

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

TABLE OF CONTENTS

PREAMBLE

Structure of the Report

1 INTRODUCTION

1.1 Composition of the Task Group on Sexual Abuse of Children

1.2 Public Hearings

1.2.1 Aims

1.2.2 Process

2 SUMMARY OF SUBMISSIONS

2.1 ACCESS

2.1.1 Problems

2.1.2 Recommendations

2.2 Aids Orphans Community Programme

2.2.1 Recommendations

2.3 Anonymous

2.4 Baby Rape and Child Abuse Investigation Task Team

2.4.1 Proposals

2.5 Cape Town Child Welfare Society

2.5.1 The Isolobantwana approach

2.5.2 Problems previously experienced

2.5.3 Attempts to address the concerns

2.5.4 Benefits of the Programme

2.6 Child Abuse Action Group

2.6.1 Problems – Social Services

2.6.2 Problems - Education

2.6.3 Problems – Judicial System

2.6.4 Recommendations

2.7 Child and Family Welfare Society of Pietermaritzburg

2.8 Child Protection Programme, University of the Western Cape

2.8.1 Problems

2.8.2 Recommendations

2.9 Childline-South Africa

2.9.1 Childline's services

2.9.2 Childline's experiences

2.9.3 Causal factors

2.9.4 Solutions to the problems

2.10 Children's Institute, University of Cape Town

2.10.1 Underlying causes of sexual abuse of children

2.10.2 Recommendations

2.11 Children's Rights Centre

2.12 CIET Africa

2.12.1 Findings

- 2.12.2 Social implications
- 2.12.3 Responses
- 2.12.4 Additional findings
- 2.13 Clemenshaw, Dot**
- 2.14 Commun-'I'-Care Project 2002**
- 2.15 Community Law Centre, University of the Western Cape**
 - 2.15.1 Problems
 - 2.15.2 Recommendations
- 2.16 Concerned Citizens Against Pornography (CCAP)**
- 2.17 Department of Education**
 - 2.17.1 Policies
 - 2.17.2 Programmes
 - 2.17.3 Legislation
 - 2.17.4 Inter-Departmental Initiatives
- 2.18 Department of Health**
 - 2.18.1 Problems
 - 2.18.2 Programmes
- 2.19 Department of Home Affairs**
 - 2.19.1 Defining Child Pornography
 - 2.19.2 Effects of Child Pornography
 - 2.19.3 Legislation and Conventions Dealing with Child Pornography
 - 2.19.4 Findings
 - 2.19.5 Recommendations
- 2.20 Department of Justice and Constitutional Development**
 - 2.20.1 Policies and Legislation
 - 2.20.2 Minimum sentences
 - 2.20.3 Repeat offenders.
 - 2.20.4 Provisions for rape victims to testify.
 - 2.20.5 Sexual Offences and Community Affairs Unit (SOCA)
 - 2.20.6 Inter-Departmental initiatives
- 2.21 Department of Safety and Security**
 - 2.21.1 Policies and Legislation
 - 2.21.2 Programmes
 - 2.21.2.1 Internal Programmes
 - 2.21.2.2 External Programmes
 - 2.21.3 Inter-Departmental initiatives
- 2.22 Department of Social Development**
 - 2.22.1 Introduction
 - 2.22.2 Policies
 - 2.22.3 Programmes
 - 2.22.4 Legislation
 - 2.22.5 Inter-Departmental Initiatives
- 2.23 Domestic Violence Helpline, Durban**
 - 2.23.1 Problems
 - 2.23.2 Recommendations

- 2.24 Donald Fraser Hospital**
- 2.25 Dr Yusuf Dadoo Primary School**
- 2.26 Dyanti, Felicia**
 - 2.26.1 Problems
- 2.27 Far North Regional Network on Violence Against Women**
 - 2.27.1 Challenges Facing Rural Areas
 - 2.27.2 Recommendations
- 2.28 It's Your Move Youth Action Group**
 - 2.28.1 Target groups for CSEC
 - 2.28.2 Factors that impact on the CSEC
 - 2.28.3 Who are the offenders?
 - 2.28.4 Challenges
 - 2.28.5 Recommendations
- 2.29 Johannesburg Child Welfare Society**
 - 2.29.1 Problems
 - 2.29.2 Recommendations
- 2.30 Kadalie, Rhoda**
 - 2.30.1 Defining abuse
 - 2.30.2 Causes of child abuse
 - 2.30.3 The institutions responsible for protecting children
 - 2.30.4 Proposed measures to protect children
 - 2.30.5 Recommendations for the prevention of child sexual violence
- 2.31 Kandawn, Masego**
- 2.32 Khosa, L**
- 2.33 Khuma Multi-Purpose Organisation**
 - 2.33.1 Recommendations
- 2.34 Lucas, Shabalala**
- 2.35 Maister, Dolly**
- 2.36 Maklina, P M**
- 2.37 Mayne, Anne**
 - 2.37.1 Recommendation
- 2.38 Medical Research Council (MRC)**
 - 2.38.1 Problems
 - 2.38.2 Causes of rape:
 - 2.38.3 Recommendations
- 2.39 Mkhabela, Pleasure**
- 2.40 Molo Songololo**
 - 2.40.1 Definition of sexual exploitation
 - 2.40.2 Actions that constitute trafficking of children
 - 2.40.3 United Nations statistics on trafficking of children
 - 2.40.4 Factors that contribute to trafficking
 - 2.40.5 Who are the affected children?
 - 2.40.6 Legislation and Conventions
 - 2.40.7 Perpetrators and methods used
 - 2.40.8 Findings

