



Workshop with Service Providers for Child Sex Offenders

**Held at the South African Law Commission,
Pretorius Street, Pretoria**

Thursday 4 April 2002

REPORT

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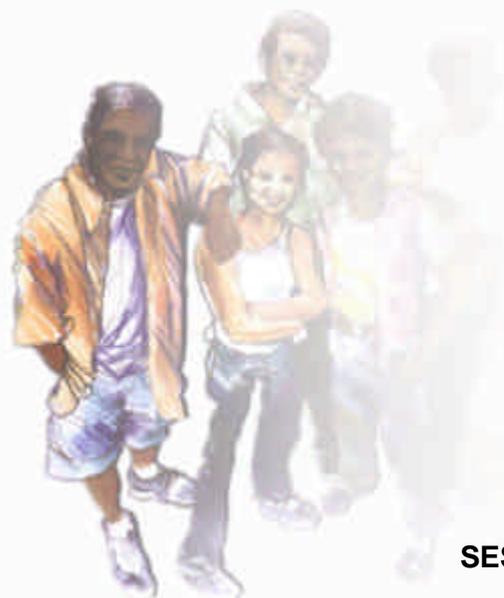
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TABLE OF CONTENTS

INTRODUCTION	1
OPENING	2
SESSION ONE	3
OBJECTIVES OF THE WORKSHOP	3
Buyi Mbambo, Child Justice Project	
THE EXTENT OF THE PROBLEM	4
Ms Jacqueline Gallinetti, Community Law Centre, UWC	
QUESTIONS AND COMMENTS FROM THE FLOOR FOLLOWED MS GALLINETTI'S PRESENTATION.....	6
SESSION 2 - POLICY & PRACTICE ISSUES	6
LAW COMMISSION PROPOSALS – THE SPACE FOR PROGRAMMES & TREATMENT	6
Carrie Kimble, SA Law Commission	
THE POLICY ON THE DIVERSION AND PROSECUTION OF CHILD SEX OFFENDERS.....	7
Adv. Maggie Tserere – Nat. Prosecuting Authority)	
THE PRACTICE REGARDING DIVERSION AND PROSECUTION OF CHILD SEX OFFENDERS.....	8
Ms Val Melis, Senior Public Prosecutor, Department of Justice, Durban Regional Court	
THE ROLE OF THE PROBATION OFFICER	9
Ms Thelma van den Berg, Dept. of Social Development	
QUESTIONS AND COMMENTS FROM THE FLOOR FOLLOWED MS VAN DEN BERG'S PRESENTATION.	10
SESSION 3 – PROGRAMMATIC INTERVENTIONS: REALITIES, CHALLENGES AND GAPS	11
PROGRAMMES FOR CHILD SEX OFFENDERS.....	11
Ms Linda Dhavicharan, Childline, KwaZulu-Natal	
TOWARDS EFFECTIVE INTERVENTION WITH CHILD SEX OFFENDERS	12
Ms Carol Bower, SAYStOP, Cape Town	
THE CHALLENGES OF REPLICATING A MODEL FOR CHILD SEX OFFENDERS.....	13

Workshop with Service Providers for Child Sex Offenders



Mr Lizo Cagwe, Nicro, Port Elizabeth	
PROGRAMMES FOR CHILD SEX OFFENDERS.....	14
Ms Jabu Sishuba, Dept. of Correctional Services	
PROGRAMMATIC AND SERVICE DEVELOPMENT ISSUES FOR CHILD SEX OFFENDERS.....	15
Mr Brian Stout, Lecturer, University of Fort Hare	
QUESTIONS AND COMMENTS TO THE PANEL FOLLOWED MR STOUT'S PRESENTATION.	16
SESSION 4	17
SUMMING UP OF THE MORNING SESSIONS: POSITIONING SOUTH AFRICA IN INTERNATIONAL TRENDS AND PRACTICES.....	17
Ms Joan van Niekerk, Childline KwaZulu-Natal	
SESSION 5 – GROUP DISCUSSIONS	20
ANNEXURE A	23
Address by Ms C.E. Gillwald (MP)	
ANNEXURE B	28
Address by Ms Buyi Mbambo Child Justice Project	
ANNEXURE C	34
Address by Ms Jacqui Gallinetti Community Law Centre, UWC	
ANNEXURE D	47
Address by Adv. Maggie Tserere	47
SOCA Unit (National Prosecuting Authority)	
ANNEXURE E	51
Address by Ms Thelma van den Berg, Department Social Development - "The role of the probation officer"	
ANNEXURE F	56
Address by Mr Brian Stout Lecturer, University of Fort Hare	



