and lower productivity.
- 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 intergenerational transfers of violence

¹³² This issue was raised by the Committee at the Justice Committee Hearings

¹³³ Including Nisaa and ADAPT

¹³⁴ Submission O

behaviour cannot be accurately estimated and private costs to women cannot be captured.¹³⁵

▪ **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 programme which affects issues of violence against women is the Victim Empowerment Programme, hosted by the core NCPS departments, namely Justice, Welfare, the SAPS, Safety & Security and Correctional Services, but also involves the departments of Health and Education, and provincial departments.¹³⁶
- R1,5 million of the OSW's funding of R2,5 million for 1998/1999 was donor funding, which terminated in August 1999. The budget for 1999/2000 only covers salaries and administration.¹³⁷
- During 1999, the OSW advised the Committee that it was developing a green paper on a national gender policy to be passed by Cabinet in 1998. This policy document was not finalised by the OSW during 1998. On 15 March 1999, Deputy Minister Essop Pahad and the director of the OSW, Dr Ellen Kornegay, advised the Committee that a draft national gender document had been completed and was undergoing internal review, to be realised as a green paper.
- 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.
- The Committee requires a response from the Department of Health regarding the procedures in place to ensure that under-resourced provinces and local governments receive more money for the implementation of both primary health care, as well as free health

¹³⁵ Statements from a 1999 research report by UCT's Institute for Criminology's Gender, Law & Development Project, "Violence Against Women in the Southern Cape: Exploring Access to Justice Within a Feminist Jurisprudence Framework"

¹³⁶ Statements from the Department of Welfare's NCPS Victim Empowerment Programme paper dated May 1998

¹³⁷ Reported in the Committee's Second Annual Report (January 1998 - March 1999), page 53.

care for pregnant women and children under the age of six, than stronger resourced provinces and local governments.¹³⁸

- Although the Department of Foreign Affairs were 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 relating 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 no access to alternative housing, the Committee also requires a response from the Departments of Housing and Agriculture and Land Affairs (both of whom were also 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 Practices Relating to Women's Housing Issues".¹³⁹

▪ **CO-OPERATION BETWEEN GOVERNMENT AND CIVIL SOCIETY**

- CEDAW requires government to recognise the importance of NGO's, to facilitate and enhance their work and to co-operate with them on all levels.¹⁴⁰
- Numerous submissions mentioned the importance of an inter-sectoral approach, involving both government and civil society, in addressing violence against women.
- It appears that 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 since inception of the Network, and the Network has received financial and administrative

¹³⁸ This issue was raised by the Committee with the Parliamentary Health Committee in August 1997.

¹³⁹ As reported in the Committee's November 1998 report on Government's implementation of CEDAW and the BPA, page 44

¹⁴⁰ Articles 4(e), 4(o) and 4(p) of Annex F to CEDAW

support from the Department.¹⁴¹ The Department of Health also participates in the National Network on Violence Against Women.¹⁴²

- The Committee was also 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 of the NGO's mentioned their prime difficulty of 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

- CEDAW stipulates that the state should "*promote research, collect data and compile statistics, especially concerning domestic violence, relating to the prevalence of different forms of violence against women and encourage research on the causes, nature, seriousness and consequences of violence against women and on the effectiveness of measures implemented to prevent and redress violence against women; those statistics and findings of the research will be made public*"¹⁴³
- 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 of the 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.¹⁴⁴
- By way of example, Masimanyane reported that their research on the prosecution of sexual offences cases were made extremely difficult through the absence of any recordal system whatsoever by court officials, and police dockets and court files which were incomplete. Nisaa also reported that there is no official methodology which records how many women phone police stations when they are in a crisis or when their lives are endangered. When women report abuse, domestic violence is recorded as common assault or assault with the intent to do grievous bodily harm. This difficulty creates a further obstacle in cases of femicide, where a long history of abuse is commonly found.