- 2.40.9 Recommendations
- 2.41 Moseki, Joshua**
- 2.42 Mrwebi, Ms.**
- 2.43 Msibi, Prudence**
- 2.44 Nadel**
 - 2.44.1 Problems
 - 2.44.2 Child Care Act
 - 2.44.3 Sexual Offences Act
 - 2.44.4 Recommendations
 - 2.44.4.1 Child Care act
 - 2.44.4.2 Sexual Offences Act
- 2.45 National House of Traditional Leaders (NHTL)**
 - 2.45.1 Problems
 - 2.45.2 Recommendations
- 2.46 Palliative Medical Institute**
 - 2.46.1 Problems
 - 2.46.2 Recommendations
- 2.47 Pandor, Naledi**
 - 2.47.1 Recommendations
- 2.48 Phaphamani Rape Crisis Counselling Centre**
- 2.49 Professional Board for Psychology**
 - 2.49.1 Aim of the Study
 - 2.49.2 Findings of the Study
 - 2.49.3 Recommendations
- 2.50 RAPCAN**
 - 2.50.1 Problems
 - 2.50.2 Reasons for the high rape statistics of children:
 - 2.50.3 Factors influencing low reporting rate:
 - 2.50.4 Recommendations
- 2.51 Regional Child Abuse Protection Committee – KwaZulu Natal Midlands**
- 2.52 Santho-Qhokotswane, Mamokhothu**
- 2.53 Shabangu, Jimmy**
- 2.54 Shadow Pictures**
 - 2.54.1 Problems
 - 2.54.2 Recommendations
- 2.55 Sigwela, S G**
- 2.56 Silangwe, Nozipho**
- 2.57 Smith, Charlene**
- 2.58 Social Workers' Association of South Africa**
 - 2.58.1 Concerns and problems experienced
 - 2.58.2 Recommendations
- 2.59 Soul City**
 - 2.59.1 Problems
 - 2.59.2 Recommendations

- 2.60 South African Catholic Bishops' Conference**
 - 2.60.1 Problems
 - 2.60.2 Recommendations
 - 2.61 South African Human Rights Commission**
 - 2.61.1 Findings
 - 2.61.2 Recommendations
 - 2.62 South African Law Commission (SALC)**
 - 2.62.1 Draft Sexual Offences Act
 - 2.62.1.1 Problems
 - 2.62.1.2 Recommendations
 - 2.62.2 Child Care Legislation
 - 2.62.2.1 Key provisions of the Act:
 - 2.63 South African National Council for Child Welfare**
 - 2.63.1 Causes of Sexual Violence
 - 2.63.2 Factors Preventing Effective Service Delivery
 - 2.63.3 Recommendations
 - 2.64 Standing Together to Oppose Pornography (STOP)**
 - 2.64.1 Recommendations
 - 2.65 Third Law**
 - 2.65.1 Recommendations
 - 2.66 Tjabane, Thembeka**
 - 2.66.1 Recommendations
 - 2.67 Trollip, J E**
 - 2.68 UN Child Justice Project**
 - 2.68.1 Problems
 - 2.68.2 Legislation - Child Justice Bill
 - 2.68.3 Recommendations
 - 2.69 United Christian Action**
 - 2.69.1 Problems
 - 2.69.2 Recommendations
 - 2.70 University of Fort Hare. Department of Private Law**
 - 2.70.1 Causes and contributing factors
 - 2.70.2 Legal considerations
 - 2.70.3 Recommendations
 - 2.71 University of Zululand**
 - 2.72 Van Rensburg, Pat**
 - 2.73 White, Rose**
 - 2.74 Women Against Children and Community Abuse (WACCA) Advice Centre**
 - 2.74.1 Causes of Child Rape
 - 2.74.2 Gaps in Existing Legislation
 - 2.74.3 Recommendations
 - 2.75 Youngleson, Michele**
 - 2.75.1 Recommendations
- 3 THE TASK GROUP'S FINDINGS AND RECOMMENDATIONS**

3.1 Introduction

- 3.1.1 Socio-economic factors
- 3.1.2 Societal attitudes
- 3.1.3 Recommendations

