

SOUTH AFRICA

Comment from
National Council of Women of South Africa
(Affiliated to the International Council of Women since 1913)

CEDAW/C/ZAF/2-4

on the
Concluding comment to the initial report of South Africa

by
the CEDAW committee at its 24 and 29 June 1998 meetings

under
Principal subjects of concern: 121

...high level of violence against women including the high incidence of rape, particularly
of young girls
and
...a danger that efforts to address violence against women, although identified as a
priority...
may become submerged in the larger struggle against violence in society.

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The National Council of Women of South Africa

Is an organization of women volunteers working with its affiliated societies to promote its aims.

Researches legislation, especially measures involving women and children, consults relevant bodies and sends appropriate letters or more formal resolutions to Government. A private Members Bill, introduced on our behalf by Member of Parliament Sheila Camerer regarding trafficking in women, is listed in the Trafficking Report issued by the United States State Department.

Maintains friendly relations with a broad spectrum of organizations such as National Council of African Women, Lesotho National Council of Women, South African Institute of Race Relations, South African Women in Dialogue etc

Comment from the National Council of Women of SA on the Convention on the Elimination of All Forms of Discrimination Against Women Report (initial report of South Africa CEDAW/C/ZAF/1) to address the CEDAW Committee’s 1998 concerns on Violence against Women and Children.

The effects of the removal/decrease of effective measures

The initial report to United Nations by the South African government had several concerns expressed by the CEDAW committee:

114: Factors and difficulties affecting implementation of the Convention on the Elimination of All Forms of Discrimination Against Women.

121: Principle subjects of concern: Concern at high levels of violence against women including the high incidence of rape particularly of young girls.

Government to undertake research into the causes of the high incidence of rape so that preventative measures may be developed.

Child Protection Unit of the SAPS

The Child Protection Unit (CPU) which was functioning fairly well was ‘mainstreamed’ and the Institute for Security Studies (ISS) research into the result of this found “Police restructuring a failure” (Sunday Times 1 June 2010)[1]. The study showed that the disbanding of the specialized units such as the Family Violence and Child Protection had had a detrimental effect on the fight against crime. The ISS also found that the closure had a “profound impact” on both police and victims of domestic violence, sexual assault and child abuse. Police lost dedicated members.

Effects of decreasing Sexual Offences Courts (SO Courts)

The US State Department in the 2009 report on Diplomacy in Action Human Rights report: South Africa of March 2010, in the section on Women found the number of courts for sexual offences decreased from 64 to 42 during the year. And, that sexual offences cases took longer to resolve, were harder to track for case managers, and the conviction rate within the Sexual Offences Courts, which was previously the highest in the country decreased. The US State Department report also noted that there had been no official statement and that support was eroding for the dedicated courts.[2]

In the November 2009 report to the Parliamentary Portfolio Committee on Justice and Constitutional Development the National Prosecuting Authority (NPA) outlined its desire to increase the number of Sexual Offences Courts. The NPA also expressed the view that mainstreaming the Sexual Offences Courts may deter the specialization of presiding officers in Sexual Offences matters.[3]

The Second NPA Sexual Offences Indaba, the NPA Annual Report of 2006/07 and a study showing the usefulness of the Sexual offences Courts

In May 2009 The National Council of Women of South Africa (NCWSA) attended the 2nd Sexual Offences Indaba.

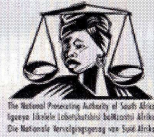
The NPA’s advocate Mpshe who headed the NPA and an advocate of the Sexual Offences and Community Affairs Unit (SOCA) of the NPA advocate Majokweni expressed concern with the sentences imposed on offenders as well as the number of acquittals reported. This was reported in the official government BuaNews of 19-05-2009, (“NPA calls for stronger action against rapists”.)[4]

However, according to the Annual Report of the National Prosecuting Authority 2008/09 the decrease in the SO courts is due to a decision by the Regional court Magistrates/Presidents not to have dedicated courts anymore – SO cases are scheduled between all available courts i.t.o. CFM principles. (See copy of Table 5 which follows on from this report)