¹⁴¹ Statement from a letter addressed to the Committee chairperson by the Minister for Welfare and Population Development in June 1998.

¹⁴² Statement in the Department of Health's 1998 progress report to the Committee

¹⁴³ Article 4(k) of Annex F to CEDAW

¹⁴⁴ Submission by the MRC's CERSA in its report on research on violence against women in three South African provinces

- Nisaa further reported that the disaggregation of data and the devising of protocols around domestic violence may yield better data collection, and that 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 general¹⁴⁵. The Committee will request the Department to furnish it with a progress report in this regard.

▪ **RECOMMENDATIONS AND QUERIES TO GOVERNMENT DEPARTMENTS**

○ **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;¹⁴⁶
- that urgent attention be given to the appointment of more prosecutors, intermediaries, interpreters and magistrates¹⁴⁷, and that the Department of Justice allocate resources for this purpose;
- that the training of magistrates and prosecutors in gender-sensitivity, issues relating to gender violence and dealing with traumatised witnesses, especially children, be given priority;¹⁴⁸
- 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;¹⁴⁹
- that consideration be given to a more accessible court system for women in rural areas;¹⁵⁰

¹⁴⁵ White Paper on Safety and Security of 1998

¹⁴⁶ Recommendations of the Commission on Gender Equality and the Centre for Rural Legal Studies

¹⁴⁷ Recommendation by the President of the Regional Court for the Western Cape

¹⁴⁸ GAP also recommended that Magistrates be provided with clear guidelines on what constitutes “undue harm” for the purpose of the Domestic Violence Act.

¹⁴⁹ Recommendation by GAP

¹⁵⁰ Recommendation by GAP

- that the establishment of more Sexual Offence and Family Courts receive priority;
- that rape and sexual offence cases and cases of crimes against children be dealt with on a separate and continuous roll by both the High Court and Magistrate's Courts;¹⁵¹
- that attention be given by the Judicial Service Commission to sensitivity to gender issues in the appointment of High Court judges¹⁵², and that judges receive training in the international law requirements of CEDAW and other international human rights instruments¹⁵³, the nature and effect of violence against women, dealing with traumatised victims and gender sensitivity in general¹⁵⁴; and
- that gun control laws be enforced more strictly.¹⁵⁵

○ Law enforcement

The Committee recommends:

- that the Department of Safety and Security allocate resources to engage the services of experienced trainers from reputable NGO's 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;¹⁵⁶
 - the various legal remedies available to survivors of violence. It appeared from various submissions that

¹⁵¹ Recommendation by the President of the Regional Court for the Western Cape

¹⁵² The Commission on Gender Equality reported to the Committee that it was investigating the possibility of incorporating the CGE into the JSC to ensure the appointment of a more gender-sensitive judiciary.

¹⁵³ The Committee was addressed in this regard by Constitutional Court Judge Kate O'Regan, who had attended a judicial colloquium on the application of international human rights law at the domestic level.

¹⁵⁴ Recommendations by the Commission on Gender Equality, ADAPT, the Minister of Justice and the Chair of the Parliamentary Justice Committee

¹⁵⁵ UNISA's Institute for Social and Health Sciences reported that, in their research conducted on rape surveillance at the Hillbrow, Lenasia South and Chris Hani Baragwanath medico-legal clinics from 1996 to 1998. Weapons were used in 54,9% of attacks. In 35,3% of cases, such weapons were firearms.

¹⁵⁶ Recommendation by the MRC's CERSA

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 violence¹⁵⁹;
 - 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 policing¹⁶² and street lighting.¹⁶³

○ **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 women¹⁶⁴;
- that both government and civil society give urgent attention to the establishment of shelters for abused women. This is

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

○ **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.

○ **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

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

○ **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 campaign¹⁷⁰;
- 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 education¹⁷³;

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 skills¹⁷⁴; 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 services¹⁷⁷, 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 questions¹⁷⁸:
- 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?