3.2 Social Development Services

- 3.2.1 Introduction
- 3.2.2 Legislative framework
- 3.2.3 Civil Society Organisations
- 3.2.4 Recommendations

3.3 Education

- 3.3.1 Introduction
- 3.3.2 Legislative Framework
- 3.3.3 Life Skills Education
- 3.3.4 Recommendations

3.4 Health issues related to sexual abuse of children

- 3.4.1 Introduction
- 3.4.2 Medical response to abuse
- 3.4.3 Recommendations

3.5 Criminal Justice System

- 3.5.1 South African Police Service
 - 3.5.1.1 Introduction
 - 3.5.1.2 Review of the Sexual Offences Act:
 - 3.5.1.3 Recommendations
- 3.5.2 Court system
 - 3.5.2.1 General issues and effective prosecution
 - 3.5.2.2 Evidence
 - 3.5.2.3 Protection of survivors and witnesses
 - 3.5.2.4 Bail
 - 3.5.2.5 Sentencing
 - 3.5.2.6 Recommendations
- 3.5.3 Correctional Services
 - 3.5.3.1 Introduction
 - 3.5.3.2 Child sex offenders
 - 3.5.3.3 Adult sex offenders
 - 3.5.3.4 Register of Sex Offenders
 - 3.5.3.5 Recommendations

3.6 International instruments for the protection of children

- 3.6.1 Introduction
- 3.6.2 International Law Framework
 - 3.6.2.1 International treaties binding on South Africa
 - 3.6.2.2 Instruments not signed or ratified by South Africa and therefore not binding on the Republic
- 3.6.3 Recommendations

3.7 Commercial sexual exploitation

- 3.7.1 Introduction

3.7.2 Recommendations

3.8 Media

3.8.1 Introduction

3.8.2 Protecting survivors from media exposure

3.8.3 Recommendations

4 CONCLUSIONS

4.1 Overall Findings

4.2 Overall Recommendations

Preamble

We, the members of the Parliamentary Task Group on Sexual Abuse of Children,

Taking note with the greatest concern of the repeated instances of sexual abuse of ever-younger children in our country,

Considering that to protect our children from all instances of such heinous crimes is not only a moral obligation of the highest priority but a legal obligation as well,

Taking into account the rights of the child and values contained in international instruments such as the *African Charter on the Rights and Welfare of the Child* and the *UN Convention on the Rights of the Child*, which are legally binding upon the Republic of South Africa,

Recalling section 28 of the Constitution of South Africa that enshrines the rights of the child and must underpin and inspire all legislation of the Republic,

Having been convened by a decision of the Speaker of the National Assembly of 11 February 2002, and in order to give effect to a motion of the National Assembly of 14 November 2001

Having held public hearings on the issue,

Condemn once again strongly all forms of sexual abuse and violence against children of all ages, irrespective of motivation and person of the perpetrator, and issue the following report for consideration by the National Assembly.

Structure of the Report

The first part of the report will give an introduction that sets out the composition of the Task Group and process of the Public Hearings.

The second part will provide an overview of all the submissions received by the Task Group in the course of the hearings. The views expressed and the recommendations made in these submissions do not necessarily mirror the Task Group's opinion.

The third part contains the views, findings and recommendations of the Task Group with regard to sexual abuse of children.

The final part of this document will set up a framework for the manner in which the Task Group will take forward its recommendations.

1 Introduction

1.1 Composition of the Task Group on Sexual Abuse of Children

The Task Group includes representatives from different political parties present in Parliament and comprises the following members:

Mr S Dithebe (ANC), Mr C Morkel (NNP) - Joint Monitoring Committee on Improvement of Quality of Life and Status of Children, Youth and Disabled Persons;

Ms P Cupido (DP), Prof S Mayatula (ANC) - Portfolio Committee on Education;

Dr O Baloy (IFP), Ms SK Mnumzana (ANC) - Portfolio Committee on Health;

Ms L Mabe (ANC), Mr M Masutha (ANC) - Portfolio Committee on Justice and Constitutional Development;

Mr M George (ANC), Ms A Van Wyk (UDM) - Portfolio Committee on Safety and Security;

Ms S Kalyan (DP), Mr E Saloojee (ANC) - Portfolio Committee on Social Development;

Ms P Govender (ANC), Ms R Southgate (ACDP) - Joint Monitoring Committee on the Improvement of Quality of Life and Status of Women.

The hearings were also attended by a number of other Members of Parliament who were not officially members of the Task Group, but whose contributions over the four days enriched the process significantly.