The NPA Annual Report of July 2006/07

The statistics that could be found were in the NPA Annual Report and though rather unsatisfactory these have been used. The number of Sexual Offences Courts is given as being 67 in 2005-06 and by 2006-07 the figure was 59. (See table from the NPA Report)

Tracking performance over a period of 5 years re dedicated courts and linked to TCC's:



The National Prosecuting Authority of South Africa
Iqosa: Ikhosi LaseMantsohu/Isithixo Sase-Afrika
Die Nasionale Hoofprokureergereguleerder van Suid-Afrika

	2002/03	2003/04	2004/05	2005/06	2006/07	Change over previous year	Change over period	Notes
Number of dedicated courts	22	41	53	67	59	-12.4%	166.7%	Due to dedicated pros and improved victim service.
Conviction rate in dedicated courts	64%	61%	63%	70%	65%	-7.3%	1.4%	Whilst in other regional courts it is below 50% for sexual offences
Number of TCC's	3	5	5	10	10	0%	233.3%	Integration of services from all role-players improves conviction rate.
Conviction rate: TCC's	74%	82%	80%	80%	83%	4.2%	12.6%	Whilst it was 95% at well established TCC linked court in Wynberg.

Further, in June 2009 the Minister of Justice and Constitutional Development, J Radebe, in a reply to a question from the Opposition (Q 103) gave the number as 45 dedicated Sexual Offences Courts[5] The minister in his reply also mentioned that where measures such as CCTVs and separate interview rooms were not available this was in breach of the constitution. Further, the Minister mentioned that many magistrates are not

prepared to have exclusive Sexual Offences roll dedicated Sexual Offences courts.
(Minister's reply follows this report)

In 2003/04 the Thuthuzela Care Centres (TTCs) conviction rate with 5 centres was little changed from the following when there were 10. But with 67 Dedicated SO courts the conviction rate was 70% which fell to 65% the following year when there were 59. There is an association with the number of SO courts and conviction rates. In the regional courts the rate is below 50%. The well established Wynberg SO Court has a 95% conviction rate. The Thuthuzela Care Centres remained at 10 in the November 2009 report of the Parliamentary Portfolio Committee on Justice and Constitutional Development.

The mission statement by the Department of Justice and Constitutional Development includes the words 'to provide quality Justice for all'.

Are women and children receiving quality Justice?

Mariette Reyneke and Beatri Kruger, a prosecutor and advocate at the University of the Free State in an article titled "Sexual Offences Courts: Better justice for children?" published 2008, with her co-author advocate Mariette Reyneke, conclude that there are sufficient grounds to conclude that SO courts do provide improved justice for child victims of sexual offences.[6]

In South Africa 60% of SO victims are children of less than 15 years old, with 39.5% of victims being between the ages of 15-17. This is according to the South African Police Service website statistics of 2009/2010. So, is the child's/young girl's best interest being met?

Notes:

The NPA is tasked with carrying out criminal proceedings on behalf of the state.

TCC: One stop facilities to reduce secondary trauma for victims, improve conviction rates, and reduce the cycle of time for finalizing cases.

Sexual Offences Courts: Prosecute Sexual Offences only. Leads weekly strategy meetings and case assessment. Consults with victims throughout court process. Ensures speedier more effective prosecutions.

Recommendations

1) There is evidence that statistics are not being analysed in accordance with the WHO 2005 "Addressing violence against women and achieving the Millenium Development Goals (MDG's)".[7]

The National Council of Women of South Africa passed a resolution calling for this and sent the resolution to the Minister of Justice in July 2009, but has received no answer to date.

The resolution was also sent to the Statistician-General who has replied indicating that this will be considered, as well as sex disaggregated statistics.