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

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.

An Overview – Violence against Women Hearings, November 1999

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

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

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

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

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

Criminal Justice

New and Proposed Legislation and its Implementation

New Legislation

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

Proposed Legislation

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

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

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

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

Specific Impediments to the Implementation of the Domestic Violence Act (DVA) and Issues Pertaining to Sexual Offences - Submissions¹⁸⁰

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.

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 trial dates. The **Department of Justice** reported that they are in the process of establishing pre-trial services to alert prosecutors and magistrates of previous convictions and arrests of offenders. The **Head of Sexual Offences and Community Affairs** in the **Office of the Director of Public Prosecutions** reported that 60 prosecutors were undergoing training which includes:

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

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

The Judiciary

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

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

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

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

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

Appeals from the Regional Court and Sexual Offences Courts

2 concerns were raised:

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

Appointments of Judges and Disciplinary Proceedings

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

Education of Judges

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

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

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

LAW ENFORCEMENT

Previous Commitments and Recommendations

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

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

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

Present Experience of the SAPS

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

The following issues still remain to be addressed by the Department of Safety and Security:-

- The development of a profile of rape survivors and perpetrators.
- Disciplinary action against members of the SAPS who are themselves perpetrators of violence against women.
- The technical aptitude of investigating officers in the investigation of charges of violence against women; especially rape.
- The establishment of specialised units for rape and other violence against women and children.
- The Department’s participation in trauma centres for rape survivors.

Welfare Services and Shelters **Counselling and Shelters**

In the White Paper on Social Welfare of 1997, guidelines include strategies to counteract all forms of abuse and violence against women; support services for women who have been battered, raped and sexually abused; the training of police officers, magistrates and criminal justice personnel in the management of violence against women, gender-sensitive welfare services and taking into account women's needs as care-givers.

Participants in the Hearings reported the following:

- An absence of proper counselling for women who are survivors of violence.
- Severe lack of temporary safe housing for women as a means of escaping situations of violence.
- Lack of government funding of shelters.
- Support services such as shelters, financial support, legal assistance, police protection, access to housing, education, training, employment opportunities, psychological services were essential to assist women to transcend the cycle of violence.
- The Institute of Criminology's Gender, Law and Development Project, UCT, presented their research findings of rural areas in the Southern Cape. These include:
 - Participants reported fear of retaliation, public humiliation, ostracism by family and friends and little faith in the police and courts.
 - Women reported little or no support from family or the community.
 - Participants reported little or no assistance from social workers and local welfare agencies.

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

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

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

- The Department's efforts to ensure that women are not discriminated against with regard to welfare grants and properly regarded as main care providers.
- The Department's efforts to ensure the allocation of more funds to care dependency grants for seriously impaired children.

Transport

- Various submissions described the difficulties experienced by especially rural women in accessing health care and legal services due to inaccessibility of transport;
- Though the Department of Transport was not requested by the Committee to participate in the hearings, the Committee intends requesting the Department to furnish it with its formal response to the following issues, with reference to its White Paper on National Transport Policy of 1996. These are:
 - The Department's efforts to make public transport more accessible and affordable to women, who rely on these services for access to justice and health care services.
 - The Department's efforts to improve transport within villages and towns, as well as transport to and from rural areas.
 - The Department's efforts to ensure the safety of women on the public transport system.

Health Care

Medico-Legal Examinations

Various submissions reported on practical difficulties experienced with the required medico-legal examination of the victims of sexual assault and rape:

- Health care services are disproportionately concentrated in historically white and urban centres.
- A concomitant lack of access, mainly transport, especially for rural women.
- Lengthy waiting periods between reporting the crime to the police and the medical examination, which not only compounds the victim's trauma, but is also a deterrent to proceedings with criminal charges.
- A lack of privacy during the medical examination and a failure on the part of district surgeons to explain the reasons for and nature of the examination. This is often due to linguistic problems.
- Inadequate treatment for conditions such as HIV/AIDS, STD's and pregnancy, or treatment without even the most basic of explanations of the health risks faced by rape survivors.
- The President of the Regional Court in the Western Cape told the Committee that district surgeons often lack expertise and equipment.