1.2 Public Hearings

1.2.1 Aims

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

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

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

1.2.2 Process

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

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

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

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

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

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

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

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

Monday, 11 March 2002

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

Tuesday, 12 March 2002

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

Wednesday, 13 March 2002

- Molo Songololo
- Ms R Kadalie

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

Thursday, 14 March 2002

- Afrika Cultural Trust

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

2 Summary of submissions

2.1 ACCESS

2.1.1 Problems

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

2.1.2 Recommendations

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

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

2.2 Aids Orphans Community Programme

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

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

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

2.2.1 Recommendations

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

2.3 Anonymous

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

attempts to bring the matter to the attention of the Police, there has been no movement on the case. The writer suggests that there may have been collusion between the accused and the corrupt police officials.

The submission does not make any recommendations.

2.4 Baby Rape and Child Abuse Investigation Task Team

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

2.4.1 Proposals

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

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

2.5 Cape Town Child Welfare Society

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

2.5.1 The Isolobantwana approach

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

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

2.5.2 Problems previously experienced

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

2.5.3 Attempts to address the concerns

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

2.5.4 Benefits of the Programme

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

2.6 Child Abuse Action Group

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

2.6.1 Problems –Social Services

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

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

2.6.2 Problems - Education

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

2.6.3 Problems – Judicial System

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

2.6.4 Recommendations

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

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

2.7 Child and Family Welfare Society of Pietermaritzburg

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

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

2.8 Child Protection Programme, University of the Western Cape

2.8.1 Problems

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

2.8.2 Recommendations

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

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

2.9 Childline-South Africa

2.9.1 Childline's services

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

Other services offered include:

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

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

2.9.2 Childline's experiences

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

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

2.9.3 Causal factors

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

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

2.9.4 Solutions to the problems

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

2.10 Children’s Institute, University of Cape Town

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

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

2.10.1 Underlying causes of sexual abuse of children

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

2.10.2 Recommendations

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

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

2.11 Children's Rights Centre

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

2.12 CIET Africa

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

The study dealt with various themes including:

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

2.12.1 Findings

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

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

2.12.2 Social implications

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

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

2.12.3 Responses

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

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

2.12.4 Additional findings

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

2.13 Clemenshaw, Dot

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

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

2.14 Commu-'I'-Care Project 2002

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

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

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

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

It is therefore recommended that

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

2.15 Community Law Centre, University of the Western Cape

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

2.15.1 Problems

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

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

2.15.2 Recommendations

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

2.16 Concerned Citizens Against Pornography (CCAP)

The submission raises the following concerns:

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

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

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

2.17 Department of Education

2.17.1 Policies

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

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

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

2.17.2 Programmes

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

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

2.17.3 Legislation

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

2.17.4 Inter-Departmental Initiatives

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

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

2.18 Department of Health

2.18.1 Problems

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

2.18.2 Programmes

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

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

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

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

2.19 Department of Home Affairs

2.19.1 Defining Child Pornography

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

2.19.2 Effects of Child Pornography

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

2.19.3 Legislation and Conventions Dealing with Child Pornography

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

2.19.4 Findings

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

2.19.5 Recommendations

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

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

2.20 Department of Justice and Constitutional Development

2.20.1 Policies and Legislation

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

The Bill includes revised substantive law provisions such as:

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

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

2.20.2 Minimum sentences

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

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

2.20.3 Repeat offenders.

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

2.20.4 Provisions for rape victims to testify.

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

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

2.20.5 Sexual Offences and Community Affairs Unit (SOCA)

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

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

2.20.6 Inter-Departmental initiatives

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

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

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

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

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

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

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

2.21 Department of Safety and Security

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

2.21.1 Policies and Legislation

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

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

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

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

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

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

2.21.2 Programmes

2.21.2.1 Internal Programmes

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

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

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

2.21.2.2 External Programmes

1. Prevention

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

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

2. Response and investigation

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

Specialised Child Protection Units

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

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

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

Convictions and sentences

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

3. Support to victims and witnesses

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

The Act also requires the SAPS to record all incidents of domestic violence in a register, and report to Parliament every six months on complaints against police officers for non-compliance with the National Instruction on Domestic Violence.

- Training. Starting in 2002, the basic training for all members include victim empowerment training. During 2001 6 139 members were trained. 30 849 members were trained since the start of the Victim Empowerment Programme.

2.21.3 Inter-Departmental initiatives

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

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

Inter-departmental initiatives in which the Department participates include:

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

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

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

2.22 Department of Social Development

2.22.1 Introduction

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

2.22.2 Policies

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

2.22.3 Programmes

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

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

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

2.22.4 Legislation

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

2.22.5 Inter-Departmental Initiatives

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

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

2.23 Domestic Violence Helpline, Durban

2.23.1 Problems

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

2.23.2 Recommendations

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

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

2.24 Donald Fraser Hospital

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

2.25 Dr Yusuf Dadoo Primary School

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

2.26 Dyanti, Felicia

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

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

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

2.26.1 Problems

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

2.27 Far North Regional Network on Violence Against Women

2.27.1 Challenges Facing Rural Areas

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

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

2.27.2 Recommendations

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

2.28 It's Your Move Youth Action Group

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

2.28.1 Target groups for CSEC

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

2.28.2 Factors that impact on the CSEC

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

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

2.28.3 Who are the offenders?

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

2.28.4 Challenges

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

2.28.5 Recommendations

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

2.29 Johannesburg Child Welfare Society

2.29.1 Problems

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

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

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

2.29.2 Recommendations

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

2.30 Kadalie, Rhoda

2.30.1 Defining abuse

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

2.30.2 Causes of child abuse

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

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

2.30.3 The institutions responsible for protecting children

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

2.30.4 Proposed measures to protect children

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

2.30.5 Recommendations for the prevention of child sexual violence

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

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

2.31 Kandawn, Masego

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

2.32 Khosa, L

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

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

2.33 Khuma Multi-Purpose Organisation

2.33.1 Recommendations

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

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

2.34 Lucas, Shabalala

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

2.35 Maister, Dolly

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

2.36 Maklina, P M

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

2.37 Mayne, Anne

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

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

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

2.37.1 Recommendation

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

2.38 Medical Research Council (MRC)

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

2.38.1 Problems

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

2.38.2 Causes of rape:

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

2.38.3 Recommendations

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

2.39 Mkhabela, Pleasure

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

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

2.40 Molo Songololo

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

2.40.1 Definition of sexual exploitation

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

2.40.2 Actions that constitute trafficking of children

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

2.40.3 United Nations statistics on trafficking of children

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

2.40.4 Factors that contribute to trafficking

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

2.40.5 Who are the affected children?

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

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

2.40.6 Legislation and Conventions

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

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

2.40.7 Perpetrators and methods used

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

2.40.8 Findings

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

2.40.9 Recommendations

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

2.41 Moseki, Joshua

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

2.42 Mrwebi, Ms.

The submission details a number of cases where children have been abused, but makes no comments about the causes or recommendations regarding the prevention of sexual abuse of children.

2.43 Msibi, Prudence

This submission raises a concern about the Justice Department's sentencing procedure by arguing that the sentences handed out to perpetrators are too lenient. It indicates that within the context of a rights-based approach, it appears that the rights of rapists are given precedence over the victim. She recommends that the minimum sentence for victims aged one month to 10 years should be 20 years and 15 – 20 years for victims aged 11 years upwards.

2.44 Nadel

The submission by Nadel was presented by Ms Johanna Kehler who stated that there are gaps in the existing legislation regarding child rape. The urgency of this issue requires action to be taken before the new Sexual Offences Bill is passed by Parliament.

2.44.1 Problems

- Current legislation does not do enough to protect children.
- In the year 2000, there were 58 rapes or attempted rapes of children reported each day. In 2001, 21 000 rapes of children were reported for that year. Of these, 21% were committed by male relatives, 41% of all raped people were under the age of 18 years, and of these, 50% were under the age of 11 years.
- Only 9% of all child rape cases taken to court result in a conviction.

2.44.2 Child Care Act

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

2.44.3 Sexual Offences Act

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

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

2.44.4 Recommendations

2.44.4.1 Child Care act

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

2.44.4.2 Sexual Offences Act

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

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

2.45 National House of Traditional Leaders (NHTL)

2.45.1 Problems

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

2.45.2 Recommendations

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

2.46 Palliative Medical Institute

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

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

2.46.1 Problems

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

2.46.2 Recommendations

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

2.47 Pandor, Naledi

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

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

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

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

2.47.1 Recommendations

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

2.48 Phaphamani Rape Crisis Counselling Centre

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

2.49 Professional Board for Psychology

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

2.49.1 Aim of the Study

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

2.49.2 Findings of the Study

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

2.49.3 Recommendations

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

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

2.50 RAPCAN

2.50.1 Problems

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

2.50.2 Reasons for the high rape statistics of children:

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

2.50.3 Factors influencing low reporting rate:

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

2.50.4 Recommendations

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

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

2.51 Regional Child Abuse Protection Committee – KwaZulu Natal Midlands

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

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

2.52 Santho-Qhokotswane, Mamokhothu

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

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

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

2.53 Shabangu, Jimmy

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

police personnel in the Middleburg Child Protection Unit. The concern arises from the case of Ms Deliwe Maseko, whose child was raped. Although the police was given all the relevant information, the suspect was not arrested.

Mr Shabangu lodged a formal complaint with the Child Protection Unit in December 2001 and has not received any response to date.

2.54 Shadow Pictures

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

2.54.1 Problems

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

2.54.2 Recommendations

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

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

2.55 Sigwela, S G

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

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

2.56 Silangwe, Nozipho

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

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

2.57 Smith, Charlene

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

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

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

She criticises the current training of medical personnel and calls for the improving of rape forensic and rape care training at medical teaching institutions. It calls on the pharmaceutical companies to help fund the proposed training.