The Minister of Police in reply to a question from the Opposition in parliament stated that he could not reply as to how many rapes of minors have been reported in the past three years, time taken to outcome of court trial, how many withdrawn, and by whom. Also, whether the forensic evidence was collected, and if there was inadequate or no investigation as well as the action taken against the relevant persons. ("Police say they're clueless about child abuse figures" 12 Dec 2007, Saturday Star, and Minister's reply to parliament)[8a,8b] Statistics are needed.

2) The National Council of Women of South Africa recommends that the Sexual Offences courts “roll-out” (CEDAW/C/ZAF/2-4: Part 5, 2.4.2 V.2.16) mentioned in the 1998-2008 SA Government CEDAW report be implemented, since, as has been outlined above, the NPA and others want this,[9] and despite the decision of the Magistrates/Presidents not to have dedicated SO courts. (See NPA Table 5). And, this should be regarded as a matter of urgency. Minister for Women, Children and People with Disabilities on 5 October 2010, in a personal communication, is aware of the decreased Sexual Offences courts and was asked by NCWSA to intervene, and it is hoped that her successor will do this.

The reinstatement of the CPUs should also be achieved as a matter of urgency.

3) Professor Rachel Jewkes of the Medical Research Council has shown in research that, “Quarter of men in South Africa admit rape” (Mail and Guardian 18 June 2010.)[10] And, HIV/AIDS is the greatest fear of South African women who are raped. “Respondents particularly valued the availability of HIV prophylaxis (with HIV test) and having a sensitive healthcare provider who could provide counselling” (British Medical Journal 5 December 2005 “Women’s experiences of and preferences for services after rape in South Africa: interview study”)[11] South Africa is one of the countries with the highest HIV infections worldwide. Government is urged to ensure availability of ARVs for rape victims at health facilities.

4) Maternal Mortality (MM) as reported in the SA Government Millennium Development Goals Country Report 2010 is at 625/100 000 live births making forced pregnancies extremely dangerous.[12]

The National Council of Women of South Africa has a personal communication from Professor Robert Pattinsen who is the foremost expert on MM in the Confidential Reports into MM who says that he questions the validity of data before 1998. The MM rate must be reduced.

5) The National Council of Women of South Africa endorses the call from the Women’s Legal Centre for acceptable mitigating and aggravating factors, and, that judges let rapists off lightly in terms of the Criminal Law Amendment Act of 31 December 2007. (Report in the Sunday Times 8 March 2008, “Judges Flout Guidelines and let Rapists off lightly”)[13]

6) The National Council of Women of South Africa recommends sex-disaggregated stats be collected at provincial and national level and made available on violence against women. (Sunday Independent 19 September 2010, “MDG report an eye-opener for statisticians”, written by the Statistician-General.)[14]

Conclusion

High levels of gender based violence deny South Africans the realization and enjoyment of the rights in the constitution, and the Convention on the Elimination of All Forms of Discrimination Against Women.

F Cleaton-Jones

National Adviser: Child, Family & Youth

7th November 2010

(Documentary evidence is provided below for reference [5])

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Sexual Offences and Community Affairs (SOCA)

Introduction

SOCA develops strategy and policy, and oversees the management of cases relating to sexual offences, domestic violence, human trafficking, maintenance offences and young offenders. The broad outcomes that SOCA seeks to achieve are to:

- Improve the conviction rate in gender-based crimes and crimes against children;
- Actively protect vulnerable groups from abuse and violence;
- Ensure access to maintenance support; and
- Systematically reduce secondary victimisation

Purpose

SOCA develops strategy and oversees the management of cases relating to sexual offences against women and children.

Service Delivery Achievements

A number of the key performance indicators in dealing with the prosecution of cases involving women and children are reflected in Table 5, which tracks performance over a five-year period.