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

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

Physical and Psychological Aspects of Treatment of Victims of Violence

- It further appeared that few health care workers were properly equipped to deal with both the physical and psychological aspects of the treatment of women and children who were victims of violence, especially sexual violence.
- The Women's Health Project reported that most of the general practitioners surveyed by them felt inadequate in coping with issues surrounding domestic violence.
- District surgeons and hospitals were only concerned about rape victims when the survivor showed physical injuries.
- It also appeared that health workers were perfectly positioned to assist women who are victims of violence, with a majority of women informing the health care worker who treats them of the identity of their abuser.
- Many health workers, however, are not trained to deal with issues of violence and an education and counselling opportunity is therefore missed.
- In the **Department of Health's 1998 Progress Report** to the Committee, the Department stated that it had joined other countries to discuss a resolution on the prevention of violence as a public health priority, that it participates in the National Network on Violence against Women and that it assisted in developing guidelines for survivors of sexual offences.

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

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

HIV/AIDS and Violence against Women

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

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

Incarceration of Offenders

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

RECENT RESEARCH ON VIOLENCE AGAINST WOMEN

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

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

SUMMARY OF RESEARCH

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

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

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

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

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

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

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

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

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

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

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

Public Awareness and Education

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

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

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

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

The GETT report also lists the following recommendations:

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

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

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

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

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

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

The Budget and Allocation of Resources

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

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

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

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

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

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

Inter-Ministerial Co-Operation and Co-Operative Governance

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

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

Co-Operation between Government and Civil Society

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

The Need for a Statistical Database

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

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

Recommendations and Queries to Government Departments

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

Criminal Justice

The Committee recommends:

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

Law Enforcement

The Committee recommends:

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

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

Welfare Services and Shelters

The Committee recommends:

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

Health Care

The Committee recommends:

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

Incarceration of Offenders

The Committee recommends that:

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

Public Awareness and Education

The Committee recommends that:

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

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

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

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

Tracking the Changes after the November 1999 Hearings

From 2000 to 2001

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

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

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

Domestic Violence

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

Public Education

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

Training and Restructuring

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

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

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

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

Manpower and Language

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

After-Hours Assistance

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

Transport

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

Shelters

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

Jurisdiction

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

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

Addresses

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

Magistrates

Personpower and Language

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

Restructuring

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

Financial Implications of the Domestic Violence Act

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

Prosecutors

Staff

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

Jurisdiction

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

Inter-Departmental Co-Ordination

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

Problems with Act

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

Training of SAPS

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

Department of Health and Welfare

Bureaucratic and Practical Stumbling Blocks

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

Statistics

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

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

Summary Report on Violence Against Women

October 2001

Introduction

The Joint Monitoring Committee on the Improvement of the Quality of Life and Status of Women (hereinafter referred to as the Committee) was permanently established in June 1998 to monitor and oversee progress with regard to the improvement of the quality of life and status of women in South Africa. The Committee's specific brief is to monitor government's commitments made at the United Nations Fourth World Conference in Beijing in 1995 and the provisions of the United Nations Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) in 1995.

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

The Committee's hearings on violence against women were held from 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 – Nelsruet, Mpumalanga; 19 June 2000 – Port Elizabeth and Pietersburg;
- The joint 2-day workshop between the JMC and the Public Participatory Unit (PPU) of Parliament, 25 – 26 July 2001, Parliament, Cape Town.
- The rural road shows held in conjunction with the PPU.

An Overview – Violence against Women Hearings, November 1999

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

Specific Impediments to the Implementation of the Domestic Violence (DVA) and Issues Pertaining to Sexual Offences - Submissions¹⁸¹

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.

- 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.