The submission suggests that there is a strong link between violent crime and the use of alcohol. It quotes the Medical Research Council study that found alcohol as a common factor in 60% of the murders reported last year. The document proposes that liquor manufacturers fund welfare, training and criminal justice projects through the government tax or other levies imposed.

It is reported that children who are abused are often likely to become abusers themselves. The submission proposes that the Department of Education and Correctional Services should ensure that children do not go to jail and should provide adequate alternative facilities. The presentation argues that children should not be exposed to violence and abuse.

The presentation recommends counselling and peer mediation in schools and calls for the establishment of trauma groups in schools. Teachers need to also be trained. Sexual violence against children is inextricably linked to the high prevalence of violence in our society.

2.58 Social Workers' Association of South Africa

2.58.1 Concerns and problems experienced

The submission suggests that the current system of handling the sexual abuse of children is inadequate and further traumatises the child. There are too few social workers with specialised training to deal with the survivor's immediate needs as well as longer-term therapy. The coordination between social service agencies and the CPU is lacking, and there seems to be no recognition that the social worker is a professional equipped to deal with a child's emotional needs.

The submission further notes that there was no standard interview protocol, that the medical personnel are sometimes not properly trained for this specialised area or simply too thinly spread especially in the rural areas.

With reference to the court system, the submission states that courts are not child-friendly and the court process takes much too long. The survivor could be exposed to the perpetrator because they have to use the same entrance to the court and sometimes the same waiting room. The manner in which the testimony given by a child is treated, suggests that members of the legal profession regard children as unreliable witnesses.

Dealing with abuse on a regular basis causes severe trauma to social workers, who feel that they are fighting a losing battle. This results in social workers feeling burnt-out.

2.58.2 Recommendations

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

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

2.59 Soul City

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

2.59.1 Problems

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

2.59.2 Recommendations

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

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

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

2.60 South African Catholic Bishops' Conference

2.60.1 Problems

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

2.60.2 Recommendations

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

2.61 South African Human Rights Commission

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

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

2.61.1 Findings

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

2.61.2 Recommendations

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

2.62 South African Law Commission (SALC)

2.62.1 Draft Sexual Offences Act

2.62.1.1 Problems

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

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

2.62.1.2 Recommendations

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

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

2.62.2 Child Care Legislation

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

2.62.2.1 Key provisions of the Act:

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

2.63 South African National Council for Child Welfare

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

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

2.63.1 Causes of Sexual Violence

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

2.63.2 Factors Preventing Effective Service Delivery

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

2.63.3 Recommendations

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

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

2.64 Standing Together to Oppose Pornography (STOP)

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

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

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

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

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

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

2.64.1 Recommendations

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

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

2.65 Third Law

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

2.65.1 Recommendations

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

2.66 Tjabane, Thembeka

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

Case 1:

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

Case 2:

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

2.66.1 Recommendations

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

2.67 Trollip, J E

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

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

2.68 UN Child Justice Project

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

The submission focused on:

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

2.68.1 Problems

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

2.68.2 Legislation - Child Justice Bill

The Bill proposes the following:

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

2.68.3 Recommendations

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

2.69 United Christian Action

2.69.1 Problems

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

2.69.2 Recommendations

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

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

2.70 University of Fort Hare. Department of Private Law

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

2.70.1 Causes and contributing factors

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

2.70.2 Legal considerations

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

2.70.3 Recommendations

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

2.71 University of Zululand

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

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

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

2.72 Van Rensburg, Pat

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

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

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

The submission does not make any recommendations.

2.73 White, Rose

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

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

2.74.1 Causes of Child Rape

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

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

2.74.2 Gaps in Existing Legislation

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

2.74.3 Recommendations

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

2.75 Youngleson, Michele

This submission is based on a journal article entitled “The History of Child Abuse” written by Lloyd deMause in 1998 which chronicles child abuse from ancient times to the present. Child abuse has been depicted as a cycle, which is difficult to break. Parents themselves have to work through their own childhood pain if this cycle is to be broken. The reasons why children are abused, issues of causation and intervention in terms of supporting parents and teaching parenting is explored in detailed. Within each culture and nation child abuse occurs in various forms. This may range from sexual to physical violence and neglect.

Childrearing practices, and the role of the mother and father in supporting child development are integral to solving some of the problems encountered. Various modes of childrearing ranging from projectionist to socialization are mentioned.

2.75.1 Recommendations

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

3 The Task Group’s Findings and Recommendations

3.1 Introduction

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

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

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

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

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

3.1.1 Socio-economic factors

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

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

conditions also impact on women's ability to protect themselves and their children against an abusive partner or father.

There have been suggestions that mothers, who allow their children to be abused, must be liable for prosecution. While not in a position to come to a conclusion on the matter of criminal liability for those persons who are aware of abuse but do not prevent it, the Task Group finds that dependency on an abuser may prevent either the abused child or an adult family member who is aware of the abuse from reporting the abuse; this applies to both emotional and economic dependency. The Task Group also finds that in situations where the family has no access to reliable and affordable childcare services, this increases children's vulnerability to sexual abuse.

