



**THE PRESIDENCY:  
REPUBLIC OF SOUTH AFRICA**

**THE UN STUDY ON VIOLENCE AGAINST CHILDREN  
QUESTIONNAIRE TO GOVERNMENTS**

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**RESPONSE FROM THE GOVERNMENT OF SOUTH AFRICA**

**JUNE 2006**

**INTRODUCTION**

The response of the South African Government to violence against children must be understood within the context of South Africa's transition from a past

characterised by state-enforced discrimination, exclusion and inequity. This divisive, state-driven social engineering (apartheid) relegated the majority of the country's people to the fringes of the body politic and the economy and it distanced them – almost entirely – from access to developmental resources. The systematic marginalisation of the black people of South Africa resulted in unprecedented levels of social, economic and cultural deprivation that fractured family and social structures with long-term repercussions that continue to reverberate through communities to this day.

Child protection legislation in a free and democratic SA is aimed at ameliorating and addressing the negative impact of decades of discrimination, domination, inequity, patriarchy and underdevelopment. The new approach to legislative reform is perfectly consistent with a human rights approach to the progressive realisation of children's rights. It is also consistent with the rights of children embedded in the Constitution of the Republic of South Africa

The relationship between poverty and vulnerability to violence, abuse and exploitation has been well documented globally. The compounded impact of generations of race and class discrimination has left especially black South African children in a severe state of deprivation and underdevelopment.

The eradication of poverty, inequality and underdevelopment is therefore fundamental to the achievement of the national vision of a caring- and people-centred society in which the rights and dignity of all are respected and protected. Children's rights to survival, growth, protection, development and participation are entrenched in South Africa's Constitution and these rights have been further reinforced in subsequent legislation, policy development and government programmes.

Lending further credence to government's commitment to the rights of the child, an Office on the Rights of the Child (ORC) has been established in the Presidency, the highest executive office in the land. The ORC, in collaboration with Government Departments, Offices on the Rights of the Child in the Premiers' and Mayors' Offices, and the National Children's Rights Advisory Council comprising of Government officials and members of Civil Society, coordinates and monitors delivery on children's rights. Child rights protection and the development of the human potential of children are explicit goals of the National Children's Rights Programme.

Internationally, South Africa has since the advent of democracy in 1994, systematically expanded its participation in the global agenda for the protection and promotion of the rights of children. The country has also acceded to the major international standard-setting instruments for the protection of children against violence. The South African government therefore remains committed to implementing the provisions contained in these instruments. During the past ten years of democracy government has overhauled its domestic legislation to align it with international standards and the South African Constitution.

The following is South Africa's response to questions posed by the UN General Secretary.

## LEGAL FRAMEWORK

This part of the questionnaire aims to determine how your country's legal framework addresses violence against children, including prevention of violence, protection of children from violence, redress for victims of violence, penalties for perpetrators and reintegration and rehabilitation of victims.

### International Human Rights Instruments

**1. Describe any developments with respect to violence against children that have resulted from your country's acceptance of international human rights instruments, including, for example, the Convention on the Rights of the Child and its optional protocols, the Palermo Protocol or regional human rights instruments. Provide information on cases concerning violence against children in which your country's courts or tribunals have referred to international or regional human rights standards.**

#### **1.1 The United Nations (UN) Convention on the Rights of the Child (1989)**

South Africa ratified the *United Nations (UN) Convention on the Rights of the Child* (1989) (The CRC) in 1995. The Convention ascribes primary responsibility for child protective services to government and clearly outlines what individual governments should do to safeguard children from serious harm. By ratifying the United Nations Convention on the Rights of the Child (CRC) South Africa committed itself unequivocally to mainstreaming the rights of children into the policies and programmes adopted by government.

Within the context of meeting the Millennium Development Goals (MDGs) South Africa continually aligns and reviews its child protection and care policies and programmes to ensure the achievement of the MDGs as they pertain to children.

#### **1.2 The African Charter on the Rights and Welfare of the African Child (1997)**

On 7 January 2000, the South African Government ratified the *African Charter on the Rights and Welfare of the African Child* developed by the Organisation of African Unity. This Charter is intentionally context-specific and reflective of African culture, values and mores. The Charter includes a special emphasis on the rights and responsibilities of African children that are not addressed in the CRC. There is, for example, a strong focus on collective rights and responsibilities, with less emphasis on the primacy of individual rights. The Charter also addresses issues such as female circumcision, children's

responsibilities to their families and their communities and the role of extended families in child rearing.

### **1.3 Optional Protocol on the Sale of Children, Child Prostitution and Pornography (2002)**

For states that had ratified the Convention, the *Optional Protocol on the Sale of Children, Child Prostitution and Pornography (2002)*, became a legally binding instrument on 18 January 2002. South Africa acceded to the Optional Protocol on 30 June 2003. This protocol focuses on the criminalisation of serious violations of children's rights, namely the sale of children, illegal adoption, child prostitution and child pornography. In addition, the protocol stresses the importance of international cooperation as a means of combating the trans-national nature of these transgressions. It also calls for the implementation of extensive public awareness, information and education campaigns to enhance the protection of children and young people from these serious violations of their rights. Evidence of South Africa's intention to comply with the protocol is captured in various parts of this document, including the country's efforts to harmonise international and regional cooperation and awareness campaigns. (See question 15).

### **1.4 The International Labour Organisation (ILO) 182 Convention on the Elimination of the Worst Forms of Child Labour**

South Africa ratified this Convention on 7 June 2000. It requires ratifying governments to take measures to effect the immediate abolition of 'the worst forms of child labour'. This includes slavery, child prostitution, and using children for illegal activities and works which - by their very nature or circumstances - are likely to harm the safety or morals of children or young people.

The Convention recommends that programmes of action should focus specifically on younger children, the girl child, work situations in which girls are at special risk and other groups of children with special vulnerabilities or needs.

### **1.5 The International Labour Organisation (ILO) 138 Minimum Age for Admission to Employment Convention of 1973,**

This convention was ratified by South Africa on 30 March 2000. It requires that ratifying states pursue a national policy designed to ensure the effective abolition of child labour and to elevate progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.

The Convention specifies that the minimum age for work likely to jeopardise the health, safety or morals of children should be at least 18 years. The Convention further indicates that laws may permit the employment of children

between 13 and 15 years of age in *light work* that is unlikely to be harmful to their health or development and work that will not prejudice their benefiting from school or vocational programmes. Work done in schools or as part of a certified programme of education or training is allowed, provided certain safeguards are in place.

The Department of Labour oversees a Child Labour Action Plan that has developed several focus areas for research and intervention. Partial funding for this programme was provided by the International Labour Organisation. The Plan attempts to combat the worst forms of child labour, which include action plans and pilot projects addressing, for example, the commercial sexual exploitation of children, trafficking of children and using children in illegal activities. All Government Departments are responsible for implementing the Child Labour Action Plan and they contribute to research in this regard.

**1.6 Other international obligations that contribute to the protection of children and to which South Africa has formally ascribed are listed below:**

- South Africa has signed and is in the process of ratifying the *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*.
- The *Convention on the Minimum Age for Admission to Employment* (ILO No. 138) was ratified on 30 March 2000.
- *Council of Europe Cyber Convention*: South Africa signed the Convention, on 23 November 2001. Ratification of the Council of Europe's *Additional Protocol to the Convention on Cybercrime* is currently underway. This additional protocol criminalises acts of a racist and xenophobic nature committed on the internet or other electronic media. When this protocol has been signed the country will proceed with the ratification of both instruments.
- South Africa acceded on 01 August 2003 to the *Convention on the Protection of Children and Cooperation in respect of Inter-country Adoption*.
- South Africa acceded on 8 July 1997 to the *Convention on the Civil Aspects of International Abduction (Hague Convention)*
- *Declaration and Agenda for Action against Commercial Sexual Exploitation*
- The *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* was ratified by South Africa on 10 December 1998.
- *UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing rules)*
- *UN Guidelines for the Prevention of Juvenile Delinquency (Riyad rules)*
- *UN Standard Minimum Rules for the Protection of Juveniles Deprived of their Liberty (JDL)*
- South Africa ratified, on 20 February 2004, the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and*

*Children.* This protocol supplements the *UN Convention against Transnational Organised Crime*.

South Africa has used the above international instruments extensively to review, develop, enhance and inform child-related legislation, policies and programmes.

## **Legal Provisions on Violence Against Children**

### **2. Describe how forms of violence against children are addressed in your country's Constitution, legislation and subsidiary legislation, and where appropriate Customary Law.**

Child protection is the responsibility of the national and provincial governments. Legislation and policies pertaining to child protection are developed at the national level with extensive input from the provincial governments. Consultation with civil society organisations and institutions is integral to all child care and protection policy formulation processes.

Implementation, at the programme level, is a provincial competency and will therefore vary according to the specific needs of each province. This section of the questionnaire details progress made in respect of legislation that pertains to the protection of children. In addition, the core government departments i.e. Social Development (welfare), Health, Education, Justice, the South African Police Service, Foreign Affairs and Labour each have sector-specific policies and obligations in respect of child protection. *These sectoral policies are attached as an annexure to this report.*

Rewriting and amending the pre-1994 legal statute has been one of the major challenges of the new, democratic Parliament of South Africa. Since 27 April 1994 Parliament has produced in excess of 875 new pieces of legislation. Much of the new legislation has concerned itself with the transformation of the state and the establishment of a regulatory environment conducive to a flourishing, rights-based legal culture.

#### **2.1. The Constitution of the Republic of South Africa**

Section 28 of the Bill of Rights – the cornerstone of the Constitution – provides for the protection of children's rights as follows:

- (1) Every child has the right:
  - To a name and a nationality from birth;
  - To family care or parental care, or to appropriate alternative care when removed from the family environment;
  - To basic nutrition, shelter, basic health care services and social services;
  - To be protected from maltreatment, neglect, abuse or degradation;
  - To be protected from exploitative labour practices;
  - Not to be required or permitted to perform work or provide services that:

- (i) Are inappropriate for a person of that child's age; or
- (ii) Place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development;

Not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under sections 12 and 35, the child may be detained only for the shortest appropriate period of time, and has the right to be –

- (i) kept separately from detained persons over the age of 18 years; and
- (ii) treated in a manner, and kept in conditions, that take account of the child's age;

To have a legal practitioner assigned to the child by the state, and at state expense, in civil proceedings affecting the child, if substantial injustice would otherwise result; and

Not to be used directly in armed conflict, and to be protected in times of armed conflict.

Section 28(2) provides further that a child's best interests are of paramount importance in every matter concerning the child and section 28(3) provides that the term "child" means a person under the age of 18 years.

The rights of children as described by the Constitution have found further expression in the unfolding legislative programme of Parliament. Two important child-related pieces of legislation are currently being considered by Parliament; they are the *Children's Bill* and the *Child Justice Bill*.

*The Child Care Act, 1983*, as amended, is currently being comprehensively reviewed and will be replaced by the new Children's Act. It is expected that the Parliament will pass the new Bill shortly. The National Assembly has adopted the *Children's Bill* in a second reading. The Bill will be submitted to the National Council of Provinces, (the second house in the South African Parliament), in August 2005.

The *Child Justice Bill* deals with children who have come into conflict with the law and promotes an entirely new approach to managing these children in a constructive framework aimed at diversion from the mainstream criminal justice system, rehabilitation and correction. While passage of the Bill is being awaited, an *Interim National Protocol for the Management of Children Awaiting Trial* and consistent inter-sectoral collaboration at the national, provincial and local tiers of government, have resulted in practices that largely anticipate the formulations contained in the new *Child Justice Bill*. Elements of the Protocol include diversion programmes for children *in lieu* of prison sentences and the application of alternative sentencing practices aimed at rehabilitation and reintegration into communities. The number of children awaiting trial in correctional facilities, police cells and secure care facilities has been reduced on average from 2200 child detainees in 2000, to 1380 in May 2005.

## **2.2 Child Care Act, 1983**

*The Child Care Act* is the primary legal resource for the protection of children and young people. This Act determines the powers of commissioners of child welfare (magistrates presiding in children's courts) and governs the operation of children's courts. It also provides for official investigations into cases of alleged abuse and neglect and it regulates out-of-home placements. The Act compels health care professionals, social workers, educators and the managers and staff of children's homes and other care institutions to report suspected ill-treatment of children and young people in their care.

This Act will shortly be replaced by the more comprehensive Children's Act which has as one of its key objectives the holistic protection and care of all children.

## **2.3 Prevention of Family Violence Act, 1993**

This Act is the predecessor to the Domestic Violence Act, 1998 and was replaced by the latter except for sections 4 and 5. Section 4 requires any person in a position of responsibility for a child to report any reasonable suspicion that the child has been abused to a police official, a commissioner of child welfare or a social worker in a designated organisation. This provision runs parallel with section 42 of the *Child Care Act, 1983* and can be used as a complementary provision although the Children's Bill may well replace it.

## **2.4 The Child Care Amendment Act (1999)**

*The Child Care Amendment Act, 1999* took effect on 1 January 2000. The *Child Care Act, 1983* was amended to provide for the protection of children against commercial sexual exploitation. The insertion of Section 50a describes measures for dealing with perpetrators and those who own, lease, manage or occupy property on which the commercial sexual exploitation of children occurs. It also provides for the failure to report such occurrence within a reasonable time.

## **2.5 The Abolition of Corporal Punishment Act, 1997**

This Act repeals any provision that authorises corporal punishment decisions by a court, including a court of traditional leaders. Corporal punishment is also outlawed in schools, out-of-home placements and in correctional facilities.

## **2.6 The Child Justice Bill**

In 1996 the SA Law Reform Commission was commissioned to review the situation of children within the criminal justice system, which resulted in a proposed *Child Justice Bill, 2002* that caters for the protection of children

accused of crimes. The *Child Justice Bill* proposes a new minimum age for criminal capacity, the use of individual assessments, the application of new procedures as they relate to children, the use of diversion mechanisms, more appropriately structured child justice courts, alternative sentencing options and a review system for effective monitoring.

In terms of the *Criminal Procedure Act, 1977* children younger than 7 years are presumed to lack criminal capacity. Those between 7 and 13 years are also accorded this lack of criminal capacity but this assumption may be rebutted. Children between 14 and 17 years old have criminal capacity and those over 18 are treated as adults.

Whilst awaiting the passage of the *Child Justice Bill*, by Parliament, an *Interim National Protocol for the Protection of Children Awaiting Trial*, was adopted by the Ministers of Justice, Social Development, Correctional Services and Safety and Security in 2002. This interim protocol is monitored by the Inter-sectoral Child Justice Steering Committee which is chaired by the Department of Justice. It monitors all children awaiting trial and deals with matters pertaining to their individual wellbeing. The focus of the protocol is to practice diversion methods and to make use of alternative sentencing practices where available. The National Prosecuting Authority, for example, has issued an instruction to fast-track the cases of children awaiting trial for more than 3 months. Local case management teams are being established between the various disciplines, to ensure that children awaiting trial are monitored throughout the system. The objective of the *Child Justice Bill* and the parallel Child Justice System is to divert as many children in conflict with the law as possible from the mainstream criminal justice system.

## **2.7. The Correctional Services Act, 1998**

Section 7 (2) (b) makes provision for separation of male prisoners from female offenders.

Section 7 (2) (c) makes provision for the protection of children against abuse in correctional facilities by insisting on the separation of child and adult offenders. Section 19 (2) (3) of the Act also provides for the access of children to social services with a view to preventing instances of abuse and exploitation.

Sections 32 and 102 of the Act regulate the lawful use of force and justify certain measures aimed at keeping offenders in safe custody.

Administratively, all incidents of unauthorised or excessive use of force should be investigated immediately, both departmentally and criminally. Strict disciplinary actions are prescribed for officials found guilty of the excessive use of force or the assault of offenders.

The Department of Correctional Services is in the process of retraining officials on the use of force/authority. Revised training programmes focus on human rights education with a move in emphasis from punishment to

rehabilitation and correction as a means of reintegrating offenders back into society.

The Department of Correctional Services also has an internal complaints procedure to deal with any act of violence against children.

Other institutions to which official complaints can be directed include:

- The Judicial Inspectorate.
- The Independent Complaints Directorate.
- The Secretariat for Safety and Security.
- The SA Human Rights Commission.
- The Office of the Public Protector.

### **2.8. The Domestic Violence Act, 1998**

This Act encompasses a substantial broadening of the limited scope of its predecessor, the *Prevention of Family Violence Act, 1993* and recognises that domestic violence is a serious social evil and an obstacle to achieving gender equality.

The *Domestic Violence Act* (DVA) took effect in December 1999. The legislation relies heavily on strong inter-disciplinary coordination and is aimed at providing a victim-centred legal remedy for acts of domestic violence and abuse. The legislation is structured in such a way that it compels all service providers to collaborate on the management of individual cases.

Special protective measures contained in the DVA enable children direct access to legal remedy by not insisting that an adult prefers charges. Section 4(4) determines that: "Notwithstanding the provisions of any other law, any minor, or any person on behalf of a minor, may apply to the court for a Protection Order without the assistance of a parent, guardian or any other person." This implies that any child can approach the court directly for a Protection Order.

In an attempt to secure support for victims, the Act provides that any person making an application for a Protection Order (complainant) may be accompanied by up to three persons. Provision is also made for in-camera proceedings.