Table 5: Service Delivery Performance Indicators-2004/05-2008/09

Sexual Offences - NPS and Sexual Offences and Community Affairs								
Indicator	2004/05	2005/06	2006/07	2007/08	2008/09	Change over prev yr	Change over period	Notes
Number of dedicated courts	53	67	59	64	50	-21.9%	-5.7%	A decline in the number of courts is noted due to the decision by Regional court Magistrates/ Presidents not to have dedicated courts anymore - SO cases are scheduled between all available courts i.to CFM principles
Conviction rate: Dedicated Courts	63%	70%	65%	64%	66.7%	+2.7%	+5.9%	Increased due to enhanced screening processes
Number of Thuthuzela Care Centres	5	10	10	9	17	+88.9%	+240.0%	
Conviction rate: T.C.C.s	80%	80%	83%	75%	61.2%	-18.4%	-23.5%	





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Reply by Minister of Justice and Constitutional Development J Radebe on questions posed in the National Assembly for written reply

11 June 2009

Question no. 103

Ms N W A Michael (DA) to ask the Minister of Justice and Constitutional Development:

(1) Whether any sexual offences courts are operational; if not, why not; if so, (a) how many and (b) where are they situated;

(2) Whether all the sexual offences courts are operational for five full days per week; if not, (a) which of the sexual offences courts are not, (b) what (i) are the reasons in each case and (ii) steps are being taken to ensure that every sexual offences court is fully operational for five days per week;

(3) Whether all sexual offences courts adhere to the departmental seven-point blueprint regarding (a) two dedicated prosecutors, (b) administrative support, (c) victim assistance, (d) case managers, (e) intermediaries, (f) counselling services and (g) dedicated magistrates; if not, (i) which courts do not adhere to the seven-point blueprint, (ii) what resources are lacking in each case and (iii) when will they receive the outstanding resources;

(4) What is the anticipated cost to his department of equipping each sexual offences court for adherence to the seven-point blueprint?

(1)(a) Yes, currently there are 45 dedicated Sexual Offences Courts in operation.

1 (b) The Sexual Offences Courts are situated in:

1 (a) See attached list:

- * Port Elizabeth
- * Uitenhage
- * Bethlehem
- * Bloemfontein
- * Welkom
- * Kimberley
- * Upington
- * Bafokeng
- * Moretele

- * Odi
- * Bellville
- * Cape Town
- * Goodwood
- * George
- * Oudtshoorn
- * Wynberg
- * Durban
- * Empangeni
- * Pinetown
- * Stanger
- * Klerksdorp
- * Middelburg
- * Mokerong
- * Thabamooopo
- * Nelspruit
- * Mankweng
- * Evander
- * Butterworth
- * Mthatha
- * Germiston
- * Randfontein

(2) The number of Sexual Offences cases on the court rolls does not justify a full court roll for a full week, and may operate for two to three days a week, or once a month for a week etc. It also happens that other types of crimes are also dealt with by the dedicated Sexual Offences Court, as there is an attempt to utilise their court rooms optimally. This will only happen when the court roll is completed.

3 (a) There are two (2) dedicated prosecutors at all dedicated Sexual Offences court countrywide, the NPA has attained a ratio of 2.1 prosecutors per regional court. However as a result of e.g. maternity leave and a high vacancy rate, the posts are not a correct reflection of the situation on ground level. The NPA is currently focusing on filling these posts urgently.

(3) Whether all sexual offences courts adhere to the departmental seven-point blueprint regarding (a) two dedicated prosecutors, (b) administrative support, (c) victim assistance, (d) case managers, (e) intermediaries, (f) counselling services and (g) dedicated magistrates; if not, (i) which courts do not adhere to the seven-point blueprint, (ii) what resources are lacking in each case and (iii) when will they receive the outstanding resources;

Yes/No – not all Sexual Offences Courts adhere to the Departmental seven-point blueprint. Details to this effect are indicated below:

Name of Court

- (a) Two dedicated prosecutors
- (b) Administrative Support
- (c) Victim Assistance
- (d) Case Managers
- (e) Counselling Services

(f) Dedicated Magistrates

(ii) What resources are lacking;

(iii) When will they receive the outstanding resources?