Another factor that has been linked to the incidence of sexual violence against children is alcohol and substance abuse. Submissions have argued that being under the influence of alcohol or drugs erodes people's ability to respect themselves and those around them. The Task Group recognises that in the context of alcohol and drug abuse children are particularly at risk of abuse.

3.1.2 Societal attitudes

It was argued that dominant attitudes around the power relations between men and women contribute to women and children being viewed as objects or possessions. The Task Group finds that the distorted patriarchal attitudes men have towards women and children contribute to the latter being vulnerable to all forms of violence. It notes the argument in one of the submissions that South Africans have yet to fundamentally interrogate patriarchal notions of power relations between men and women, such as the right of the man as head of the household to exercise his power as he sees fit.

The Task Group finds that while Section 9 of the South African Constitution guarantees equality for all its citizens, at the level of the family and the community this has to be translated into the universal acceptance of the inalienable right of women and children not to be subjected to abuse, whether physical, emotional or sexual. These rights also find their expression for instance in Article 27 of the *African Charter on the Rights and Welfare of the Child* and Article 34 of the *UN Convention on the Rights of the Child*.

The Task Group heard a number of proposals that speak to longer-term solutions to the rebuilding of the social fabric. Among the submissions on the matter were arguments that stated that sexual violence against children is an extension of violence against women. Efforts at eradicating sexual abuse would therefore focus on, among others, changing attitudes through sustained, mass campaigns that challenge the way men see women, and how women see themselves.

Representatives from the faith-based sector suggested that this sector has a particular role to play in the way that they impart the values of their faith to young people. This would include teaching equality between men and women, condemning the commodification of women and educating children and youth about appropriate forms of behaviour and interaction.

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

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

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

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

3.1.3 Recommendations

The Task Group recommends -

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

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

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

3.2 Social Development Services

3.2.1 Introduction

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

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

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

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

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

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

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

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

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

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

3.2.2 Legislative framework

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

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

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

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

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

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

3.2.3 Civil Society Organisations

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

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

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

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

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

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

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

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

3.2.4 Recommendations

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

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

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

The Task Group recommends in relation to social services -

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

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

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

The Task Group recommends in relation to civil society organisations -

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

3.3 Education

3.3.1 Introduction

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

is compelling evidence, such as highlighted in the MRC study to indicate that both the nature and levels of abuse require immediate and urgent action.

According to the MRC, not only is the girl's body violated through sexual abuse in schools, but also her right to education as enshrined in Section 29 of the Constitution, and in various international instruments such as the *International Covenant on Social, Economic and Cultural Rights* (Article 10). Many girls are forced to leave school because of pregnancies fathered by teachers and because of harassment by teachers. A girl's ability to reach her economic and social potential is reduced, which may impact on her subsequent vulnerability to being dependent on sex or the abuser for economic survival.

The Task Group was informed that this type of research does not suggest that the incidence of sexual abuse in South African schools is significantly higher than in other countries. It should be acknowledged, however, that the incidence of children being abused in schools is enough to raise serious concern.

3.3.2 Legislative Framework

The amendment to the Employment of Educators Act (Act No 76 of 1998) should enable education authorities to combat abuse in schools. This Act provides for the dismissal of a teacher who has been found guilty of engaging in a sexual relationship with a learner, with or without the consent of such learner. In addition, the South African Council for Educators Act (Act No 31 of 2000) allows for the deregistration of a teacher when such teacher has been found guilty of the sexual abuse of a learner.

The Task Group was informed that despite the legislative framework and a number of programmes and guidelines that have been developed by the Department of Education, the situation in some schools has not necessarily improved, and enforcement still presents a substantial challenge. A recent study conducted by the Human Sciences Research Council indicated that there are considerable differences in the manner in which schools respond to allegations of abuse perpetrated by both teachers and learners. Some showed zero tolerance, with set disciplinary procedures and structures, and strong links with Social Development offices and the SAPS Child Protection Unit. Other schools used verbal reprimands, random corporal punishment of learners (which is illegal) and parental summonses, while some showed no response at all.

At the same time, the Task Group must note the announcement by the South African Council of Educators that it has deregistered a number of educators found guilty of sexual abuse of learners, because it is of the opinion that this form of action will contribute to changing the patterns of abuse prevalent in schools. It encourages the Council to apply all the legislative measures at its disposal to ensure that educators who are deregistered in this manner are not able to teach in South African schools again. It also encourages the Council to continue speaking out against sexual abuse in schools.