The definition of domestic abuse in the Act is broad and encompasses the physical, sexual, psychological and economic nature of abuse. The legislation makes provision for a peace officer to arrest any respondent at the scene of an incident of domestic violence without a warrant if the peace officer reasonably suspects that the respondent has committed an offence containing an element of domestic violence.

It also makes provision for the complainant to apply to court for a protection order. Any other person, including a counsellor, health service provider, and member of the South African Police Service, a social worker or a teacher can bring this application on behalf of the complainant. The Act specifically states that any minor, or any person representing a minor, may also apply to court for a protection order without the assistance of a parent, guardian or any other person.

Furthermore, a court may refuse contact between the child and the respondent, if it considers this measure to be in the best interests of the child. It may also prescribe the conditions under which contact may occur, should limitations on contact be necessary.

On issuing a protection order, the court must also issue a warrant of arrest, the execution of which is suspended, subject to compliance with any prohibition, condition, obligation or order imposed by the court. Another important aspect of the Act is that it empowers a court to order the seizure of arms or dangerous weapons that are in the possession or under the control of the respondent in appropriate circumstances.

Any person who contravenes any prohibition, condition, obligation or order imposed by the court is guilty of an offence and on conviction, is liable to a fine or imprisonment for a period not exceeding 5 years.

## **2.9. Other legislation passed since 1994 that has a direct or indirect bearing on the protection of children from violence**

In 1995 Parliament approved comprehensive amendments to the *Criminal Procedure Act* and, more specifically, those elements pertaining to conditions of bail. The amendment recognises the right to bail, but sets stringent guidelines prohibiting release on bail when women and children are likely to be at risk at the hand of the accused. The court may also refuse bail when the likelihood exists that the accused might attempt to influence or intimidate a witness, or when threats of violence have been made by the accused.

In 1996 the *Commission on Gender Equality Act* established the Commission on Gender Equality. In terms of this legislation the Commission has the power to investigate any gender-related issues of its own accord. The Commission may also investigate complaints referred to it and it may attempt to resolve disputes that come before it. Furthermore, the Commission may rectify any act or omission by mediation, conciliation or negotiation and, where necessary, to refer any matter to the South African Human Rights Commission or the Public Protector. *The South African Human Rights Commission* can, for example, institute court proceedings on behalf of a complainant.

In 1997 the *Divorce Courts Amendment Act* opened the then Black Divorce Courts to all races, giving women greater access to less costly divorce proceedings.

In 1997 the *Criminal Procedure Second Amendment Act* brought about further changes to the bail laws to ensure that persons accused of having committed serious offences are not released on bail, especially offences where women and children are the victims.

In 1997 the *Criminal Law Amendment Act* was approved by Parliament. Besides giving effect to the Constitutional Court's judgment in respect of the unconstitutionality of the death penalty, this Act provides for the imposition of minimum sentences in respect of certain serious offences such as murder and rape. The criteria that determine the severity of these offences apply when particular circumstances pertain and these may include:-

- when the death of a woman was caused by a person in the commission of a rape or attempted rape; or
- where the victim was raped more than once; or
- where the rapist has previous convictions for rape; or
- where the victim is under the age of 16; or
- where grievous bodily harm is inflicted.

The *Witness Protection Act* was approved by Parliament in 1998. Offences to which this Act applies include murder, rape, kidnapping and indecent assault. This legislation provides protection for witnesses that have been intimidated - a common feature in the prosecution of domestic violence related matters.

The *Prevention of Organised Crime Act, 1998* introduces measures to combat organised crime, money laundering and criminal gang activities. It prohibits certain activities relating to racketeering, including ongoing, continuous or repeated participation or involvement in certain offences. It prohibits money laundering and criminalises certain activities associated with gangs. The Act also provides for the recovery of the proceeds of unlawful activities and for the forfeiture of assets that have been used to commit an offence. Offences to which numerous provisions of this Act apply include murder, rape, kidnapping, assault with intent to do grievous bodily harm, indecent assault, child-stealing, malicious injury to property and the contravention of section 20(1) of the *Sexual Offences Act, 1957*.

The *Promotion of Equality and Prevention of Unfair Discrimination Act, 2000* emanates from section 9 of the Constitution, which deals with the right to equality. The Act consequently deals with prevention and prohibition of unfair discrimination as well as the promotion of equality. The objects of the legislation are, among others, to:-

- give effect to the letter and spirit of the Constitution;
- prevent and prohibit unfair discrimination and to provide redress in cases of unfair discrimination;
- facilitate South Africa's compliance with international human rights treaty obligations, with specific reference to the Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination Against Women;

- provide for the eradication of current systemic discrimination which is a legacy of previously legalised discrimination;
- provide for the promotion of equality, prioritising the adoption of measures to advance persons disadvantaged by unfair discrimination; and
- provide for measures aimed at ensuring the eradication of unfair discrimination, hate speech and harassment with special focus on race, gender and disability.

Chapter 2 of the Act deals with the prevention, prohibition and elimination of *inter alia* unfair discrimination and harassment. Besides the general prohibition of unfair discrimination on any of the prohibited grounds, (which is not a closed list, but includes no less than 17 prohibited grounds for discrimination), special attention is given in this Chapter to the prohibition of unfair discrimination on the grounds of race, gender or disability. Sections 7 to 10 highlight unfair discrimination in areas that are not specifically prohibited by the Act and that might be alleged, such as discrimination based on age.

Chapter 2 also prohibits any form of harassment. "Harassment" is defined in Section 1 as "serious, persistent, unwanted conduct which demeans, humiliates or creates a hostile environment or is calculated to induce submission and which is related to sex, gender, sexual orientation or a person's membership of a group identified by one or more of the prohibited grounds".

Chapter 4 of the Act deals with enforcement mechanisms. Disputes arising out of the provisions of this legislation are adjudicated in equality courts. All Magistrates' Courts and High Courts are equality courts and presiding officers adjudicating over these matters are trained for this purpose. The South African Human Rights Commission and the Commission on Gender Equality may also institute proceedings on behalf of litigants in these courts. The equality courts have the power to make a wide range of orders that may vary from orders of a deterrent nature to orders of a restorative or corrective nature.

Section 28(1) of the Act is significant in that it provides as follows:

"If it is proved in the prosecution of any offence that unfair discrimination on the grounds of race, gender or disability played a part in the commission of the offence, this must be regarded as an aggravating circumstance for purposes of sentence."

3. ***Indicate if corporal punishment of children, in any setting, including in the family, is explicitly prohibited in your legal system. Provide details of any legal defences available to those who administer corporal punishment to children, including in the family. Provide information on penalties applicable to those who administer corporal punishment to children, including in the family.***

All forms of corporal punishment have been outlawed except for the defence of reasonable chastisement of a child in the home/family (*The Abolition of Corporal Punishment Act, 1997*). Recent deliberations by Parliament's Portfolio Committee on Social Development have concluded that this remaining common law defence should be outlawed and a clause to this effect has been inserted in the soon to be approved Children's Bill. Penalties applicable are similar to those that apply to the crimes of assault, assault with grievous bodily harm (GBH) and attempted murder and murder. Sentences could include imprisonment, compensation-orders, contribution-orders and interdicts as well as the loss of parental rights and responsibilities.

**4. Provide information on whether the penal code permits corporal punishment and/or capital punishment as a sentence for crimes committed by under 18 year olds.**

Sections 10, 11 and 12 of the Constitution of the Republic of South Africa outlaw corporal and capital punishment and provide as follows:

Section 10: Human dignity: Everyone has inherent dignity and the right to have their dignity respected and protected;

Section 11: Life: Everyone has the right to life;

Section 12: Freedom and security of the person: Everyone has the right to freedom and security of the person, which includes the right-

- a. not to be deprived of freedom arbitrarily or without just cause;
- b. not to be detained without trial;
- c. to be free from all forms of violence from either public or private sources;
- d. not to be tortured in any way; and
- e. not to be treated or punished in a cruel, inhuman or degrading way.

In terms of the *Criminal Law Amendment Act* regarding Minimum Sentences, life sentences do not apply to children under the age of eighteen (18). Sentencing is monitored by the Department of Justice and Constitutional Development and the National Prosecuting Authority may take the matter on review or appeal. Provision is also made for automatic review by a High Court Judge of any sentence involving imprisonment for a child.

**5. Provide details on whether bullying/hazing and sexual harassment are explicitly addressed by legislation.**

Bullying and hazing are specifically addressed by the *SA Schools Act, 1994* which prohibits it. Sexual Harassment has also been outlawed in various pieces of Labour legislation an example of which is the *Basic Conditions of Employment Act*. The Safe Schools Policy and the Policy to address Sexual Violence in Schools both deal with matters of bullying, hazing and sexual

harassment. The Departments of Education, Safety and Security, Health, Justice and the National Prosecution Authority collaborate inter-sectorally on the Safe Schools project and the programme aimed at eliminating Sexual Violence in schools.

**6. *Provide information on the way in which harmful or violent traditional practices, including but not limited to female genital mutilation, child marriage or honour crimes are addressed in your country.***

The proposed new Children's Bill makes provision for the protection of children from social, cultural and religious practices that are detrimental to their well-being, health or dignity. Specifically it provides that:

Every child:-

- Below the minimum age set by law for a valid marriage has the right not to be given out in marriage or engagement; and
- Above that minimum age has the right not to be given out in marriage or engagement without his or her consent.

Furthermore, the Bill prohibits genital mutilation or the circumcision of female children as well as virginity testing of children. Taking into consideration the child's age, maturity and stage of development, every child has the right to refuse circumcision. A male child who has been subjected to circumcision against his will may also lay a charge of assault or indecent assault with the intent to do grievous bodily harm, as the case may be. These charges may be preferred against the person that performed the circumcision; or a person that is under obligation to protect that child from maltreatment, abuse or degradation.

**7. *Provide information on the applicability of specific provisions to address all forms of violence against children to non-citizens and stateless children, including asylum seekers and displaced children. If specific provisions do not apply to such children, provide details of protection offered to them.***

The **Constitution**: Chapter 2, Section 18 defines the term "children" to mean all children and every one under the age of 18, not only South African citizens. The protective measures in this document are therefore applicable to all children living in South Africa.

The *Child Care Act, 1983* stipulates that non-citizens and stateless children, including asylum seekers and displaced children have the right to all measures designed to protect all children. Additional legislation that applies is listed below:

- The **South African Immigration Amendment Act, 1994**: The preamble, paragraphs N, O and P include children as part of immigration system. The Act provides for the protection of the human

rights of foreigners. This includes an obligation that the country educates civil society on the rights of foreigners and refugees. In protecting foreigners, the Act ensures that: (1) A human rights-based culture of enforcement is encouraged; (2) international obligations of the Republic are complied with; and (3) civil society is educated on rights of foreigners and refugees.

- The **South African Immigration Amendment Act, 2004**: Section 9 stipulates that: Any decision in terms of the Act (other than the decision contemplated in subsection 1 of this Act dealing with the decision of entry or refusal of foreigners by Minister) that materially and adversely affects the rights of any person, shall be communicated to that person in the prescribed manner and shall be accompanied by the reason for that decision.
- The **South African Refugee Act** controls and protects the rights of refugees. Chapter 5 provides all refugees full legal protection which includes all rights set out in Chapter 2 of the Constitution and the right to remain in the Republic in accordance with the provisions of this Act. Refugees are entitled to qualifying documents, education and health services. Section 32 of the Act provides that any child and mentally disabled person that qualifies for refugee status in terms of Section 3 and who needs care must be assisted when applying for asylum. It also provides that children must be brought before the Children's Court for protection.

Chapter 3 deals with the protection and control of Asylum Seekers, including children. Children under the age of 16 are exempted from furnishing photographs/identification during application for asylum.

- **South African Citizenship Act, 1995**: In terms of Section 10 of this Act a minor who returns to the Republic may retain his or her South African citizenship upon attaining 18 years of age if he or she was outside the Republic.

8. ***Provide information on any difference in the definition of violence and the applicable legal framework according to:***

- ***The sex or sexual orientation of the victim and/or of the perpetrator;***
- ***The age of the victim and /or of the perpetrator;***
- ***The relationship between the victim and the perpetrator, including, but not limited to infanticide, sexual violence in***

***marriage, incest and sexual abuse within the family, and physical chastisement.)***

Presently, common law still differentiates between males and females in this regard. In addition the *Sexual Offences Act, 1957* determines that rape can only be perpetrated by men and that females are the inevitable victims. In practice, these rules of evidence, have been broadened to include the social nature of such crimes and this is reflected in the new *Sexual Offences Bill*. This legislation is currently under consideration by the Portfolio Committee of Justice & Constitutional Development.

This Bill is a distinct departure from its predecessor in that it provides for a non-gender-specific definition of rape. Until this legislation is passed the sexual assault of a male is adjudicated under the indecent assault charge, which is a far less serious offence than rape. In addition, domestic violence that may occur in same-sex partnerships is covered under the *Domestic Violence Act*.

**9. *Provide information on any recent comprehensive review of the legal framework to address violence against children.***

The *Sexual Offences Act, 1957* has undergone a comprehensive review by the South African Law Reform Commission who, after broad consultation, referred a draft Bill to the Minister of Justice for consideration. The Bill was approved by Cabinet and then forwarded to Parliament for final deliberation and passage. The Bill is substantially different to the existing legislation and addresses specifically issues related to sexual violence against children.

**9.1 The Sexual Offences Bill**

The proposed legislation contains the following elements:

- Rape is no longer defined as unlawful sexual intercourse between a man and a woman. Instead, the Bill defines rape as an unlawful act of sexual penetration. Acts of sexual penetration are regarded as *prima facie* unlawful when committed under coercive circumstances, under false pretences, or with persons incapable in law of comprehending the act of sexual penetration.
- The Bill creates two new statutory offences of “sexual violation” and “oral genital sexual violation”. The sentences for contraventions of these offences are on par with those proposed for rape.
- The Bill introduces a new crime dealing with acts of sexual penetration or indecent acts with consenting children. The legislative proposal is gender neutral and makes no distinction between acts committed against boys and girls. The proposal merely refers to children between the age of 12 and 16. It is further recommended that the defences available under the old law be repealed and replaced by the defence

that the accused was deceived into believing the child (between the ages of 12 and 16 years) was over the age of 16 years and that that belief was reasonable.

- The Bill defines a new crime - that of child prostitution. This is to replace the current provision in the *Child Care Act* dealing with the commercial sexual exploitation of children. Included in this new offence, is the prohibition of the organisation and promotion of child sex tours. The Bill asserts that it is an offence to intentionally commit a sexual act with a child; or to accept any reward or compensation for such an act; to arrange such a transaction between a child and another person; and to keep a brothel or in any way offer or facilitate the commercial sexual exploitation of a child.

Due to the numerous problems in practice that have been brought to the attention of the Law Reform Commission, it was found that the adversarial system of criminal procedure and related rules of evidence are not suitable for the prosecution of sexual offences (particularly involving children). The following elements are contained in the proposed legislation:

- The creation of a category of vulnerable witnesses that will include all complainants in sexual offences cases. These vulnerable witnesses will be afforded new protective measures extending beyond those currently provided by the *Criminal Procedure Act*.
- The abolition of the cautionary rule with regard to children and other complainants in sexual offence cases.
- Reconsideration of the similar fact rules with regard to sexual offences, more readily allowing the admission of such evidence where it is relevant to the case.
- Reconsideration of the rules with regard to previous consistent statements. A judicial officer should no longer draw negative inference from the fact that the complainant did not lay the complaint at 'the first reasonable opportunity'.
- Hearsay evidence of children has been revisited in an attempt to more readily allow admissibility of such evidence.

The Portfolio Committee on Justice and Constitutional Development is considering the *Criminal Law Amendment (Sexual Offences) Bill, 2003*. The Department of Justice and Constitutional Development chairs an interdepartmental Steering Committee for the planning, costing and implementation of the proposed legislation.

In a parallel process aimed at addressing an escalating trend in violent crimes against women and children, the South African Cabinet has established an Interdepartmental Management Team to promote an Anti-Rape Strategy, under the chair of the Sexual Offences and Community Affairs (SOCA) Unit of the National Prosecution Authority.

Fifty Three (53) dedicated Sexual Offences Courts have been established at a Regional level, countrywide. Case rolls at these courts deal exclusively with sexual offences. Specially trained and dedicated magistrates and prosecutors handle the sexual offences in a more victim-centred way. Additional Courts are established where no permanent courts can be established immediately. There are 15 such Additional Sexual Offences Courts operating at the moment. The South African Government and the Justice Ministry is in the process of developing and implementing plans to ensure equal access to resources for all Regional Courts dealing with sexual offences cases.

Conviction rates in the dedicated courts have risen to 64%. This increase is a significant improvement over the 48% prosecution rate achieved in non-specialised regional criminal courts. In addition the average case turnaround time in the specialised courts has been reduced from 285 days to 142 days.

## **9.2 The Child Justice Bill**

*Child Justice Bill, 2002* proposes a new minimum age for criminal capacity, the use of individual assessments, the application of new procedures as they pertain to children, the use of diversion mechanisms, more appropriately structured child justice courts, alternative sentencing options and an effective review and monitoring system.