(3)(c)(ii)(iii)

The NPA has Court Preparation officials at 65 centres countrywide. They prepare witnesses for the task of testifying by explaining roles/ responsibilities of role players, court processes and by addressing fears and concerns. In addition the Court Preparation officials, as far as possible, refer the witnesses for further services e.g. therapy, medical services and referral to a place of safety. They do not discuss the merits of the case with the victims. Their support has proven invaluable in many instances. The NPS cannot expand Court Preparation services in the current financial year, but plan to do so in 2010/11.

There are 16 Victim Assistant Officers based at Thuthuzela Care Centre around the country. The Department of Justice and Constitutional Development is best placed to deal with this question. However, the NPA conducted a survey in 2007 on services rendered so as to establish what services are rendered, and what protection is offered in the Criminal Justice System to child victims. For the purposes of the survey, a questionnaire was developed and distributed to prosecutors. Responses were received from the more senior and experienced prosecutors. In some instances, the responses were a combined or consultative response.

According to official NPA records not all 450 Regional Courts countrywide are equipped with intermediary facilities. A high percentage of respondents indicated that they have been experiencing problems with the functioning of the intermediary facility equipment (CCTV) over the past year, resulting in the postponement of cases involving child victims. Therefore the victims have to come to court on more than one occasion, which results in secondary victimisation. The following problems were experienced in the different clusters:

- * no visual
- * poor sound quality
- * plugs and microphones need to be replaced

Attendance to the problems experienced was generally reported to be slow. The respondents indicated that only a small percentage of courts are equipped with one way glass/mirrors and separate waiting rooms.

Prosecutors and Court Preparation officers have huge accommodation needs countrywide, although we are in consultation with the DoJ and CD to resolve same. The Constitutional Court in the case of Director of Public Prosecutions, Transvaal vs The Minister of Justice and

Constitutional Development (CCT 36/08) instructed the Director General to submit a list of Regional Courts indicating how many intermediaries are indeed available, how many Regional Courts have CCTVs and separate rooms from which to testify etc. NPA has to comment on the report by August 2009. It was stated that the non availability of these measures is a breach of the Constitution. It was stated that each child complainant who is denied the assistance of an intermediary has his or her rights violated. The Constitutional Court attached a lot of weight to the survey conducted by the NPS.

Proposed reply to question 109 – 3 (f), (ii) and (iii):

The Department of Social Development is responsible for physco-social support for rape victims. Since ensuring support services is not their core function, prosecutors might not be a reliable source for the information requested. However, the majority of respondents (66,7%) to the survey indicated that there is some psycho-social support service available to child victims with 33,3% stating that there is currently no psycho-social support available to children in their area.

The responses seem to indicate a discrepancy between the availability of the services and the rendering thereof (for instance, though the responses for Pretoria indicated that Social Development is available to render the services, it was also noted that child victims are in fact not so assisted and the child victims are simply left to cope on their own especially in the rural areas). It was also indicated that where psycho-social support is rendered, it is mostly provided before testifying and the responses might therefore include references to mere acts of support, such as provided by Court Preparation officers.

The NPA is responsible for Court Preparation. Court Preparation is not counselling. At best it can be described as therapeutic jurisprudence.

Proposed reply to question 109 – 3 (g) (ii) AND (iii):

Regional Court Presidents are in charge of case flow management and as such are in charge of dedicated courts. Many Magistrates are not prepared to have exclusive Sexual Offences roll dedicated Sexual Offences courts. The NPA has expressed its concerns on this issue to the Department of Justice and Constitutional Development.

The Department of Justice and Constitutional Development together with all other role players should discuss and resolve this issue with the Magistrates so that the best interests of the children and vulnerable groups may be served. In the meantime the NPA will continue to place its focus on training as many

prosecutors as possible to deal with specialised matters, and have already issued instructions to prosecutors on ensuring the speedy finalisation and prioritisation of these types of cases, whether they are tried in ordinary Regional courts or specialised courts.

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11 June 2009

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