The difficulty education authorities have in enforcing provisions in legislation include a lack of openness, ambiguous attitudes towards violence against girls, and the lack of clear definitions and preventative procedures. The Task Group therefore welcomes the Department of Education's plan to ensure a common

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

3.3.3 Life Skills Education

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

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

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

3.3.4 Recommendations

The Task Group therefore recommends -

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

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

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

3.4 Health issues related to sexual abuse of children

3.4.1 Introduction

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

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

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

3.4.2 Medical response to abuse

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

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

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

3.4.3 Recommendations

The Task Group recommends -

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

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

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

3.5 Criminal Justice System

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

3.5.1 South African Police Service

3.5.1.1 Introduction

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

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

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

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

3.5.1.2 Review of the Sexual Offences Act:

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

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

3.5.1.3 Recommendations

The Task Group recommends

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

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

3.5.2 Court system

3.5.2.1 General issues and effective prosecution

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

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

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

3.5.2.2 Evidence

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

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

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

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

3.5.2.3 Protection of survivors and witnesses

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

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

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

3.5.2.4 Bail

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

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

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

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

3.5.2.5 Sentencing

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

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

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

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

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

3.5.2.6 Recommendations

The Task Group recommends –

in relation to effective prosecution of cases

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

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

in relation to evidence

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

in relation to the protection of survivors of sexual violence

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

in relation to bail

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

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

in relation to sentencing

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

3.5.3 Correctional Services

3.5.3.1 Introduction

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

3.5.3.2 Child sex offenders

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

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

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

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

3.5.3.3 Adult sex offenders

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

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

afford to pay for it themselves. At the same time, it acknowledges that severe resource constraints may seriously affect the feasibility of such proposals.

The Task Group recognises that where a “treatment order” forms part of a sentence, this would have to be followed up to ensure that a lack of resources or a lack of insight into the need for rehabilitation are not the reasons why such rehabilitative treatment are not implemented. In addition, there would have to be considerable campaigns aimed at reaching consensus among both correctional services staff and the public in general that such rehabilitation programmes do not constitute a mere waste of money on the offender at the cost of the taxpayer, but that it forms a vital part of a completely new paradigm within which there will be elements of both punitive and restorative justice.

The Task Group further acknowledges that the comments above do not elaborate on all the different aspects of the debate around rehabilitation, and that the issue of effective rehabilitation of sex offenders, the cost of such programmes and the conditions in correctional facilities merit further investigation by both the Departments of Correctional Services and Social Development.

3.5.3.4 Register of Sex Offenders

In media reports as well as in discussions before the Task Group, the establishment of a national register of sex offenders has been suggested as one of the preventative measures that could be used to combat the sexual abuse of children. It has been argued that there are a number of examples of how such a register could operate, and the example of the United Kingdom was put as the kind of system that could most benefit the South African context.

In the UK, the Sex Offenders Act 1997 requires those convicted of specified sexual offences involving children, and of other serious sexual offences against adults, to register their names and addresses with the police. At present the registration rules in the UK include the following: sex offenders must register their name and address with a designated police station within 72 hours of their release from jail. Failure to register can lead to a six-month jail term or fine. In addition, the police can apply for a community protection order, which lasts for a minimum of five years, and can bar an individual from areas frequented by children. Head teachers, doctors, youth leaders, sports-club managers and others are notified on a confidential basis of the presence of a local sex offender.

At the core of the argument in favour of such a register is the belief that informing the child protection agencies and certain other professionals who work with children of the whereabouts of a convicted sex offender will enable these agencies and individuals to keep sex offenders away from children. The Task Group notes the contention that rehabilitation of sex offenders in the current prison environment has had little success, and that a significant number of sex offenders become repeat offenders once they have been released from prison.

While noting the arguments in favour of a register of sex offenders, the Task Group has also considered the arguments against it. It has been shown, for example, that there is little to stop a sex offender giving a false address when complying with their mandatory registration requirements. Another important factor that has to be noted is the question of what the public does with the

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

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

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

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

3.5.3.5 Recommendations

The Task Group recommends -
in relation to child sex offenders

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

in relation to adult sex offenders

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

in relation to a register of sex offenders

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

3.6 International instruments for the protection of children

3.6.1 Introduction

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

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

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

3.6.2 International Law Framework

3.6.2.1 International treaties binding on South Africa

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

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

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

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

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

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

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

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

and

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

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

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

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

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

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

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

In the context of the Protocol, exploitation comprises

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

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

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

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

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

3.6.3 Recommendations

The Task Group recommends

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

3.7 Commercial sexual exploitation

3.7.1 Introduction

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

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

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

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

3.7.2 Recommendations

The Task Group therefore recommends

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

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

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

3.8 Media

3.8.1 Introduction

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

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

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

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

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

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

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

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

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

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

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

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

3.8.2 Protecting survivors from media exposure

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

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

3.8.3 Recommendations

The Task Group recommends

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

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

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

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

4 Conclusions

4.1 Overall Findings

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

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

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

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

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

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

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

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

4.2 Overall Recommendations

The Task Group recommends -

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

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

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