## **9.3 Review of the Child Care Act and the Children's Bill**

An exhaustive process of review, research and consultation led to the development of the new Children's Bill. The Children's Bill is nearing finalisation and approval by Parliament. Given the broad scope of the preparatory investigation, the Bill contains a wide range of measures designed to protect and defend the rights of children. Some of the relevant aspects of the Bill are highlighted below:

- The Bill addresses the question of the best interests of the child, children's rights and the responsibilities of children.
- It deals with the diversity of family forms in South Africa with a shift in focus from parental power to parental responsibility. The Bill also deals with the acquisition of parental responsibility by persons other than biological parents and the termination of parental responsibility.
- It recognises prevention and early intervention services as vitally important components of a child's development.
- Formal measures for the protection of children from abuse and neglect are the central focus of the new legislation. Exploitation and abandonment, being forms of abuse and neglect respectively, are included within the ambit of this legislation. The Bill further addresses issues such as the protection of the health rights of children, the protection of children as consumers, children in need of special protection, and the protection of children affected by the divorce or separation of their parents.

- The Bill deals with the temporary care of children by persons other than their parents or ordinary caregivers and refers specifically to the following forms of substitute care: foster care, adoption, and residential care. More specifically, it addresses aspects such as professional foster care, cluster foster care, parental rights and responsibilities, rights and responsibilities of foster parents, the foster care grant, who may be adopted, who may adopt, subsidised adoptions, the rights of children to care and protection in residential care facilities, minimum standards and quality assurance in residential care, and funding of residential care.
  - The new legislation addresses international issues affecting children. These include, *inter alia*, inter-country adoptions, cross-border trafficking in children, child abductions and matters pertaining to refugee children.
  - It retains the existing court structure but grants more extensive powers to Judicial Officers on matters pertaining to children. The Bill also addresses the matter of child-support grants and social security for children. In addition, a monitoring system is established to ensure the effective implementation of the new children's statute.
  - The Bill specifically addresses the care of sexually exploited children. In this regard, the references to child prostitution, child pornography and child trafficking focus on the child as a victim and as being in need of care.
  - Through this legislation the common law defence of the right to reasonable parental chastisement is abandoned. This measure has been welcomed and will protect children from serious breaches of their physical integrity. In effect, the bill criminalises certain forms of parental chastisement.
  - The Bill further provides that all children over the age of 12 years may consent to HIV testing, with proper pre- and post-test counselling. It also provides for confidential access to condoms for all sexually active persons, regardless of age. It further regulates safety provisions at places of entertainment

The far-reaching implications of the new legislation have necessitated the establishment of an inter-sectoral Committee to oversee the costing, planning and implementation of the Bill.

#### **9.4 Films and Publications Amendment Act, 2004**

This legislation amends the *Films and Publications Act, 1995*. Key changes in this legislation include the following:-

- The definition of child pornography is amended while the provisions for the possession of pornographic materials are further regulated. In addition new definitions with regard to sexual conduct are also imposed. These amendments increase the effectiveness of the legislation by broadening the range and scope of the legislation.

- New sections have been inserted that provide for the regulation of internet-linked aspects of pornography. Jurisdiction, presumptions and burden of proof considerations are also modified in the Amendment. These changes are aimed at addressing existing gaps with respect to crimes relating to violence against children committed via the Internet.

The Films and Publication Board is a statutory body established by the *Films and Publication Act, 1996*. The primary role of the Films and Publications Board is to classify films, videos, DVD's, computer games and certain publications for suitable viewership in relation to the age of the child.

**10. *Provide information on any studies and surveys, which have been undertaken to assess the impact of legal measures to address violence against children***

**11. *Identify those parts of the court structure in your country tasked with addressing violence against children. Indicate if your family or juvenile courts have specific responsibility for this issue.***

a. All courts have the responsibility to protect the rights and wellbeing of children. High Courts are the upper guardians of children; while the Constitutional Court is the highest legal authority on all matters. The role of the Constitutional Court for the purposes of this report refers specifically to the protection and promotion of children's rights, particularly those prescribed in the Bill of Rights.

b. Existing courts and their responsibilities towards children:

c.

- i. Children's Courts: these courts protect neglected, abused and exploited children and remove them from abusive situations.
- ii. All Magistrates' Courts are Children's Courts in terms of the existing *Child Care Act, 1983*. There are 747 magistrates' courts countrywide.
- iii. Family Law Centres: These centres focus on dealing with family matters in a one-stop service centre approach that provides an appropriate court environment with the associated and necessary support services. Matters pertaining to Divorce, Maintenance (Parental Child Support), Domestic Violence and Child Care are processed in the Family Court Centres. There are five pilot centres at the moment and the concept will be extended to each province (9) by 2007.
- iv. Child Justice/Juvenile Courts: The purpose of these centres is to divert children in conflict with the law from the mainstream criminal justice system. Three One Stop Child Justice Centres serve as

pilots and further rollout is planned on an incremental basis as the sustainability of the project is determined.

- v. Sexual Offences Courts: The Department of Justice, the National Prosecution Authority, the Judiciary, the Legal Aid Board and Justice College collaborate to sustain and improve service levels at the 53 permanent and 15 additional existing Sexual Offences Courts. Their primary motivation is to protect the rights of victims/survivors of sexual violence by minimising secondary victimisation. The environment in these courts is victim-friendly and best practice protocols are maintained through a monitoring and report-back system. Where dedicated courts have been established, such cases are heard in the ordinary Regional Criminal Courts. In order to improve access to equal justice in all Regional Criminal Courts, the resources allocated to dedicated Sexual Offences Courts, will be mainstreamed to all Regional Courts on an incremental and sustainable basis.

#### Minimum Age For Sexual Activity

- 12. Provide information on any legislatively defined minimum age required for valid consent to sexual activity. Is this age different for girls and boys? Is this age different in respect of heterosexual and homosexual activities?**

The *Sexual Offences Act* provides that the minimum age for consensual sexual activity - for boys - is 14 years and 16 years for girls. The new *Sexual Offences Bill* will address this discrepancy, guided by section 9 of the Constitution, which *inter-alia*, outlaws age and gender discrimination.

- 13. Provide information on the minimum age of marriage for women and men**

Presently in South Africa, all persons, whether male or female attain the age of majority at twenty-one years of age. The *Age of Majority Act, 1972* provides for the special declaration of a minor to be a legal major. Persons who have attained the age of eighteen years may apply to the provincial division of the High Court of South Africa to be declared a legal major. In the new *Children's Bill* the age of majority for both male and females is 18 years.

Section 24 of the *Marriage Act, 1961* (Marriage of minors) states that no marriage officer shall solemnise a marriage between parties of whom one or both are minors unless the consent which is legally required for the purpose of contracting the marriage has been granted and furnished to him/her in writing. The Act, stipulates in terms of the prohibition of marriage of persons under

certain ages that: (i) No boy under the age of 18 years and no girl under the age of 15 years shall be capable of contracting a valid marriage except with the written permission of the Minister of Home Affairs or any duly authorised official, should he/she consider such marriage desirable; and (ii) If the Minister or any duly authorised official so directs, it shall be deemed that he/she granted written permission to such a marriage prior to the solemnisation thereof.

The *Recognition of Customary Marriages Act, 1998* includes three requirements for the validity of customary marriages. One of these requires that both persons must be above 18 years.

The new proposed *Children's Bill* includes provisions for the marriage of minors. Section 12 (2a and 2b) provides that: Every child – below the age set by law for a valid marriage – has the right not to be given out in marriage or engagement; and above that minimum age has the right not to be given out in marriage or engagement without his or her consent.

### Sexual Exploitation of Children

**14 Provide information on legislation and other measures to prevent the commercial sexual exploitation of children, including through prostitution and other unlawful sexual activities. Provide details on means to ensure that child victims of such exploitation are not criminalized. Provide information on legislation or other measures to prohibit all forms of sale or trafficking in children, including by their parents.**

The proposed *Children's Bill* and *Sexual Offences Bill* both contain provisions that address the commercial sexual exploitation and trafficking of women and children. The *Sexual Offences Act, 1957* criminalises the establishment or operation of brothels. The Victim's Empowerment Programme provides support for children who become victims of sexual abuse or violence. The *Child Justice Bill* and parallel Child justice System also prescribe restorative measures for the rehabilitation of child perpetrators.

The provisions of the Anti-Trafficking investigation performed by the South African Law Reform Commission, has been implemented in practice while awaiting finalisation of the proposed legislation.

The Child Labour Action Plan - chaired by the Department of Labour - has also identified Commercial Sexual Exploitation of Children, as a primary area of focus and the inter-sectoral Action Plan proposes preventative measures and special interventions aimed at eliminating this base and cruel form of child labour.

### Pornography and Harmful Information

- 15. Provide information on legislation and other measures to prohibit the production, possession and dissemination of child pornography. In particular, please provide information on any controls on pornography produced and/or disseminated via the internet.**

#### **The Films and Publications Act, 1996**

The *Films and Publications Act* prohibits the production, possession, importation and distribution of pornographic material depicting persons that under the age of 18 years. It also provides for the protection of children from exposure to pornographic material. One of the primary objectives of this legislation is the protection of children against sexual exploitation or degradation in publications, in films and on the Internet.

The *Films and Publication Act* has also been amended to make investigations and prosecution of Child Pornography offenders more effective. The Act has also broadened its definition of child pornography and imposes harsher sentences for offenders.

There is, however, concern about the vast and growing amount of pornographic material that is distributed via the Internet. The Act is being reviewed by the Department of Home Affairs to make better provision for the prosecution of Internet-related offences.

In celebration of the International Day of the Child (1 June 2005), the Department of Home Affairs held a two day conference to address the issue of Child Pornography. The theme of the workshop was: *Action against the exploitation of children through pornography*. Civil society organisations have also partnered with government to unite against child pornography, and a toll free number has been generated for urgent information and reporting purposes.

- 16. Provide information on any legislation or guidelines to protect children from injurious information and material transmitted through the media, Internet, videos, electronic games, etc.**

The *Films and Publications Act, 1996* establishes guidelines for the Classification of Films and Interactive Computer Games (Schedules 3 and 8). These guidelines impose restrictions on the distribution of injurious information, material transmitted via the media, and electronic games that could be harmful to children. The Department of Home Affairs and the South African Police Service are monitoring the cell-phone industry closely to assess children's access to harmful information via that medium. At a recent conference convened by the Department Of Home Affairs, the major cell-phone companies were requested to present and defend their positions on children's access to injurious information and material transmitted via cellular telephones.

- 17. Provide information on legislation, regulations or administrative directives requiring reporting of all forms of violence against and abuse of children in all settings to appropriate bodies. If reporting legislation, regulations or administrative directives exist, please indicate whether all citizens are required to report, or whether the obligation falls on certain professional groups only. Provide details of any sanctions for non-reporting.**

Section 4 of the *Prevention of Family Violence Act, 1994* provides that professionals such as doctors and teachers must report suspected abuse. These provisions will be expanded upon later in the report with reference to the *Children's Bill, 2003*. In addition, sanctions for non-reporting will be described.

#### **The Child Care Act, 1983 and Child Care Amendment Act, 1996**

Section 12 of the *Child Care Act, 1983* provides that any police officer, social worker or authorised person may remove a child to a place of safety if that person believes that the child is in need of care. Motivating circumstances for the decision to move the child may include:

- i. that the child lives in circumstances likely to cause or conducive to his/her seduction, abduction or sexual exploitation;
- ii. that the child lives in or is exposed to circumstances that may seriously harm the physical, mental or social wellbeing of the child;
- iii. that the child is in a state of physical or mental neglect; and
- iv. that the child has been physically, emotionally or sexually abused or ill-treated by his /her parents or guardian or the person in whose custody he or she lives.

The Act provides for the official investigation of alleged abuse, neglect and exploitation. Provision is also made for reporting allegations or suspicion of abuse, neglect and exploitation. Remedial and preventative actions including the removal of children to places of safety or other forms of alternative care (out-of-home placements; including foster care and residential care) are also described in the Act.

#### **SPECIFIC LEGISLATIVE PROVISIONS FOR PREVENTION AND PROTECTION MEASURES**

- 18. Indicate specific legislative provisions to address all forms of violence against children at home and institutions including sexual exploitation**

Prevention and protection measures include:-

- Sections 11 and 12 of the *Child Care Act, 1983* provide for the removal of a child to a place of safety as a prevention and protective measure.

- Section 50 (1) of the same Act provides for the prevention of ill-treatment of children by determining that “any person or any parent or guardian of a child or any person having the custody of a child who ill-treats that child or allows it to be ill-treated, shall be guilty of an offence.”
- The Act also makes provision for the reintegration and rehabilitation of children that have been placed in alternative care and for the extension of orders governing the alternative care, should they be necessary.
- Section 37 of the Act determines that “The Minister may, if he/she considers it desirable in the interest of any pupil or foster child, at any time by order in writing the discharge that pupil or foster child from the effect of any order made by any court under section 15 of the Act or section 290 of the *Criminal Procedure Act, 1977*, in which event the parent or guardian of the pupil or foster child and the institution or foster parent concerned shall also be discharged from the effect of such order”.
- Section 50 A (1) (3) also makes provision for preventative measures in respect of the commercial sexual exploitation of children in that “any person who participates or is involved in the commercial sexual exploitation of a child shall be guilty of an offence”. Also “any person who is an owner, leaser, manager, tenant or occupier of property on which the commercial sexual exploitation of a child occurs and who, within reasonable time of gaining information of such occurrence, fails to report such occurrence at a police station, shall be guilty of an offence”.
- Section 42 of the *Child Care Amendment Act, 1996* prescribes that “every dentist, medical practitioner, nurse, social worker, teacher or any person employed by or managing a children's home, place of care or shelter, who examines, attends or deals with any child in circumstances giving rise to the suspicion that that child has been ill-treated, or suffers from any injury, single or multiple, the cause of which probably might have been deliberate, or suffers from nutritional deficiency disease, shall immediately notify the Director-General of Social Development or any officer designated by him/her”.

**19. *Indicate if corporal punishment is prohibited***

Regulation 32 of the *Child Care Act, 1983* prohibits corporal punishment in a children's home and in institutional care facilities by stating that “behaviour management practices shall not be used by any person in a children's home, place of care, shelter, school of industries or by a foster parent “. [The Abolition of Corporal Punishment Act, 1997](#) prohibits corporal punishment in schools. The Act also abolishes and amends all laws that allow courts to authorise caning as an alternative punishment.

**20. Provide information on the care and protection of non-citizens and stateless children**

The *Child Care Act* provides the legal framework for the care and protection of all children (non-citizens included) who are found and declared to be in need of care in South Africa. Section 55 of *Child Care Act, 1983* makes provision for the admission of children from other countries into South African child-care institutions; thus making institutional provision for their needs.

**21. Provide information on definition of violence according to age, sex, etc.**

The *Sexual Offences Bill*, currently before the Portfolio Committee on Justice and Constitutional Development is substantially different to the existing legislation and addresses specifically issues related to sexual violence against children.

The new legislation contains the following elements of a definition of sexual violence against children:

In addition to a much broader definition of rape, the Bill creates two new statutory offences of “sexual violation” and “oral genital sexual violation”. The sentences for contraventions such as these are on par with those proposed for rape.

The *Domestic Violence Act, 1998* understands the term “violence” to include, physical, sexual, psychological, emotional and economical violence.

The *Child Care Act, 1983* defines a child as any person under the age of eighteen years, regardless of sex, race and religion. Acts of violence, abuse or exploitation as they pertain to children will be prosecuted in terms of this definition.

The *Child Care Act, 1983* prohibits any behaviour management practices that discriminate on the basis of cultural or linguistic heritage, gender, race or sexual orientation.

**22. Provide information on the commercial sexual exploitation of children**

Section 50 of the *Child Care Act, 1983* outlaws the commercial sexual exploitation of children. Reference to the Act is made in response to questions 17 and 18 above.

**23. Reporting obligations by certain professionals.**

The *Child Care Act* (section 42 and regulation 39 A) makes provision for mandatory reporting by professionals and persons in the health sector,

(dentist, medical practitioner, nurse), education sector, or welfare sector (social worker, any person employed by or managing children's home, place of care or shelter). Reporting is controlled by Form 25, the use of which is regulated by the *Child Care Act*.

**24. Provide information on any complaints procedures relating to forms of violence against children**

Regulation 30 (for all places of care) of the *Child Care Act, 1983* makes provision for disciplinary and complaint procedures in the event of ill-treatment of children. Provincial protocols spell out procedure for complaints either to the local organisation involved in these matters or to the nearest government department. The National Department of Social Development facilitates dispute resolution through panel discussions with families and children at risk.

Complaints procedures in terms of the *Domestic Violence Act, 1998* further provide that children may also independently approach a Domestic Violence Court or the South African Police Service, for protection orders against perpetrators.

Children may also approach the Public Protectors' Office, the South African Human Rights Commission and the Gender Equality Commission for assistance regarding complaints relating to violence against children.

**25. Indicate if children and persons acting on their behalf have access to these procedures.**

Access to the procedures described in the previous paragraph is open to both children and their caregivers.

**26. Describe steps that have been taken to raise awareness to submit complaints about violence against children**

Regulation 30 (2) of the *Child Care Act, 1983* ensures protection from exploitation and neglect within institutions. It encourages consultation with children and young persons in matters concerning them and regulates reviews of out-of-home placements.

Information sessions are held with communities and representatives from different professions to promote and raise awareness regarding the obligation to report and investigate complaints of abuse and exploitation. The topic of "Child abuse and exploitation" is well integrated into the public education interventions of the different departments targeting children in institutions and schools.

The annual *16 Days of Activism for no violence against women and children* Campaign (25 November to 10 December) promotes awareness of the many kinds of violence that impact on women and children. The Campaign also provides extensive information on the government and civil society services available to victims/survivors of violence. The campaign focuses on providing information on preventative measures that can be taken to avoid violence and abuse. It also provides information on restorative measures that can be taken to ameliorate the negative impact of violence and abuse on women and children. The Campaign stresses the importance of partnerships between government and civil society to combat violence.

The annual *Child Protection Week* and *Youth Month* (June) lend further impetus to government's education and awareness programme as it pertains to violence and the abuse of children.

*Women's Month* (August) concentrates government's year-long awareness and education programme on the empowerment and development of women. Issues pertaining to the protection, development and promotion of the girl-child form a crucial element of this programme.

The *Safe Schools Project* is a collaborative effort between the Social and Safety and Security Clusters of departments and civil society to develop violence-free school environments that are essential to the healthy development of the country's youth.

Government's Imbizo programme includes a series of personal contact information sessions with communities, where the government leadership (at national, provincial and local levels) is required to listen and respond to the needs of the communities with which they engage.

The Family Violence, Child Protection and Sexual Offences (FCS) units of the South African Police Service conduct year-round community education engagements with key stakeholders. Awareness is fostered through multi-disciplinary meetings, op-ed articles in the media and the presentation of lectures. These lectures are presented to people of all ages, including children and adults.

The mandatory obligation to report cases of child abuse is also addressed by the FCS training division with detectives and functional members. Officials are also trained on how to manage child-directed abuse and violence.

The Department of Justice and Constitutional Development is required to develop a rich, rights-based legal and social culture. The Department conducts social outreach and education campaigns in respect of the *Domestic Violence Act, the Sexual Offences Act and the Maintenance (Parental Child Support) Act*. The training of prosecutors, magistrates and judges in all aspects of dealing with child-directed violence and abuse is also facilitated through the Department of Justice and Constitutional Development and the Justice College.

## Complaints Procedures

### **27. Provide information on any complaints procedures relating to all forms of violence against children perpetrated in:**

- The family/ home;
- Schools and pre-school care and education (both formal and non-formal, state and private);
- Military schools;
- Institutions, state and private, including care, residential, health and mental health;
- The context of law and public order enforcement including in detention facilities or correctional centres;
- The neighbourhood, street and the community, including in rural areas;
- The workplace (informal and formal);
- Sports and sporting facilities.

All the relevant departments have established complaints procedures. These are captured in the various policy guidelines and it is therefore important read the response to this question with the information provided in Annexure I. The latter provides more specific details of the legislation and policies that guides the intervention of government departments.

The protection of children is a high priority of all government departments. There are extensive measures in place to encourage, facilitate and support children who may need to lay a complaint relating to any form of violence perpetrated against them. There are also extensive initiatives including legislation and policies to facilitate multidisciplinary coordination.

#### **27.1 The Family/Home/Community including Sports and Sporting Facilities.**

Section 12 of the *Child Care Act, 1983* provides for the reporting of allegations or suspicions of abuse, neglect and exploitation, removal of children to places of safety and placement in alternative care. The Act also provides for official investigation into cases of alleged abuse, neglect and exploitation. Children can make complaints at any attending professional including a dentist, medical practitioner, nurse, social worker, teacher or any person employed by or managing a children's home, place of care or shelter. In turn, the *Child Care Amendment Act, 1996* "the professional, who examines, attends or

deals with any child in circumstances giving rise to the suspicion that that child has been ill-treated, or suffers from any injury, single or multiple, the cause of which probably might have been deliberate, or suffers from nutritional deficiency disease, shall immediately notify the Director-General or any officer designated by him/her”.

Although the Department of Social Development serves as the lead department in this regard, service delivery occurs in close corporation with the Department of Safety and Security. The *Child Care Act*, the *Domestic Violence Act* and the provincial protocols discussed above, provide detailed procedures for complaints and intervention.

Hotlines are operated by non-governmental social welfare agencies that also provide extensive services in terms of follow-up intervention. Neighbourhood child protection initiatives have been developed and implemented in many communities by the Department of Social Development as well as NGOs to ensure closer and more accessible help for children and their families.

The South African Police Service has adopted a victim-centred approach to the management of child abuse, rape and other sexual offences. It provides programmes that improve services to victims and it supports victims through the criminal justice system. These initiatives including presentations at schools that are based on the South African Victims’ Charter the Victim Empowerment Policy and the relevant National Instructions.

The Department of Health is currently running pilot programmes on the prevention of child abuse. The main focus is on empowering carers, educators, learners and community health workers regarding preventive strategies. These also target children. Explicit procedures on how to report instances of abuse are included in these programmes.

### ***27.2 Schools and Pre-School Care and Education (Both Formal and Non-Formal, State and Private)***

As it pertains to the prevention of violence and abuse in schools, the Department of Education is the lead Department. (See the legislative and policy guidelines in Annexure I).

The Department has developed and implemented guidelines for the management of reports of child abuse in schools. The implementation of these guidelines was supported by workshops with educators and students. In November 2000, the Department of Education, with the support of the Canadian International Development Agency, completed a school-based module, *Managing sexual harassment and gender-based violence*. The module is intended to raise awareness about the problem of gender-based violence and to provide institution-based policies and programmes, including reporting of such instances by students.

### ***27.3 Institutions, State and Private, Including Care, Residential, Health And Mental Health***

Children in all forms of out-of-home placements receive information about reporting procedures. These procedures are described in most governance policies for residential care facilities.

The Department of Correctional Services operates development centres for children within youth centres. The primary objective of these centres includes the provision of distinctive, custodial treatment and development programmes in an environment that is conducive to the development of young offenders. In addition to the separation of children and adults in correctional facilities, offenders are incarcerated according to degrees of risk and aggression. Programmes can therefore be developed separately according to the special needs of offenders, for example, training and education on violence against children and rehabilitation programmes for sexual offenders. An important focus of intervention programmes is the provision information about procedures to follow in instances of victimisation and abuse.

### ***27. 4 The Context of Law And Public Order Enforcement Including Detention Facilities or Correctional Centres;***

The Department of Justice and Constitutional Development receives complaints from the public, parents, caregivers, NGO's, children and other government departments regarding children in trouble with the law; and children in need of care and protection. The department's role is to co-ordinate a response relating to the specific complaint received.

Contact names and numbers regarding specific complaints in family law and child justice issues, are distributed in pamphlets, awareness campaigns, electronic media and through a Website. Inter-sectoral co-ordination mechanisms such as the Inter-sectoral Child Justice Steering Committee deal with individual complaints and assists with the co-ordination of responses. A key strategy is to divert children in trouble with the law, from the mainstream criminal justice system.

The Victim's Service Charter further provides for the establishment of a Victim's hotline that will refer complaints and/or enquiries, to the relevant divisions for urgent attention. The hotline is in the process of being established.

Anti-Corruption and Anti-Fraud Hotlines already exist, through which complaints and requests for assistance are also received and prioritised.

### ***27.5 The Workplace (Informal and Formal);***

The Department of Labour is responsible for regulating children's work-related activities including combating worst forms of child labour. To this effect, in 1999 the Department of Labour initiated the development of the first ever, comprehensive programme of action to protect children against child labour (See annexure I). A flagship project undertaken to address worst forms of

child labour deals with the commercial sexual exploitation of children, child trafficking (movement of children for exploitative labour or abuse) and educational rehabilitation of children found in worst forms of child labour. This department in collaboration with the other relevant departments are engaging in consistent efforts to raise awareness among children and young people and to encourage reporting through the appropriate procedures.

**28. *Indicate whether children or persons acting on their behalf can access these procedures. Indicate whether legal aid is available to facilitate submission of complaints, and the circumstances in which legal aid will be available.***

The Constitution provides for legal aid at state expense in criminal matters as well as in civil and family law-matters, where substantial injustice would otherwise result. The Legal Aid Board, a statutory institution and the Department of Justice and Constitutional Development are developing Family Law-policy for the provision of Legal Aid in these and other civil matters.

The proposed *Child Justice Bill* calls for state-provided legal aid which aid cannot be waived by children under 14 years old or where the hearing may result in imprisonment. The new *Children's Bill* provides for legal aid in all matters pertaining to the best interests of a child, including the submission of complaints. The Legal Aid Board has been planning and budgeting for the legal representation of children awaiting trial. Information received from the Legal Aid Board in this regard, is as follows:

- Justice Centre executives are requested to give special attention to children awaiting trial. Dedicated professional assistants are made available in areas where the numbers of awaiting-trial children are high and where specific Juvenile Courts have been established.
- The Stepping Stones One-Stop Child Justice Centre in Port Elizabeth has been allocated a dedicated attorney to attend to all children's matters on that court's roll. The Legal Aid Board also provides attorneys to service the Bloemfontein Child Justice Centre.
- The Legal Aid Board's Justice Centres are linked to all prisons and they have been instructed to ensure that any children detained in prison, should be given priority.
- The Justice Centres have also developed links to the places of safety to ensure that children who require assistance are given Legal Aid. This has been done at Matate Matches in Kroonstad and Ekuselweni in Port Elizabeth and at various sites in the Western Cape.
- The Department of Justice also regularly furnishes a list of awaiting-trial children who do not qualify for bail and the relevant Justice Centres are instructed to visit the children and, where possible, to expedite matters.
- In some instances, dedicated service providers have been placed at Reception Courts to ensure that applications for Legal Aid are dealt with at first appearance.

- The Legal Aid Board and the Office of the Inspecting Judge of Prisons are required to exchange relevant information and cooperate to facilitate the provision of legal aid for awaiting-trial offenders and in particular children in custody. A pilot project was implemented with effect from 1 June 2005 to monitor the effectiveness of these measures.
- The Legal Aid Board is part of the Inter-sectoral Child Justice Steering Committee, the committee that coordinates the activities of all Departments associated with awaiting-trial children.

**29. Describe steps that have been taken to raise awareness of possibilities to submit complaints about violence against children**

South Africa has institutionalised a range of events and specific annual campaigns to raise awareness about violence against children and women. Examples are, the annual *Child Protection Week* during June and the national *16 Days of Activism for No Violence Against Women And Children Campaign* aimed at raising awareness and educating on all matters concerning violence against children.

Each of the relevant government departments is obligated to develop its own protocols and guidelines for the prevention and management of instances of child abuse. The Department of Social Development publishes and disseminates information about these mechanisms in accessible formats. In partnerships with various civil society organisations this department operates help lines. Examples are the Child Line and a help line for Women. The Department of Justice and Constitutional Development published booklets relating to children's rights; "*Busi goes to Court*", being an example of these publications. This booklet explains what a child needs to know about what happens at a court. This department has also embarked on specific Children's Programmes, such as Court Preparation Programme for specific age groups and intermediary services for children who might be traumatised by a court procedure or hearing. The Department is finalising proposals for mainstreaming such programmes in all courts.

In addition, the departments of Social Development, Safety and Security, Justice, Education and Health have developed child and community friendly advocacy brochures, posters and other promotional materials to raise awareness and to distribute information about remedial options for complaints and reporting purposes.

Children can further report any violence perpetrated against them to the SA Human Rights Commission, the Gender Equality Commission, the Public Protector and the South African Police Service.

**30. Provide information on any special procedural or evidentiary rules which may apply in proceedings with respect to violence against children.**

- Section 170A of the *Criminal Procedure Act, 1977* makes provision for the appointment of intermediaries who are appointed by the Courts to promote the interests of children in court matters. This section also provides that children may give testimony in a room other than the court room (for example a purpose-designed child witness booth). This mechanism ensures that secondary victimisation is minimised during the court process.
- In addition, the use of support persons for victims/survivors of violence during court proceedings is also common practice in most court proceedings involving vulnerable victims.
- The provision of separate waiting rooms for child victims/survivors is also standard in all new courts, while this infrastructure is provided in existing buildings on an ongoing basis.
- All these elements are incorporated and expanded upon in the proposed *Children's Bill*, the *Child Justice Bill* and the *Sexual Offences Bill*. See question 2 and subsections above.

**31. *Provide information on the usual outcome of complaints of violence against children (e.g. compensation, punishment of perpetrators, perpetrator).***

Cases of abuse, exploitation or other forms of violence against children are dealt with via two basic mechanisms: the courts or by way of mediation and/or intervention by Social Workers. Where applicable, Social workers are encouraged to utilise non-intrusive mediation, rehabilitation and family preservation services prior to the adoption of more intrusive measures. The outcomes of the various responses to complaints are, by definition, diverse. Depending on the individual case details and the response mechanisms applied, the outcomes will include mediated resolution, compensation, and/or punishment of perpetrator/s.

**32. *Provide information on the usual outcome of legal proceedings in which children and juveniles are found guilty of perpetrating violence (e.g. imprisonment, corporal punishment, community service, perpetrator rehabilitation, family therapy).***

The purpose of the *Child Justice Bill* is to divert children, away from the Criminal Justice System by way of diversion, community service, perpetrator rehabilitation and family therapy. Imprisonment should be a last resort and corporal punishment is outlawed completely.

## INSTITUTIONAL FRAMEWORK AND RESOURCES TO ADDRESS VIOLENCE AGAINST CHILDREN

The aim of this section is to establish if your country has an institution coordinating multi-sectoral activities concerning violence against children which include prevention, protection, redress, reintegration and rehabilitation .

### 33. *Are there Government authorities and structures responsible for addressing violence against children?*

- **The Office on The Rights of the Child in the Presidency**

Government established the Office on the Rights of the Child (ORC) in 1998. The office is situated in the Presidency, the highest executive office in the land.

The ORC convenes, coordinates and monitors the development and implementation of policies and programmes that secure and promote the rights and well being of children. In support of this key role, government departments and civil society organisations meet regularly under the auspices of the National Children's Rights Advisory Council. This structure, along with its provincial counterparts, is responsible for the development of a National Programme of Action for Children (NPA).

The following government departments have been designated as the core departments in matters related to children and their protection: Correctional Services, Education, Health, Social Development, Justice and Constitutional Development, Home Affairs, Labour and Safety and Security. Each of these entities has department-specific policies and programmes in place, but they also participate in an inter-sectoral service delivery mechanism that ensures an integrated, holistic and comprehensive service to children. In South Africa, non-government organisations (NGOs), community-based organisations (CBOs), faith-based organisations (FBOs) and the corporate sector cooperate and work closely in the child protection field.

A number of structures have been established to enhance and coordinate the delivery of protection services to children. These include:

- The **National Committee on Child Abuse and Neglect (NCCAN)** was established in 1996. The role of the inter-sectoral NCCAN is to provide a national platform for the development and coordination of intervention strategies and support mechanisms. The NCCAN was engaged in the development of the Policy Framework and Strategic Plan for the Prevention and Management of Child Abuse, Neglect and Exploitation. The Department of Social Development convenes NCCAN and is also the lead department for the coordination of national child protection events such as the Child Protection Week.
- An **Inter-departmental Report on Co-ordinated Programmes to Address Crimes against Women and Children** is presented annually to

the South African Cabinet. It includes reports from the Departments of Justice and Constitutional Development; the Sexual Offences and Community Affairs Unit of the National Prosecuting Authority; the South African Police Service; the Departments of Social Development, Health, Education, the Office on the Rights of the Child and the Office on the Status of Women in the Presidency.

- The primary objective of the Government's **Cluster System** is the provision of seamless service delivery to communities. Bi-weekly meetings are held at the Ministerial and Director General level. Cascading this practice down to middle management and provincial- local government levels has proven challenging. As it pertains to the protection of children, the Social and Safety and Security clusters of departments work closely to provide integrated services to child victims. Protocols are currently being developed to regulate service delivery where departments interface with one another in the provision of similar or associated services.

**34. *Is there a lead Department tasked with responsibility for addressing violence against children?***

Due to the diversity of aspects involved in the protection of children, each government department has specific sectoral tasks to perform. However, the departments are often also called upon to take the lead for short or longer-term inter-sectoral activities. For example, the Department of Social Development is tasked with the leading role in the development of the Policy Framework and Strategic Plan for the Prevention and Management of Child Abuse, Neglect and Exploitation, while Justice leads on a variety of projects with a predominantly legal content. The SA Police Service is responsible for policing crimes against children. Specialised investigative capacity is provided through the FCS Units for the detection, prevention and investigation of child-directed violence and abuse. So too, the National Prosecuting Authority provides specialist skills and capacity in the prosecution of crimes against children. The provision of integrated services is however enhanced by formal coordinating mechanisms. The Cluster approach to service delivery makes use of lead departments in cases where shared responsibility for service delivery exists.

**35. *Are specific financial and human resources allocated by your country to address violence against children?***

In the Department of Social Development, child protection is a concurrent competency. In instances such as these, National Departments are responsible *inter alia* for developing policy and service delivery guidelines while provinces are responsible for policy implementation. Budgetary allocations are accordingly made via the National Departments to their Provincial counterparts, based upon agreed norms and standards for provincial service delivery.

Justice, on the other hand, is a national competency and the department is structured to meet the civil and criminal justice needs of communities across the national spectrum. The provision of child protection services is a priority of the department and this is reflected in the spending patterns of the Department.

Whether a provincial, shared or national competency, child protection is a priority service delivery area of government and the Treasury allocates financial resources according to strict programmatic guidelines based on the principles of redress and social justice. Both the Social and Safety and Security Clusters of Departments have enjoyed increasingly favourable portions of the national budget over the past decade. Community Safety and Poverty Alleviation are national priorities and the provision of financial resources for service delivery to vulnerable groups such as children, women, the aged and the disabled enjoys preference over other spending priorities.

Income support therefore remains a key strategy of government to fight poverty in the short term. In this regard, the passage of the *Social Assistance Act, 2004* and the *South African Social Security Agency Act, 2004* will extend essential benefits to millions more South African children, disabled persons and the aged. The number of social grant beneficiaries increased from 2.9 million in April 2000 to 7 million in April 2004. It is expected that the numbers will grow annually by an estimated 20%.

**36. Does your country allocate specific resources to activities to address violence against children?**

The promotion and protection of children's rights (and more specifically the prevention of violence against children) is a cross-cutting service delivery imperative and most departments include child and youth-specific service delivery programmes in their respective schedules of work. Service delivery to vulnerable groups, especially children, is a government priority and is expressed in an extensive and wide-ranging human development programme aimed at redressing development deficits for the poor and marginalised.

All provinces allocate the lion's share of their Social Development budgets to social security. The percentage allocated to this function ranges from 82% in Gauteng, (a relatively wealthy province) to 95% in the Eastern Cape and KwaZulu-Natal, (substantively poorer provinces). It appears that wealthier provinces are often better able to 'afford' non-social grant functions. Broadly defined, over 70% of the national budget is devoted to social services and human development programmes; including housing and basic municipal services. The departments of Social Development, Education, Housing and Health enjoy the lion's share of public spending.

Financial resources are allocated via the Treasury to the line functions tasked with providing services within the child protection system. Respective government departments provide human, financial and other resources for service delivery, advocacy, prevention and treatment programmes.

Government's response to child-directed abuse and violence is based on the understanding that violence – or even the threat of violence – impacts

extremely negatively on human development (and even more negatively on vulnerable groups such as children). A continuing challenge for government is to meet the developmental challenges of a marginalised majority based on the revenue generated from a relatively small tax base. Needs continue to exceed, substantially, the available resources and all service delivery programmes, including child protection services, are subject to sustainability considerations. Service delivery has of necessity to be incremental year-on-year as the programmes implemented over the past decade begin to reverse the centuries of deprivation and under-development that has afflicted the majority of the country's people.

**37. *Do international or bilateral donors provide resources for activities addressing violence against children?***

Funding in support of the work of government is provided by local and international donors to departments and NGOs. As it pertains to the protection of children's rights, this area of work has attracted significant levels of financial support. Accounting for expenditure associated with donor funds is subject to stringent control and scrutiny and country-to-country agreements are monitored directly by the Treasury.

**38. *Does your country provide any assistance to other countries' efforts to respond to the problem of violence against children?***

Relevant government departments engage in collaborative interaction within the context of SADC and other child and youth focal points in the region. Government has provided humanitarian assistance to various neighbouring countries in the event of natural disasters.

Individuals, organisations and tertiary educational institutions engage on a regular basis with their counterparts at the regional and international level. South Africa has, over the past decade, hosted a range of workshops, conferences and other forums in the area of child protection. South Africa has also provided skills and capacity building resources to several countries in Africa.

The peace-keeping initiatives of the Defence Department in the Democratic Republic of Congo have required increased levels of funding over the past three years.

The SAPS has provided assistance with the establishment of child protection units and it has also provided training, in Botswana, Ethiopia, Ghana, Lesotho, Namibia, Rwanda, Swaziland, Zimbabwe and Zambia.

**39. *Does your country have Human Rights institutions?***

***If your country has a national human rights institution, such as a human rights commission or ombudsman, or a child-specific human rights***

***institution, does it have any role or competence in the area of violence against children, including receiving complaints?***

The South African Human Rights Commission, the Public Protector and the Gender Equality Commission were established in terms of Chapter 9 of the Constitution. These Human Rights institutions deal with human rights issues and equality matters pertaining to all citizens and much of their work has reference to child-related matters.

The Independent Complaints Directorate investigates and processes complaints on the violation of human and children's rights by members of the South African Police Service.

The office of the Inspecting Judge of Correctional Centres, tables annual reports to Parliament on all matters pertaining to correctional facilities including human and children's rights matters as they relate to persons detained within the country's correctional facilities.

The South African Youth Commission is charged with the responsibility of coordinating, promoting and developing a national youth policy aimed at harnessing the potential of young women and men. An important factor leading to the establishment of the Youth Commission was the need to redress the impact of poverty and underdevelopment on this sector of the population. The Youth Commission focuses on persons between the ages of 14 to 34 years. There is thus an overlap with the Commission and Government Departments on issues affecting children between the ages of 14 and 18 years. The Umsombovu (Youth in Action) Fund has been established to support government's goals of promoting and developing the country's youth.

**40. Are there particular parliamentary structures to address violence against children?**

The South African Parliament conducted an inquiry via the Portfolio Committee on Social Development during 2002 on Violence against Children (specifically child abuse). The committee made various recommendations to Parliament on child-directed violence and abuse. The implementation of the recommendations is being monitored. The Portfolio Committee on Social Development and its counterpart in the National Council of Provinces, monitor and oversee government's service delivery to children in general and children at risk. The establishment of the Joint Committee on the Status of Children has sharpened Parliament's important oversight role, particularly as this relates to children.

**ROLE OF CIVIL SOCIETY IN ADDRESSING VIOLENCE AGAINST CHILDREN**

The aim of this section is to elicit information on civil society activities relating to violence against children.

**41. Describe significant civil society initiatives addressing violence against children in your country, including the types of**

***institutions involved (such as academic institutions, professional associations, women's associations, student associations, community-based groups, faith-based groups, child and youth-led groups, trade unions, employer's organisations, national non-governmental organisations, international non-governmental organisations) and the major activities engaged in (including advocacy, awareness raising, research, prevention, rehabilitation and treatment of children harmed by violence, provision of services, provision of resources).***

Civil society in South Africa plays a significant role in respect of the promotion and protection of children rights. The formal and informal service sectors include a range of social development organisations, community and faith-based organisations and tertiary education institutions. The formal service sector engages closely at the policy and programme level with all the relevant government departments. Their contribution extends over a wide range of service delivery programmes including response interventions and preventative measures.

Increasingly, partnerships between government and civil society (NGOs and private sector) are providing improved service delivery solutions for vulnerable groups. The importance of community participation in defending children against violence cannot be overstated and initiatives to strengthen the linkages between government and communities are actively encouraged.

Universities participate in and lead much of the child-related research conducted in the country. Their provision of legal services via their university-based legal advice clinics makes a singular contribution to the protection of children's rights, especially as this pertains to civil matters.

Faith-based organisations work closely with several departments including Social Development and Correctional Services to provide rehabilitative mechanisms for marginalised young people and children in conflict with the law.

Faith-based and community based organisations are also actively involved in the sheltering of children at risk of violence.

Universities and NGOs participate energetically in advocacy work and engage actively in the parliamentary process to promote awareness of child-related issues. Their contribution to the review and development of new legislation and policies is also significant.

Strategic partnerships between the Department of Correctional Services and NGOs have enhanced government's capacity to integrate children back into their communities once sentences have been served. Intensive efforts to combat the harmful effects of substance abuse by children and young adults have also been enhanced by government and civil society partnerships in the Safety and Security and Social Development sectors.

The Volunteer Child Network (VCN) was launched in Parliament on the 16th October 2002 as a web-based database of organisations active in the

prevention of child abuse and the management of child abuse cases. The network provides potential volunteers with access to information and contact details of participating organisations; it also facilitates networking among organisations. It assists in matching the skills and preferences of volunteers to the specific needs of individual organisations in child protection and other volunteer sectors. To date more than 500 organisations are registered with the network countrywide. A paper version of the database was launched on the 30th May 2005 during Child Protection Week and will be distributed countrywide in police stations and social welfare offices to facilitate access by those with no access to the Internet.

The private sector in South Africa is acutely aware of their social development responsibilities. Many businesses have established outreach foundations to manage this aspect of their work. These Foundations collaborate closely with one another and the government to find suitable options for intervention via strategic partnerships.

**42. Describe the support provided by your Government for these activities and the efforts made to coordinate civil society and government initiatives.**

The financing arrangements between government and non-government organisations are diverse. Different departments employ a variety of financing strategies and funding mechanisms. These include subsidisation of services, the establishment of service agreements and tenders for service schemes and grants.

Government and civil society organisations work closely at the provincial and national levels. Private sector and foreign funding initiatives frequently subsidise collaborative efforts between departments and civil society organisations. The necessity to ensure funding once the initial funding has fallen away remains a critical challenge. There is also a paucity of formalised, self-funding and sustainable NGO structures in the rural areas – the areas of most need.

A dearth of resource support for civil society initiatives remains one of the most serious challenges to the sustainability of the partnerships that have been established. .

The Presidency engages in biannual dialogue sessions with various critical sectors: Women, Faith-based organisations, Business and Youth. Various issue-based sub-committees in these forums collaborate with the Presidency on various important issues. Matters pertaining to youth, including their protection and rights enjoy priority attention in these cross-cutting Presidential Forums.

**43. Describe the role played by the media in addressing violence against children.**

The media report actively on violence against children. Media reports include print, audio and electronic reporting on an almost daily basis. These activities are not necessarily coordinated but it is an essential tool to raise awareness about child-directed violence and to monitor its incidence.

During the annual *16 Days of Activism for no violence against women and children* and the *Child Protection Campaigns*, the media works closely with government in a collaborative effort to increase awareness about the many forms of violence to which children are exposed and the negative impact that violence has on their development.

The Media Monitoring Project – an independent media NGO – determined that the response during the *16 Days of Activism Campaign 2004* by the media was an overwhelmingly constructive one. The Media Monitoring Project Report on Campaign 2004 indicated that all media – audio, print and electronic – covered violence related matters on an issue-driven basis. It also indicated that for the first time since the advent of the Campaign, over 50% of the sources for the media stories were female. The report further observed that too few sources were children or young people and improvements could be made in this regard. The report also noted a steep decline in reporting on violence-related matters immediately after the end of the Campaign.

The Media Monitoring Project has noted frequent infringements of children's rights by the media. However given the scale and complexity of the problem the media's focus on these issues is to be commended. South Africa's media has two self regulatory bodies – one for print and one for broadcast media. Complaints about *inter alia* rights infringements may be directed by anyone to these bodies.

## **CHILDREN AS ACTORS IN ADDRESSING VIOLENCE**

**This section is designed to extract information on children's activities to address violence.**

**44. *Provide information on the involvement and consultation of children in designing activities, and in implementation and monitoring of programmes and policies to address violence against them. Provide details, including ages and other details of the children involved.***

Government departments are encouraged to involve children and young people actively in the planning and implementation of policies and programmes that impact on the quality of their lives.

Some municipalities have established children's forums to formalise children's participation in local government activities. Youth groups are specifically targeted in the awareness programmes presented by the Departments of Education, Health, Social Development, Correctional Services, Safety and Security, and Justice.

Children's participation in parliament and open debates involving children are arranged at the provincial and national levels. The ages of the children participating in these programmes differ according to the intended purpose of the activities. Generally though, children younger than eighteen years of age participate in these events.

Youth Month (June), Child Protection Week, Women's Month and the *16 Days of Activism* Campaign provide excellent platforms for engaging children on issues of violence. Education and awareness programmes during these Campaigns are heavily weighted in favour of engagement with young people.

**45. Describe the involvement, if any, of children in designing special procedural or evidentiary rules applying in court proceedings with respect to hearings concerning violence against children. Provide details including ages and other details of the children involved.**

Some research has been conducted in which child respondents have been asked to describe their experiences in the Sexual Offences courts. See the attached reference list.

Children and youth were extensively consulted in the processes leading up to the current status of the *Children's Bill*, the *Child Justice Bill* and the *Sexual Offences Bill*. Children also made presentations to the Portfolio Committee on Social Development during their recent Poverty Hearings.

**46. Describe the amount and type of resources made available to support children's participation in activities to address violence against children.**

Resourcing the participation of children in activities that address violence against children is the responsibility of the relevant National and Provincial departments.

The Safe Schools Project (driven by the Department of Education and the SAPS) has provided a useful vehicle for the active participation of children in violence prevention initiatives.

Collaboration between the Departments of Arts & Culture, Social Development and Correctional Services in the *Access to Art* programme aims to deepen social cohesion and to foster value development and enrichment, especially amongst youth.

## **POLICIES AND PROGRAMMES TO ADDRESS VIOLENCE AGAINST CHILDREN**

**A comprehensive policy for dealing with violence against children is one that addresses multiple forms of violence against children,**

**that works across the different settings in which violence occurs, and which includes components for prevention, protection, victim medical, psychological, legal and social assistance, victim rehabilitation and reintegration, and perpetrator interventions. Such policy is distinguished from specific programmes that address selected sub-types of violence against children or its effects in specific populations and settings.**

**47. Does your Government have a comprehensive policy concerning violence against children?**

***If YES, provide details and describe any gender-specific provisions included in the policy.***

The protection of children against violence and abuse is a national priority. Government Policy in this regard calls for interventions that respond effectively to the many forms of violence that affect and afflict children. Responses to the various forms of child-directed violence have found expression in the wide range of progressive legislation that has been promulgated since 1994.

The National Crime Prevention Strategy calls for specific interventions as it pertains to the protection of children. Community-based Policing Forums have also been established to deal with local crime issues and much of their work relates to children.

The Social Development Department provides a range of ameliorative interventions aimed at rehabilitating and healing children after they have experienced violence or abuse. (Most of these responses have been detailed earlier in the report).

Cross-border trafficking has necessitated collaborative initiatives with neighbouring national jurisdictions and other countries in the region. Responding to policy imperatives dictating a reduction in economic violence that impacts on children, the Department of Justice has developed a strategy to address the problem of defaulting by parents responsible for child maintenance (support). Community workshops have been conducted and public service manuals have been developed to inform recipient parents of their rights and the mechanisms available to hold defaulting parents to account. The deployment of maintenance investigators has improved the Department of Justice's capacity to deal with this problem, but much remains to be done.

The Department of Health has developed policy and protocols for the treatment of rape victims/survivors with specific refinements that respond to the special needs of child rape victims. The child rape ward at the Red Cross Children's Hospital has developed a best practice service model in collaboration with the Western Cape Provincial Government.

South Africa has increasingly sought to develop and strengthen a supportive environment for victims/survivors within the criminal justice system. Programmes have been implemented to improve services to victims and support for victims throughout the criminal justice system. These initiatives are guided by the Victims' Service Charter for South Africa. The Charter was developed by the Department of Justice and Constitutional Development based on a well-established Victim Empowerment Policy.

The National Instruction 22/1998 makes provision for support to victims at crucial junctures in an investigation. This National Instruction was developed to provide a professional service to the victims/survivors of sexual offences. It provides officials with guidelines for the investigation of sexual offences and for the assistance of victims during an investigation.

The Department of Social Development has convened an inter-sectoral committee to develop a comprehensive national Policy Framework and Strategic Plan for the Prevention and Management of Child Abuse, Neglect and Exploitation. A document is being finalised for subsequent scrutiny and consideration by the Cabinet and Parliament.

An integrated Anti-Rape Strategy was developed under the leadership of the National Prosecuting Authority in 2000. An inter-departmental Management Team (IDMT) was established to address issues such as victim profiling, offender rehabilitation and support responses provided for adult and child rape victims.

The Department of Labour leads the interdepartmental Child Labour Action Programme (CLAP) within which the Worst Forms of Child Labour as designated by the International Labour Organisation are addressed. The Action Plan describes responses that address the commercial sexual exploitation of children, child trafficking and the use of children in such illegal activities as drug trafficking. The engagement of children in forms of labour that occupy significant amounts of their time (and is detrimental to education and recreational activities) such as farm labour are also addressed in the CLAP. The South African Police Service and the Departments of Home Affairs, Justice, Social Development, the National Treasury and Education participate in the steering committee. The Department of Labour chairs the committee.

The Department of Correctional Services' recently published White Paper on Corrections provides the vision framework for the transformation of the Department from a penal system of incarceration to an institution of rehabilitation and correction.

The White Paper calls for individualised case assessments and the development of purpose-specific rehabilitation plans for each offender. The plan for each inmate will be formulated at reception, monitored for the duration of the sentence and tailored to suit the offender's need for pre-release and post-release reintegration programmes. Implementation of the Sentence Plan is in its infancy and will be expanded on an incremental and sustainable basis.

The National Gender Policy makes reference to the particular vulnerability of girl-children to violence. It calls for specific interventions to enhance and accelerate their development and to bolster their resilience to violence and abuse.

The Department of Education monitors aspects such as the access to and participation by girl children in the national education curriculum. The Department of Science and Technology has worked with Education to develop a policy to ensure improved participation by girls in the fields of science and mathematics.

**48. *Does government provide support for programmes aimed at addressing violence against children?***

Government departments and non-government organisations provide an extensive range of child, family and community support programmes. Financial, human and other resources are provided via the various line functions (Social Development, Justice, the SAPS, Correctional Services, Health and Education) for dedicated programmes aimed at addressing violence against children.

Disaggregated information on expenditure in these programmes is not available. Programmes aimed at the prevention and amelioration of violence against children is a priority expenditure area for all those departments that have been tasked with addressing violence against children.

Government's support for the work of the non-government sector is, in some instances, provided in the form of grants, subsidies and joint funding initiatives.

**49. *Does your government monitor the impact of these programmes?***

With respect to Parliament, the Portfolio and Select Committees on Social Development oversee the work and performance of Government. The Joint Monitoring Committee on the Improvement and Quality of Life and Status of Children in SA (JMC), supplement's Parliament's capacity to monitor the performance of government as it pertains to the protection of children and their rights.

The Office on the Rights of the Child monitors, evaluates and reports on progress made with regard to the improvement in the quality of life and status of children, with specific reference to government's commitments.

The ORC has identified the acquisition and collation of accurate information on children as an important factor in improving the status and well-being of South Africa's children. Currently, individual departments design and conduct their own review processes. Departments are encouraged to include programme evaluation as an integrated part of programme planning and implementation. In addition, the provincial government departments are monitoring the work of the non-government sector in relation to the programmes that they support. The Financial Awards and Service Delivery

Policy Framework regulate this support and monitoring function of government.

The Presidency's 10 year review: This exhaustive and comprehensive review of government's performance over the past decade was coordinated by the Presidency. Almost every aspect of public governance was assessed by independent assessors and the detailed report provides critical evaluation of performance successes and shortfalls across the range of government departments. More information on the review can be sourced on line at [www.gov.za](http://www.gov.za).

**50. Does your Government deliver, or provide direct support for delivery by other agencies, of specific programmes aimed at preventing and responding to violence against children?**

*If YES, please provide available summary reports, or URLs, of these programmes, and indicate, using the table below, which settings and types of violence are addressed by these programmes:*

	Physical	Sexual	Psychological	Neglect	HTPs	Other
Family/Home	X	x	x	x	X	
Schools	X	x	x	x	X	
Institutions	X	x	x	x	X	
Neighbourhood / Community	X	x	x	x	X	
Workplace	X	x	x	x	X	
Law enforcement	X	x	x	x	X	
Other						

**51. Does your Government participate in any internationally coordinated activities concerning violence against children?**

*If YES, please provide details.*

- The UN Child Rights Committee and other related activities e.g. UNGASS, Stockholm and Japan special sessions on combating sexual exploitation.
- The African Union and other regional meetings and conferences.
- International conferences.
- Interpol specialist group on crimes against children.

- Southern African specialist group on crimes against children.

## DATA COLLECTION, ANALYSIS AND RESEARCH

This section aims to provide an overview of information systems and information about violence against children that may be used to inform, plan and monitor policy, legal and programmatic interventions concerning violence against children.

52. Page 52 has reference

The South African Police Service (SAPS) has a system for formal inquiries into all child (18 years and younger) deaths as a result of crime. In SA since 2002, enquiries into reported child deaths can be made with the SAPS Crime Administration System (CAS).

53. *Are regular (e.g. annual) reports published describing the statistical profile of the known or suspected violent deaths investigated by the system?*

Regular reports are published on child (18 years and younger) deaths that are result of the crimes. Details are listed in the table under (question 60).

Violence-related deaths are investigated as a matter of course by the South African Police Services which is assisted by the Directorate of Safety and Security. Police statistics are published annually and the statistics generated by Justice, the NPA and other relevant departments are made available on a regular basis.

Statistics on violence-related deaths are gathered and collated by SAPS, the Department of Justice, the National Prosecuting Authority and the Office of the Statistician General.

54. *If reports on the national profile of known and suspected violent deaths are published by your Government, indicate how the data is broken down for the purpose of reporting (check all that apply):*

Sex	X
Age	X
Ethnicity	X
Manner of death (homicide, suicide, undetermined)	X
External causes of death (firearm, strangulation,	X

etc.)	
Geographical location of incident (address)	X
Scene of occurrence (home, school, etc.)	X
Time and date of incident	X
Victim-perpetrator relationship	Not available
Other:	

**55. Provide the total number of reported cases of violence against children in 2000, 2001, 2002 and 2003.**

Total number of reported cases of violence against children in:

2002: 77 022

2003: 81 784.

Of the 81 784 cases of violence against children in 2003, 50 631 (61.9%) can be classified as serious. The table provided in question 50 provides more detailed information in this regard.

**56. Provide the total number of convictions and reported cases for the various categories of crimes of violence recorded against children in 2000, 2001, 2002 and 2003.**

Figures for 2000 and 2001 are not accessible.

CRIMES AGAINST CHILDREN	2002		2003	
	REPORTED	CONVICTED*	REPORTED	CONVICTED*
Murder	2761	499	1477	282
Attempted murder	2645	327	1975	215
Rape	17096	1817	18078	1379
Attempted rape	1809	227	1904	229
Common assault	27041	3634	31153	5200

CRIMES AGAINST CHILDREN	2002		2003	
	REPORTED	CONVICTED*	REPORTED	CONVICTED*
Assault GBH	21769	3547	22765	4108
Indecent assault	3880	611	4415	537
Incest	21	3	17	1
Abduction	0	0	0	0
Kidnapping	0	0	0	0

\*The numbers of convictions in any specific year do not necessarily refer to the cases reported in the same year.

#### **AWARENESS, ADVOCACY AND TRAINING**

**This section is aimed at gathering information on any awareness-raising, advocacy and training activities relating to violence against children which may have been conducted by your Government.**

**57. *Over the last five years has your Government conducted or commissioned any campaigns for raising awareness of and preventing violence against children?***

Educational and awareness campaigns on violence against children are conducted on a year-round basis in various government departments and at all tiers of government. The Government Information and Communication System (GCIS) conduct its own and supports awareness raising campaigns conducted by the different departments.

The Department of Justice and Constitutional Development has the specific task of human rights education and other matters related to constitutional development.

Special, focussed campaigns are conducted on an annualised basis and include the following: Child Protection Week, Youth Month, Women's Month and the *16 Days of Activism for no violence against women and children*.

National Youth Day, International Day of the Child, National and International Women's Days, International HIV/AIDS Day, the International Day for Disabled Persons, Human Rights Day and other commemorative anniversaries are used as platforms for promoting awareness about violence against children on a regular basis.

The Department of Correctional Services has developed an Anti-Rape Strategy and has conducted workshops with internal and external stakeholders to develop project specifications that aim to achieve the following:

- Alignment of admission and release protocols as well as the introduction of a Parole system in respect of sexual offenders.
- Development and management of protocols in dealing with victims of rape and other sexual offences.
- Research on the extent of HIV/AIDS and acts of rape and sexual violence that occur within Correctional Centres.
- Design and development of rehabilitation programmes for perpetrators of violence against children.
- Development and upgrading of the current data base in relation to violence against children within the offender management information system.
- Training and education of correctional officials in dealing with rape, violence against children and other sexual offences.

Ongoing awareness programmes aimed at building skills that boost resilience to crime and promote safety amongst children include Captain Crime Stop (under age 12) and Adopt-a-Cop programmes (under 18). These involve police officials visiting schools and other child-accommodating institutions. These visits raise their awareness of factors that put children at risk of victimisation. They also discourage anti-social behaviour that put children at risk of becoming offenders e.g. bullying.

The SA Police Service in partnership with the Department of Education is in the process of implementing the Signposts for Safe Schools workbook described later in Annexure ii.

**58. How were the campaign messages and information disseminated (check all that applies)?**

<b>Print media</b>	X
<b>Radio</b>	X
<b>Television</b>	X
<b>Theatre</b>	X
<b>Schools</b>	X
<b>Others</b>	

**59. Over the last five years, has your Government provided, commissioned or sponsored training programmes in the area of violence against children? If YES, indicate which of the following**

*areas were addressed by the last such training programmes and which provider groups received training (check all that apply).*

	Prevention	Protection	Redress	Rehabilitation	Penalties
Medical Professionals (including paediatricians, nurses, psychiatrists and dentists)	X	x	x	x	
Public health practitioners	X	x	x	x	
Social workers and Psychologists	X	x	x	x	
Teachers and other educators	X	x	x	x	
Court officials (including judges)	X	x	x	X	x
Police	X	x	x		
Prison (Correctional Officials) officers	X	x	x	x	x
Juvenile offenders personnel Institution personnel Parents/guardians	X	x	x	x	x
Other (please specify)	Children	X	X	X	

The training and development of staff is the responsibility of the relevant provincial and national government departments. Joint training sessions have been conducted at the national level in the application of provincial child protection protocols. Specialist training units present training programmes.

A standardised training programme for officials from the South African Police Service and the Department of Correctional Services provides ongoing human rights training. The purpose of the training is to raise awareness about human rights and to promote a human rights culture within the two organisations.

The Professional Assault Response Training (PART) module includes a comprehensive and systematic approach to predicting, understanding and managing aggressive behaviour for those correctional officials working with young offenders.

Tertiary education institutions and some non-government organisations provide training in a wide array of programmes related to child protection. The scope and extent of the available training is however diverse and requires standardisation. Assistance from the DPSA has been solicited to develop more uniform training policies and programmes for civil servants that work in this sector.

The SA Police Service has specific modules within Basic Training and the Detective Learning Programme that address issues of violence against children. In addition, specific in-service training courses also address issues that impact on the handling of child victims. This includes the FCS Investigator's Course, the reviewed Domestic Violence course (provided for functional police who operate as first-line service operatives within police stations) and the Sexual Offences Investigation Course.

## **ADDITIONAL INFORMATION**

### **DEPARTMENT SPECIFIC POLICIES AND PROGRAMMES APPLICABLE TO VIOLENCE AGAINST CHILDREN**

All the core departments have implemented their own focused and specific programmes that address the issues of violence against children. The following are some examples.

#### **1. THE DEPARTMENT OF SOCIAL DEVELOPMENT**

##### **(i) The White Paper for Social Welfare (Act No. 1108 of 1997)**

The White Paper for Social Welfare recommended the following steps to counter violence and child abuse:

- The facilitation by government of appropriate research into needs and problems pertaining to violence and child abuse
- The development of an inter-sectoral strategy
- The upgrading and expansion of services
- The outlawing of corporal punishment in state-run as well as subsidised services facilities
- The development of management protocols for service provision and special training for all role players to ensure effective and efficient services, appropriate to local conditions and resources
- The development of support systems for child victims, that are staffed by trained volunteers
- The reform of the legal system, where necessary, to create a child-friendly service environment

- The protection of child witnesses and the development of bail and sentence procedures that are effective in protecting children and promoting the rehabilitation of offenders
- The implementation of public awareness campaigns and the development of advocacy strategies to promote children's rights.

**(ii) Financing policy (notice 463 of 1999)**

The aim of the policy is to;-

- rationalise welfare funding,
- target beneficiaries and distribute benefits equitably,
- correct injustices and imbalances brought about by the historically skewed resource allocations.

The Developmental Quality Assurance (DQA) is the key developmental monitoring tool for ensuring both effective service delivery and delivery in accordance with the transformation vision and goals of the Department. The primary beneficiaries of this policy are children.

**(iii) National framework for children infected and/or affected by HIV and AIDS**

The National Strategic Framework (NSF) provides the impetus for the development and implementation of approaches that effectively capacitate and mobilise children, families and communities to combat the effects of the HIV and AIDS pandemic. It ensures that children affected by HIV and AIDS have access to integrated services that address their basic needs for food, shelter, education, health care, family or alternative care. It also aims to protect them from abuse and maltreatment. It is an inter-sectoral strategy that necessitates a pro-active response from all sectors of society that focuses most directly on the rights and needs of children affected and infected by HIV and AIDS. The policy includes those children who have contracted HIV and those that live in an environment in which the HIV and AIDS directly impacts on their lives.

**(iv) National protocol for the management of children awaiting trial**

The objective of the interim inter-sectoral protocol is to ensure effective inter-sectoral management of children charged with offences and who may need to be placed in residential care facilities while awaiting trial. The protocol calls for:

- the appropriate placement of each child based on an individual assessment;
- the correct selection of available residential care options;

- an appropriately managed flow of information between the courts and residential care facilities;
- the provision of adequate support mechanisms to ensure that facility populations remain manageable;
- safer communities through appropriate placement of children;
- the effective management of facilities and a reduction in abscondments;
- the effective monitoring of children in custody.

Provincial departments of Social Development ensure that every arrested child is assessed by a probation officer within 48 hours of his/her arrest, and that appropriate placement recommendations are made.

**(v) Provincial protocols on the management of child abuse**

The National Department of Social Development has taken the lead on the development of a National Strategy and policy guidelines to govern inter-sectoral coordination with regard to the management of instances of child abuse and neglect. Within this framework, provincial departments of social development have initiated processes to develop protocols for the multi disciplinary management of child abuse. Each province has therefore developed its own guidelines (within the national norms framework) to guide the management of child abuse cases. These guidelines contained in the provincial protocols are aimed at strengthening of intra-sectoral and inter-sectoral collaboration, coordination and partnership. The provincial protocols and guidelines for service delivery are also informed by the protection principles contained in the UN Convention on the Rights of the Child. Specifically, the protocols provide clarification of roles and responsibilities of all professionals. It also provides guidelines to ensure that children are not subjected to secondary victimisation within the system. The department has recently conducted a national review of the provincial protocols and is in the process to strengthen the identified weaknesses.

**(vi) Victim Empowerment Programme (VEP)**

The Department of Social Development is the lead department for the VEP, which was implemented in January 1999. The VEP is intended to ameliorate the impact of crime and violence on all victims. It promotes the internationally condoned basic rights of victims proposed by the United Nations.

The purpose of VEP is to:

- facilitate the establishment and integration of inter-sectoral programmes and policies that support, protect and empower victims of crime and violence. This policy has a special focus on women and children;
- ensure that the implementation of such policies and programmes is monitored and evaluated.

**(vii) Draft policies and guidelines in the process of finalisation**

- ***Draft guidelines for the Child Protection Register***
- These draft guidelines lay down uniform procedures for reporting child abuse cases in terms of section 42 of the Child Care Act 1983. The guidelines provide information on definitions of child abuse, principles underpinning services, the approach to be followed, legislative framework, roles and responsibilities, and the monitoring of cases.
- ***Draft national protocol on the management of child abuse***
- This document provides a clear national framework for the management of child abuse cases in South Africa. It ensures coordination and effective communication among participants while maintaining role distinction.
- ***Draft national policy for families***
- This policy focuses on rebuilding the family, community and social relations in order to promote social integration. It proposes the promotion of strong, independent families – families that are able to rely on strong inter-personal relationships when challenged by adversity. The policy observes that the preservation of families should enhance their inherent strengths and resourcefulness. It also makes the point that families in transition require special protections and services. The policy recognises that the family is the foundation unit of society and that family members should be nurtured to ensure their survival, growth, development and protection.
- ***Draft guidelines for early childhood development services***
- The Guidelines for Day Care were revised in 2000. These guidelines ensure that the needs of young children are addressed holistically. The guidelines insist upon the registration of places of care, which include home-based, community-based and centre-based facilities. It also encourages care givers to view registration as necessary for the protection of children and their rights.

- **Interim Policy Recommendations for the transformation of the Child and Youth Care System in South Africa**
- The draft discussion document recommends a new framework for services to children. It provides a service delivery model with different funding proposals. The document emphasises a multi-disciplinary and inter-sectoral approach. Issues related to children in conflict with the law are also dealt with. The service delivery model promotes the notion that children ought primarily to be assisted with in the family environment. When they are removed from their families, they should generally be placed in close proximity to their families, or they should be placed within the extended family.

## **2. DEPARTMENT OF EDUCATION**

The Department has several policy documents in place that promote the protection of children. Provincial Departments of Education also have protocols that specifically deal with the management of child abuse and neglect. The national Department of Education provides a national framework for provincial policies and strategies. An inter-sectoral, collaborative approach forms the basis of all policies.

### **2.1 National Education Policy Act, 1996 (Act No. 27 of 1996)**

The admission policy for ordinary public schools in terms of section 3(4)(1) and in terms of section 10A states that a learner is admitted to the total school programme and may not be suspended from classes, denied access to cultural, sporting or social activities of a school, denied a school report or transfer certificates, or otherwise victimised on the grounds that his/her parent (a) is unable to pay or has not paid the required school fees; (b) does not subscribe to the mission statement and code of conduct of the school; or (c) has refused to enter into a contract in terms of which the parent waives any claim for damages arising from the education of the learner.

### **2.2 South African Schools Act, 1996 (Act No. 84 of 1996)**

This Act provides for a uniform system for the organisation, governance and funding of schools. An important part of this Act is the establishment of school governing bodies that promote parent participation in the governance of the school. One of their responsibilities is to develop a code of conduct for learners.

### **2.3 South African school Act, 1996 (ACT 84 of 1996): Regulations for safety measures at public schools**

These regulations declare all public and independent schools drug- and dangerous weapon-free zones. It guides the head of the department or principal on steps to be taken to safeguard the school premises, as well as the protection of the people in the school. Conditions regulating access to a school premises by members of the public and parents are prescribed. Access control reduces the risk of learners to violence and exploitation.

#### **2.4 South African Council of Educators Act, 2000 (Act No. 31 of 2000)**

The Code of Professional Ethics that forms part of this Act, clearly states that an educator should avoid any form of humiliation and refrain from any form of abuse, physical or psychological; should refrain from improper physical contact with learners; refrain from any form of sexual harassment, physical or otherwise, of learners; and refrain from any form of sexual relationship with learners at a school. It is expected of an educator to use appropriate language and behaviour in his/her interaction with learners, and to act in such a way as to elicit respect from the learners and to take responsible steps to ensure the safety of learners.

#### **2.5 Employment of Educators Act, 1998**

This Act provides *inter alia* for the employment of educators, for the regulation of conditions of service, discipline and retirement and discharge of educators. One of the provisions of this Act is the dismissal of an educator if he/she is found guilty of theft, bribery, fraud or an act of corruption in regard to examinations or promotional reports; committing an act of sexual assault on a learner, student or other employee; having a sexual relationship with a learner of the school where he/she is employed; seriously assaulting, with the intent to do grievous bodily harm to a learner; illegal possession of an intoxicating, illegal or stupefying substance; or causing a learner to perform improper acts.

#### **2.6 Education White Paper 5 on Early Childhood Development**

White Paper 5 promotes a comprehensive approach to policies and programmes for children from birth to nine years of age, with the active participation of their parents and caregivers. Its purpose is to protect the child's right to achieve his/her full cognitive, emotional, social and physical potential. The strategic plan focuses on:

- (a) the delivery of appropriate, inclusive and integrated programmes, with a particular emphasis on the development of a national curriculum statement;
- (b) practitioner development and career-pathing;
- (c) health, nutrition and physical development;

- (d) provision of clean water and sanitation; and
- (e) a special programme targeting four-year-old children from poor families with special needs and those infected with HIV/AIDS.

## **2.7 Education White Paper 6 on Special Needs Education: Building an Inclusive Education and Training System**

White Paper 6 focuses on the transformation of the former system of segregation of learners with disabilities to a system of inclusive education where the principle of “quality education for all” forms the basis of the document. The term “inclusive education” refers to:

- Acknowledging that all children and youth can learn and that all children need support;
- Enabling educational structures, systems and learning methodologies to meet the needs of all learners;
- Acknowledging and respecting differences in learners, whether due to age, gender, ethnicity, language, class, disability, HIV/AIDS or other infectious diseases;
- Acknowledging that learning also occurs in the home and community, and within formal and informal settings and structures;
- Changing attitudes, behaviour, teaching methods, curricula and environment to meet the needs of all learners; and
- Maximising the participation of all learners in the culture and the curriculum of educational institutions and uncovering and minimising barriers to learning.

The policy ensures that a learner is admitted to the total school programme and may not be suspended from classes; denied access to the cultural, sporting or social activities of the school; denied a school; report or transfer certificates; or otherwise victimised on the grounds that his/her parent is unable to pay or has not paid the required school fees. The rights and wishes of learners with special education needs must be taken into account on admission to an ordinary school.

## **2.8 Revised National Curriculum Statement (RNCS) Grades R - 9 (2002)**

The RNCS adopts an inclusive approach by specifying minimum requirements for all learners. The special educational, social, emotional and physical needs of learners are addressed in the design and development of appropriate learning programmes. The learning area statements provide a list of requirements and expectations from grades R to 9. The RNCS has endeavoured to ensure that all learning area statements reflect the principles and practices of social justice, and engender respect for the environment and human rights as defined in the Constitution. In particular, the RNCS attempts to be sensitive to issues of poverty, inequality, race, gender, age, disability and such challenges as HIV/AIDS. The Life Orientation Learning Area guides

and prepares learners for life. Life Orientation specifically equips learners with the skills to live successfully and meaningfully in a rapidly changing and transforming society. It develops skills, knowledge, values and attitudes that empower learners to make informed decisions and take appropriate actions regarding health, social, personal and physical development as well as orientation to the world of work.

### **2.9 National policy on HIV/AIDS for learners and educators in public schools, and students and educators in further education and training institutions**

This policy seeks to contribute towards promoting effective prevention and care within the context of the public education system with regard to HIV/AIDS. It deals with the protection of learners who are infected and affected by HIV/AIDS, the implementation of universal precautions to eliminate the risk of transmission, and the provision of an effective and sustainable educational programme on HIV/AIDS. Age-appropriate education on HIV/AIDS forms part of the curriculum for learners, all of whom are integrated into the life skills education programme for pre-primary, primary and secondary school learners. This programme forms part of the Life Orientation Learning Area as outlined in the Revised National Curriculum Statement.

### **2.10 National policy on the management of drug abuse by learners in public and independent schools and further education and training institutions**

This policy gives clear guidelines to schools on the management of learners and educators who are experimenting with, using, abusing, dealing in or in possession of drugs. The policy deals with drug screening and searches conducted on learners. Education and information on intervention strategies and school management form an important part of the policy. Guidelines for the prevention and management of learners using/abusing drugs in all public and independent schools and further education and training institutions have been developed and should be approved soon.

### **2.11 General policy documents**

Signposts for safe schools: The Department of Education and the Department of Safety and Security have produced a manual, *Signposts for Safe Schools* that deals with social issues that impact on safety at schools. This manual is intended to provide schools with strategies to deal with specific social issues. It focuses on improving the impact, authority and efficiency of school management and school services, and the development of policies, procedures and plans. The manual covers issues such as bullying, gangs, racism, guns and weapons, truancy, witchcraft, child abuse, HIV/AIDS, stress and suicide, and substance abuse.

### **2.12 Girls education movement (GEM)**

GEM is a child-centred, child-led grassroots movement that was launched in Parliament in March 2003. It has the following objectives:

- To protect and promote the rights of all girls to quality education;
- To enable African girls to participate in decision making about their education;
- To provide girls with opportunities to develop and exercise their leadership and technical skills;
- To tap the potential of boys, men and women to work in partnership with girls to promote equitable, accessible, high quality education in Africa and through education to create a just and equitable society;
- To protect the rights of girls with special needs and any child at risk of exploitation or abuse in or outside school; and
- To sensitise key actors to the importance of girls' education and to promote policies and programmes that will ensure quality education for all girls

### **2.13 Children in schools of industry and reform schools**

The Department of Education has a specific role with regard to the placement of learners in Schools of industry and reform schools. The National Interim Protocol document issued by the National Intersectoral Committee for Child Justice has provided practice guidelines for departmental officials.

### **2.14 Life skills for sexual abuse prevention**

The first initiative of the Life Orientation/Life Skills and Learning area of Curriculum 2005 was to incorporate information on the management of sexual abuse by assisting learners to develop skills, knowledge, values and attitudes that are essential for effective and responsible participation in a democratic society. Learners learn about and analyse the different kinds of relationships between the sexes and also evaluate these relationships. They are encouraged to reflect on their behaviour on that of others and to critically evaluate human rights, values and practices.

### **2.15 Speaking out on sexual abuse**

As a first effort aimed at giving learners the opportunity to speak out about sexual abuse and related issues, the Department of Education launched the Creative Arts Initiative in 1998 as part of its Culture of Learning and Teaching (COLTS) campaign. This provided learners with a non-threatening forum to talk about what they experienced as barriers to learning and teaching. As a result of the learners' obvious need to express their views on this matter, COLTS now focuses purely on safety. High on the list of learners' concerns is the issue of violence against girls perpetrated by learners and educators.

#### **2.16 Immediate dismissal of teachers who commit crimes against children**

The Education Ministry tightened disciplinary measures and sanctions against educators in November 2000 in an attempt to address the issue of abuse of learners by educators. An amendment to the Employment of Educators Act, 1998, was introduced to the effect that should an educator be found guilty of having a sexual relationship with a learner of his/her school, whether with or without the consent of the learner, the educator would be dismissed. By the same token, where an educator is involved in the rape or sexual assault of a learner of another school and is found guilty after a fair hearing, such an educator may be dismissed from his/her post. The intention of the legislation is to make it clear that an educator who sexually abuses learners has no place in the profession. It is also for this reason that the South African Council for Educators Act, 2000, was enacted to ensure that an educator dismissed on the grounds of sexual abuse of a learner will be deregistered and never again appointed as an educator (also not in private education).

#### **2.17 Managing sexual harassment and gender-based violence**

In November 2000, the Department of Education, with the support of the Canadian International Development Agency, completed a school-based module, *Managing sexual harassment and gender-based violence*. The module is intended to raise awareness about the problem of gender-based violence and to provide institution-based policies and programmes to deal with it.

#### **2.18 Addressing gender equity in education**

In recognition of the role played by the inequality in relations between males and females in engendering sexual violence against women, the Department of Education has prepared a "popular" version of a handbook on gender equity in education for use by educators. The last section in the handbook deals with the management of sexual violence in schools.

### **3. DEPARTMENT OF HEALTH**

#### **3.1 Free Primary Health Care Policy**

The Department of Health implemented a free Primary Health Care (PHC) policy in 1994. This policy has enhanced the accessibility of PHC services to communities and victims of abuse. Abused and neglected children are seen at this first level of contact, offered appropriate care and referred to secondary and tertiary-level institutions. This is done in collaboration with other relevant stakeholders, for example Departments of Social Development and Education and the Family Violence, Child Protection and Sexual Offences Unit of the South African Police Services.

### **3.2 Policy Guideline for Child and Adolescent Mental Health Services**

This policy guideline makes provision for:

- A safe and protective external environment
- Dissemination of information
- Human resource development and training
- Counselling services
- Accessing of health care services

### **3.3 Other policies that cater for child protection measures in the health sector**

- Youth and Adolescent Health Policy Guidelines;
- School Health Services Policy and implementation Guidelines;
- HIV and AIDS Policy Guidelines;
- National Patients Rights Charter;
- Policy for the management of and prevention of genetic disorders, birth defects and disabilities; and
- Gender policy guidelines for the public health sector.

These guidelines are aimed at increasing caregiver skills, community participation and life skills education on the care and management of abused children.

The consequences of child abuse and neglect – including physical injuries, malnutrition, teenage pregnancy, sexually transmitted infections, including HIV and AIDS are given priority attention in the above guidelines. The Department of Health has established collaborative links with NGOs dealing with the abuse of children, for example NAFCI, PPASA and WHP.

### **3.4 Health Training Policy on the Prevention of Child Abuse**

The Department of Health is currently running pilot programmes on the prevention of child abuse. The main focus is on empowering carers, educators, learners and community health workers regarding

preventive strategies. The following programmes are currently under way:

- Training health care workers in counselling child victims of violence and abuse;
- Training educators and learners in the knowledge and skills to prevent violence in schools;
- Training mothers/carers in effective parenting skills
- Life skills education targeting children/youth in schools. This includes sexuality education, coping skills and victim empowerment programmes. Sexuality education also covers sexually transmitted infections and HIV/AIDS. Child-to-child approaches (peer group education) to disseminate information will reinforce children's participation in their own well-being, especially in knowing their rights; and
- Forensic training programmes are on-going in the various provinces to equip health workers with skills to manage sexually abused children.

#### **Documents currently being finalised**

- National Policy Framework For Child Abuse
- Guidelines for Health Care Providers On Managing Suspected Child Abuse, Neglect and Exploitation
- Neo-natal care guidelines
- Child health Policy
- Parasite control guidelines
- Refractive Errors, Screening Guidelines for school children
- Policy framework for non-communicable chronic conditions in children.
- Guidelines: Management of epilepsy seizure in children
- Guidelines: For the Management of diabetes type1 in children ≤ 18 years at hospital level.

#### **4. DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT**

The Department of Justice and Constitutional Development renders a range of services in respect of the protection of children. The protection of victims of sexual offences is viewed as a matter of great importance.

##### **4.1 Customer Service Charter for Court Users**

The Customer Service Charter for Court Users is one of the measures developed to make the courts more user-friendly, effective and responsive to the needs of all users, regardless of their race, gender, social, economic and other differences. The Charter is the culmination of an inclusive

consultative process involving all role-players in the court system, which formally commenced in April 1998. The aim is to implement *Batho Pele* (White Paper on the Transformation of Public Service Delivery) and Justice *Vision 2000* (The Transformation Strategy of the Department of Justice). The Charter should also be seen as a measure adopted by the Ministry of Justice to "assist and protect the courts to ensure their independence, impartiality, dignity, accessibility and effectiveness", as required by the Constitution. The Charter provides basic information about court systems and procedures. It also outlines the minimum standards of service and performance a person may expect to find in a court. These standards are based on a Service Delivery Improvement Plan (SDIP) that incorporates a Model Court Blue Print. The Charter also sets out the steps that have to be taken to realise the undertakings made in the Charter, as well as the time frames for the realisation of each service or standard.

#### **4.2 Policy on court services for children**

- **Children as victims/witnesses**

The Department stresses the need for a child-friendly court, the assistance of intermediaries for the child witnesses and assistance for children with respect to any questions that might be raised about procedures in court. It stipulates that the child should be taken to a separate child-friendly waiting area, with baby-changing facilities, and that the court should have anatomical dolls available when the child gives evidence. The protection of the privacy of the child victim/witness is of particular importance; a social worker or probation officer should be involved in the case.

- **Child offenders**

A child accused of a crime can expect that court personnel will encourage the use of diversion options to promote an effective rehabilitation process and restorative justice mechanisms. The court will do everything possible to avoid the child's imprisonment or remand to a police cell if the child is under 14 years, and will ordinarily ensure that the child is not kept in a police cell or prison for more than 48 hours, if the child is between the age of 14 years and 18 years old.

#### **4.3 Minimum Sentences Policy**

The Criminal Law Amendment Act provides for the imposition of minimum sentences in respect of certain serious offences. The South African Law Reform Commission has proposed a draft Sentencing Framework Bill, which seeks to address sentencing disparities in a number of ways.

#### **4.4 National Crime Prevention Strategy (NCPS)**

The National Crime Prevention Strategy has prioritised crimes against women and children. Various interdepartmental programmes, supported by departmental action, are implemented to combat these crimes. The Department believes that curbing the escalation of violent crimes and rape against women and children requires a common and holistic approach by relevant stakeholders.

#### **4.5 Policy on victim support and empowerment**

This policy provides for support services that recognise the rights of victims/survivors prevent secondary victimisation and, as far as possible, ensure reparation. The policy also endeavours to ensure that the victim/survivor is treated as a person whose case is important and meaningful, and who receives information, legal advice, support and access to protection. Reasonable accommodation has to be provided for children with disabilities, and separate waiting rooms must be available for victims of crime and violence. A 24-hour toll-free help line for crisis counselling and information for abused women and children must also be in place and functioning. All sexual offence cases must be prosecuted in a dedicated Sexual Offences Court, where possible. Court personnel have to follow the National Policy Guidelines on Victims of Sexual Offences. Technical aids such as one-way mirrors and closed-circuit television may be used in appropriate circumstances with the assistance of Intermediaries. The policy provides for cases to be finalised within six months where possible and to fast track all such cases on a continuous case roll and with effective case-flow management.

#### **4.6 Family-related Court Services**

These services include assistance with divorce, custody and access, maintenance and domestic violence cases. Family-related matters are heard in a special Family Court, a Children's Court or with co-ordinated family law services because all magistrates' courts are also maintenance, domestic violence and children's courts, or the High Court, depending on the nature of the case. The presiding officer is required to be helpful and to ensure that the best interests of the child are secured through the involvement of the Family Advocate. An evaluation of the case must take place within three months of referral to the Family Advocate, and an undefended matter must be finalised within three months.

#### **4.7 Gender Policy Statement**

The Gender Policy Statement takes into account the diversity of women's experiences in South Africa; particularly the compound oppression suffered by African, rural, working-class and poor women, as a direct legacy of apartheid. Priority is given to those interventions that will uplift

the most disadvantaged women. This is in line with the commitments made by the Department of Justice and Constitutional Development with respect to the implementation of the Beijing Platform for Action of 1996.

The Gender Policy Statement is based on the premise that gender inequality is about power relations between men and women, and that any policy, plan or practice that seeks to achieve gender equality must equalise those relations. As such, the Gender Policy Statement is informed by gender equality analyses and requires all future policies, plans and administrative action to be guided by such gender analyses. Simply put, gender equality analyses seek to identify and understand the manner in which any proposed policy, plan or action is likely to impact on women and men, taking into account the diversity of their needs and experiences.

#### **4.8. Sexual Offences and Community Affairs Unit (SOCA)**

The Unit is one of the operational divisions within the National Prosecuting Authority. It was established in September 1999 to focus on violent and indecent offences against women and children, as well as family violence in general. The main priorities of SOCA are to reduce the incidence of sexual offences, increase the reporting rate of violence against women and children, improve the conviction rate in these cases, and to reduce secondary victimisation and case finalisation times.

Four sections in the Unit deal respectively with sexual offences, domestic violence, maintenance (child support) and child justice from a prosecutorial perspective. The SOCA Unit is guided by the multidisciplinary coordination ethos in all its operations. This is demonstrated by its specialist projects which include the establishment of Sexual Offences Courts and the Thuthuzela Care Centres for the management of survivors of sexual offences. Its public awareness campaigns and training for prosecutors are conducted with a broad range of stakeholders that have an interest in dealing with sexual offences, domestic violence, maintenance and the standardisation of diversion practices.

Cabinet approved of an integrated Anti Rape Strategy to address the problem of rape. An interdepartmental Management Team (IDMT) was established to address victim and offender profiling and the Criminal System as it relates victims and survivors in the following categories:-

- Where victims of indecent assault are under 12 years of age;
- Where survivors of rape are aged between 13 and 18 years of age; and lastly
- Where victims/survivors are adults.

## **5. DEPARTMENT OF SAFETY AND SECURITY**

Crimes against children are policed mainly by the Family Violence, Child Protection and Sexual Offences (FCS) Unit. Specialist police officials deal with these crimes in smaller centres (police stations) across the country. The policing of crimes against children are conducted within the framework of South African law. Over and above the framework, the following policies and instructions are issued to ensure standardized and effective policing and service delivery:

#### **5.1 White Paper on Safety and Security, 1996**

SAPS activities focus on the prevention or reduction of crimes through community and sector policing, situational crime prevention and policing the factors that contribute to crime and violence. SAPS' response to rape and other sexual offences involves specialist investigative techniques in gathering evidence for use in prosecution.

#### **5.2 Victim Empowerment Programme**

The SAPS has adopted a victim-centred approach to the management of rape and other sexual offences. It therefore provides programmes that improve services to victims and it supports victims through the criminal justice system. These initiatives are based on the South African Victims' Charter the Victim Empowerment Policy and the National Instructions.

#### **5.3 National Instruction 7/1999: Domestic Violence**

Implementation of the Domestic Violence Act has specific expectations of police officials as they relate to DV matters. These include the arrest of perpetrators and the protection of victims during the incident, victim support, referral for further support and counselling, and discretion to arrest where the risk of imminent harm exists. The Act also requires SAPS to record all incidents of domestic violence in a register and to report to Parliament every six months on complaints against police officers for non-compliance with the National Instruction on Domestic Violence.

#### **5.4. National Instruction 22/1998: Sexual Offences: Support to Victims and Crucial Aspects of the Investigation**

National Instruction 22/1998 makes provision for support to victims at crucial junctures in an investigation. This National Instruction was developed to provide a professional service to the victims of sexual offences. It provides officials with guidelines for the investigation of sexual offences and for the assistance of victims.

### **5.5 National policy on community policing forums**

National policy provides for the establishment of community police forums in which both police officials and members of the community participate. The purpose is to monitor the services rendered to the community by the South African Police Service.

### **5.6 National Instruction on Children Awaiting Trial**

A national Standing Order (361 of 1999) formalises the interim inter-sectoral protocol that is intended to ensure effective inter-sectoral management of children charged with offences and who may need to be placed in residential care facilities while awaiting trial. It specifies that parents of children should be notified as soon as possible; that children should not be detained for longer than 48 hours before appearance in court; and that children are to be held separate from adults and girls to be held separate from boys.

## **6. DEPARTMENT OF CORRECTIONAL SERVICES**

The Department of Correctional Services is located at the receiving end of the criminal justice system. Its primary function is to correctly implement sentences passed down by the courts. Inherent to the implementation of those sentences is a constitutional responsibility to rehabilitate those sentenced and committed to the care of Correctional Services.

The Department regards all children as a unique category of offenders whose needs require specific responses.

The Department operates development centres for children within youth centres. The primary objective of these centres includes the provision of distinctive, custodial treatment and development programmes in an environment that is conducive to the development of young offenders. Currently, 13 youth correctional /development centres are managed by the Department. Other young offenders are accommodated in separate sections of correctional centres to keep them apart from adult offenders.

The Department of Correctional Services does not have a specific children's policy, but the issues relating to children are addressed by the Youth Policy. This policy covers the observation of children's rights and responsibilities, and also honours children's rights to survival, protection, participation and development. The Department of Correctional Services defines youth offenders as all offenders between the ages of 14 – 25 years.

The *Correctional Services Act, 1998* provides for the care and development of children in correctional centres and these programmes

are guided, where applicable, by national and international norms and standards governing child development.

The community corrections system provides alternatives to incarceration of offenders and is the preferred method of correction in low risk offenders. Incarceration should be a last resort for young offenders.

The *Correctional Services Act, 1998* makes provision for the accommodation and care of infants of incarcerated mothers where no other alternative are options are available. In trying to avoid the institutionalisation of these infants the DCS makes uses of external social workers to secure alternative care options for these children, but where this is not possible the Act requires the Department to ensure the sound physical, social, mental care and development of both the mother and the child within correctional centres.

In addition to the separation of children and adults, offenders are incarcerated according to degrees of risk and aggression. Programmes can therefore be separately developed according to the special needs of offenders, for example, training and education on violence against children and rehabilitation programmes for sexual offenders.

Various Directorates within DCS has drafted policies in line with their key delivery areas:-

- The Directorate: Social Work Services has implemented a Policy that addresses the needs and protection of children. .
- The Directorate: Health Care Services has implemented a health policy that includes protocols for physical injuries resulting from violence within correctional centres. .
- The Directorate: HIV and AIDS has implemented the HIV and AIDS policy stipulating that child and youth offenders will be exposed to general information sessions education highlighting the link between violence and HIV infection. Anonymous condom provision is provided for all sexually active offences. The Department is currently receiving funds from the President's Emergency Fund for AIDS Relief in Africa to fund programmes focussing on the prevention of HIV infection. The Department has already trained peer educators among youth and encourages programmes of education about the spread of HIV infection.

### **Existing Programmes**

The Department of Correctional Services has developed programmes that deal with offenders who are perpetrators of violence against children. These programmes can be enumerated as follows:

#### **Life-skills programme**

Examples of programmes with offenders include:-

- Substance Abuse Programmes (some of the perpetrators committed offences under the influence of a substance)
- Aggressive Offenders Rehabilitation Programme offers anger-management and life skills modules
- Sexual Offenders Programme (this involves the use of group and community work programmes, individual counselling and therapeutic interviews with sexual offenders).

#### **The focus of current treatment programmes for sexual offenders**

Rehabilitation is managed by Social Workers and psychologists and includes:-

- Accepting responsibility and modifying cognitive distortions.
- Developing victim empathy.
- Empowering offenders to take informed decisions.
- Improving social competence.
- Developing relapse prevention skills

During the admission process offenders are taken through an orientation and assessment programme with a view to determining the suitable intervention programmes. This process culminates in the development of a Sentence Plan that addresses the offending behaviour. The Directorate: Profile and Risk Management has developed a tool that assesses and categorises offenders in terms of risk, aggression and offence committed. This categorisation includes perpetrators of violence committed against children.

#### **White Paper on Correctional Services**

Early in 2005 Cabinet approved the DCS White Paper. This broadly consulted document sets the stage for a marked departure in approach, practice and ethos. Implementation of the White Paper will be constrained by resource limitations over the short to medium term and application of programmes will be on an incremental basis from a very low base.

The rights-based document calls for a developmental approach to the rehabilitation of inmates and makes special provision for sentenced young people and children. Overcrowding of both sentenced and awaiting trial inmates, however, poses the most serious challenge to the successful implementation of the Transformation Plan as described in the White Paper.

## **7. DEPARTMENT OF LABOUR**

### **The Draft Child Labour Action Programme (CLAP)**

The Department of Labour is responsible for regulating children's work related activities including combating worst forms of child labour. To this effect, in 1999 the Department of Labour initiated the development of the first ever, comprehensive programme of action to protect children against child labour. The draft Child Labour Action Programme (CLAP) was provisionally adopted in 2003 by government departments (including the departments responsible for provincial and local government, water services, justice, policing, prosecution, social development and education), as well as a wide range of organisations of civil society, including organised business, labour, NGOs, CBOs and FBOs.

The objectives of the CLAP are to:

- To identify forms of child labour including the worst forms,
- The need for prioritisation because of limited resources
- Role definition and clarification of all key and relevant role players,
- The design, implementation and monitoring of programmes,
- The identification of targets and indications of success,
- Identification of the requisite human and financial resource.

The key elements captured in the CLAP are to target existing programmes to address child labour hot spots, to amend legislation where appropriate, to strengthen the enforcement capacity, to be as realistic as possible, to learn from other best practices, and to increase public awareness and social mobilization.

### **Programme towards the Elimination of Worst Forms of Child Labour**

The draft Child Labour Action Programme identifies specific tasks for inclusion in Time Bound programme (TBP). Action steps identified for the TBP include among others, the development of Regulations for children between 15 – 17, the development and management of an information system/register, follow up surveys to supplement the SAYP in terms of specific issues such as the impact of HIV/ Aids on child labour and many others as identified in the draft CLAP document.

The major flagship projects presently undertaken to address worst forms of child labour deal with the following:

- Commercial Sexual Exploitation of Children (CSEC), Child Trafficking (movement of children for exploitative labour or abuse) and Educational rehabilitation of children found in Worst forms of Child Labour (WFCL).
- Children Used by Adults in the Commission of offences (CUBAC)
- Delivery of water services to households distanced from sources of safe water. By delivering water to such households the extremely long periods spent by some children in collecting water could be reduced, thereby making more time available for schooling and

other activities. It should also reduce the hazards they are exposed to.

## **SUMMARY OF OTHER NATIONAL RELEVANT LEGISLATION IMPACTING ON THE LIVES OF CHILDREN**

### **Basic Conditions of Employment Act, 1997**

The *Basic Conditions of Employment Act, 1997* prohibits the employment of a child that:

- is under 15 years; or
- is under the minimum school leaving age; or
- is over 15 but under 18 years of age and the employment;-
  - is inappropriate for the age of the child; or
  - if the work places at risk the child's well-being;
- that has been prohibited by the Minister of Labour through regulations.

The Department will soon promulgate a Sectoral Determination (as required by section 50 of the BCEA) that will regulate and protect the employment of children involved in advertising, artistic and cultural activities.

### **Criminal Law Amendment Act, 1997**

Section 51 of this Act obliges the court to impose a life sentence on a person convicted of rape of a girl under the age of 16 unless there are compelling reasons to the contrary.

### **Criminal Procedure Second Amendment Act, 1995**

This Act makes provision for certain grounds upon which bail can be refused. The Bill of Rights contained in the Constitution gives every accused person the right to be released on bail unless the court finds that it is in the best interests of the accused which may include a child, the victim who may also include a child, and/or the community that the accused is kept in custody.

- Section 153 of the *Criminal Procedure Act, 1977* attempts to protect child witnesses by describing the circumstances in which certain criminal proceedings will not take place in an open court. It also makes provision for the presiding officer to ask certain people to leave the hearings.
- Section 161(2) stipulates, in the case of a witness under the age of 18 years testifying in court, that the *viva voce* principle will be deemed to include demonstrations, gestures or any other form of non-verbal expression to illustrate a point.

- Section 170A provides for the appointment of intermediaries in cases where children under 18 years of age have to give evidence in court. This section further stipulates that when an intermediary is appointed, the court may direct that the child witness testify in a room other than the traditional courtroom, which is more informal and child-friendly. The role players in court are able to see the child when he/she is testifying via a closed-circuit television system (CCTV).
- Section 182 provides for the provision of a support person to the victim of a sexual offence.
- Section 195 is an exclusion to the common law provision that a husband or wife cannot testify against one other in matters where the accused is charged with an offence involving a child of either of them.

### **Probation Services Act, 1991**

The *Probation Services Act, 1991* as amended, provides for probation services to be rendered to accused and convicted persons within in the criminal justice system. Probation officers are currently all social workers that work in the fields of crime prevention, treatment of offenders, care and treatment of victims of crime, working with families and communities.

Relevant Amendments to the Acts include the following:-

- Insertion of definitions relevant to the child and youth care system;
- Insertion of the definition of “family finder” whose main function is to trace the parents or the guardian of a child that is being prosecuted, so as to make them available to assist the child in court;
- Introduction of assessment, support, referral and mediation services in respect of victims of crime;
- Introduction of crime prevention strategies through the provision of early intervention programmes, including diversion services and family group conferencing;
- Provision for the establishment of restorative justice programmes and services as part of appropriate sentencing and diversion options;
- Provision for the reception, assessment and referral of an accused person and the rendering of early intervention services and programmes;
- Investigation of the circumstances of an accused person and the provision of a pre-trial report on the desirability or otherwise of prosecution;
- Investigation of the circumstances of convicted persons;
- Provision for the duties of assistant probation officers;
- Provision for the mandatory assessment of every arrested child within 48 hours of his/her arrest; and

- Provision for the competency of a probation officer to recommend an appropriate sentence or other options available to the court.

**Witness Protection Act, 1998**

Section 12 of this Act provides for the protection of children who testify in court proceedings.

**OTHER LAWS RELEVANT TO CHILDREN**

- **Children’s Status Act, 1987**  
This Act deals with paternity and the establishment of paternity.
- **Divorce Act, 1979**  
Section 6 of this Act safeguards of the interests of children in divorce proceedings.
- **General Law Amendment Act, 1962**  
Section 5 provides for the non-publication of the identity of children involved in legal proceedings.
- **Maintenance Act, 1998**  
The Act makes provision for persons who, in law, have a duty of support in relation to another person. A custodial parent or a legal guardian looking after a child may claim maintenance from a person that has the legal duty to support a child but is not fulfilling that obligation.
- **Mediation in Certain Divorce Matters Act, 1987**  
This Act provides for the appointment, powers and functions of Family Advocates to ensure that the best interests of children are met in divorce and family disputes regarding legal matters.
- **Mental Health Act, 1973 as amended (under review)**  
The *Mental Health Care Bill* ensures that mental health services are provided at primary, secondary and tertiary levels of health care.
- **Prevention and Treatment of Drug Dependency Act, 1992**  
This Act provides for all matters related to the prevention and treatment of drug dependency. The Act was amended in 1996 to extend the application of the Act to ensure improved implementation and in 1999 to establish the Central Drug Authority.
- **The Social Assistance Act, 1992 and the Welfare Laws Amendment Act, 1997**  
The *Social Assistance Act, 1992* provides for the rendering of social assistance to persons, national councils and welfare organisations. The

Act was amended in 1994 to further regulate grant making and financial awards to certain persons and bodies.

In 1997, the *Welfare Laws Amendment Act, 1997* amended the *Social Assistance Act, 1992* to:-

- provide for uniformity of, equality of access to, and effective regulation of social assistance throughout the Republic;
- introduce the child support grant;
- do away with capitation grants;
- to abolish maintenance grants subject to the phasing out of existing maintenance grants over a period not exceeding three years; and extend the application of the provisions of the Act to all areas in the Republic.

## **OTHER INTERNATIONAL OBLIGATIONS IMPACTING ON THE LIVES OF CHILDREN**

### **Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict**

This Optional Protocol to the Convention on the Involvement of Children in Armed Conflict raises the age requirement to 18 years for participation in hostilities. The same minimum age requirement is applicable to the recruitment of children and young people into the armed forces. The United Nations has also set minimum age requirements for United Nations peacekeepers. South Africa signed the Protocol, on 8 February 2002.

### **Convention Concerning Minimum Age for Admission to Employment.**

#### **International Convention on Cyber Crime**

The Convention covers four main topics:

- Harmonisation of national laws that define offences;
- Definition of investigation of cyber crime;
- Prosecution procedures to cope with global networks; and
- Establishment of a rapid and effective system of international cooperation

Offences listed in the Convention cover the production, dissemination and possession of child pornography. The Convention outlines basic rules that make it easier for the police to investigate computer crimes.

South Africa signed the Convention and the process of ratification is under way. South Africa signed the **International Convention on Cyber Crime in Europe** during 2001.

### **Convention on the Protection of Children and Cooperation in respect of Inter-country Adoption (Hague Convention)**

The objectives of the Convention include:-

- the establishment of safeguards to ensure that inter-country adoptions take place in the best interests of affected children and with due consideration and respect for their fundamental rights as recognised in international law.
- the recognition in contracting states of adoptions made in accordance with the Convention.

South Africa acceded to the Convention on 13 December 2003.

### **Convention on the Civil Aspects of International Child Abduction (Hague Convention)**

The aim of the Convention is to establish a system of cooperation among contracting states to ensure that agreed safeguards are respected and by so doing ensuring the prevention of;-

- child abduction; and
- the sale of and/or trafficking of children and young people.

South Africa acceded to this document on 8 July 1997.

### **Declaration and Agenda for Action against Commercial Sexual Exploitation**

South Africa was party to the Declaration and Agenda for Action against Commercial Sexual Exploitation adopted at the First (Stockholm, August 1998) and Second (December 2001) World Congresses on the Commercial Sexual Exploitation of Children

South Africa thus pledged to combat such exploitation internally and to participate in international cooperative action for this purpose.

### **Optional Protocol for the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment**

The objective of the Optional Protocol is twofold:-

- First, it establishes a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty.
- Second, each state party that ratifies the Optional Protocol is required to establish, designate and maintain at domestic level one or several visiting bodies with a view to preventing and discouraging torture and other forms of cruel, inhuman or degrading treatment.

South Africa signed this document 29 January 1993 and ratified it on 10 December 1998.

**UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)**, provides a blueprint for an effective rights based child justice system.

**UN Guidelines for the Prevention of Juvenile Delinquency (Riyad Rules)**, provides guidelines for states to follow in order to prevent children from offending.

**UN Standard Minimum Rules for the Protection of Juveniles Deprived of their Liberty (JDL)** deals with a range of children that have been deprived of their liberty due to different circumstances and under different conditions.

**Protocol to Prevent, Suppress and Punish Trafficking in Persons,  
Especially Women and Children Supplementing the UN Convention  
against Trans-national Organised Crime**

The Protocol serves to supplement the UN Convention on Trans-national Crime (2000). South Africa signed 14 December 2000 and was ratified 20 February 2004.



**THE PRESIDENCY:  
REPUBLIC OF SOUTH AFRICA**