INTRODUCTION

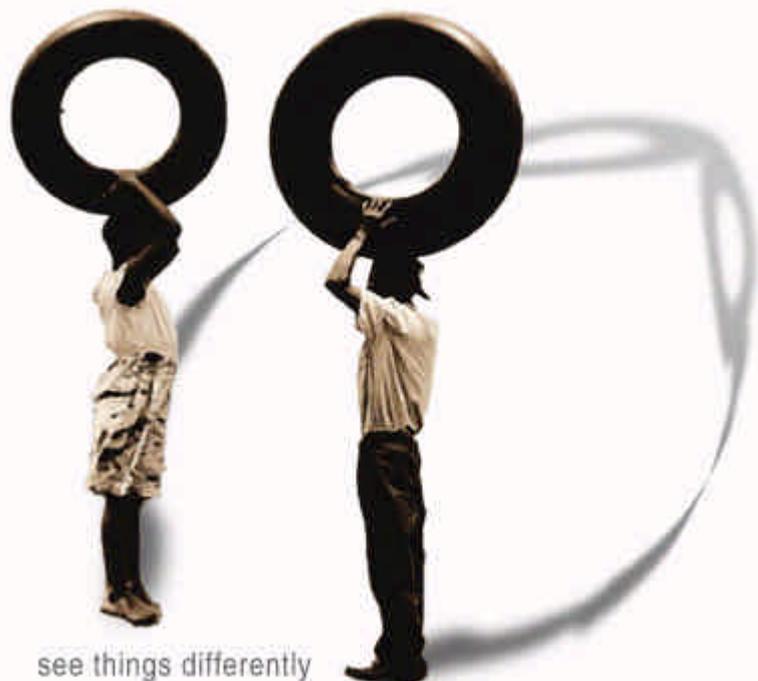
The Workshop with Service Providers for Child Sex Offenders was held on Thursday 4 April 2002 at the South African Law Commission offices in Pretoria. It was organised by the Child Justice Project, a UN Technical Assistance Project of the Government of South Africa.

There were many role players present, including representatives from The Departments of Social Development, Justice, Correctional Services and SAPS and various NGOs working in this field in South Africa.

One of the main objectives of the workshop was to look at the field of "Child Sex Offenders" and review existing projects and programmes, with the aim of improving the work in this area. It was hoped that by the end of the day we would have begun to identify gaps in knowledge and services in this field and would be able to ascertain appropriate responses to those gaps. As this is still a young field of intervention in this country it is exciting to be able to gather so many role players, able to share their knowledge, as we develop and grow the knowledge base, programmes and resources.

It is evident that both the media and Parliamentarians are key role players in this area. It was hoped that we would be able to more clearly identify the role of the media and to ensure constructive reporting, as well as to sensitise both the media and parliamentarians to the issues surrounding child sex offenders. It is also important to look at the different roles of the various Government departments as well as NGOs, academics and donors, and how these roles can be integrated. Only through partnerships with all role players will this field be effective.

One day to discuss the range of weighty subjects proposed is clearly not enough. But, it was hoped that by the end of the day we would have a framework and a greater desire to see more sustainable relationships and programmes in the field of "Child Sex Offenders". The question ultimately should be asked of everyone in this field, "Where can you get involved?"



OPENING > > > > > >

Deputy Minister of Justice, Ms C.E. Gillwald, gave the opening address. She pointed out the need to provide children with an environment that equips them for responsible adult life. She also reiterated South Africa's commitment to the United Nations Convention on the rights of the child. She acknowledged the issue of children committing sexual offences against children that go far beyond normal childhood sexual experimentation and the media attention that this has been given. It is essential to build upon the work that has already been done with regard to dealing with these children, rather than "reinventing the wheel". Deputy Minister Gillwald noted that the media does not always deal with this issue responsibly, but can do much to support our efforts to address it. Their involvement is critical to informing the public about progress being made in this field of work. Transparency and airing the topic can be positive but this has to be responsibly done. The Deputy Minister called upon journalists to adopt a responsible approach to this issue and to research their reports diligently. She also called upon all present to monitor the press and to censure them when children's rights are violated through media reports.

Deputy Minister Gillwald suggested that the organisers of the workshop release the content of today's workshop to the press to facilitate responsible reporting, in order to bring substance to this debate as well as to make the public aware of the issues. She also noted the impact of the educational system on the psychosexual development of children and their sensitivity to gender and sexuality issues. Children should be motivated to become activists with regard to their own rights and to become proactive in determining their own roles in the future.

Ms Gillwald mentioned that the Government has progressed in dealing with the issue of the sexual abuse of children. The Parliamentary Task Group on Child Abuse was established and has held its hearings. She noted that Members of Parliament were discovering their role as activists on social issues, and commended them on this. This task group will table its final report to the National Assembly of Parliament later this year.

The work of the SA Law Commission Committee on Sexual Offences was noted, as well as the work of the Committee on Child Justice. The contents of the Child Justice Bill were summarised and the efforts to individualise the needs of each child, whilst holding children responsible for their criminal behaviour. A draft action plan for dealing with sexual offences and reducing sexual crimes has also been developed through a task team within the Department of Justice. Cabinet has approved this plan. It was not clear, however, how much this plan was networked in its conceptual stages.

The importance of research into the issue of sexual offences was emphasised as it enables us to plan appropriate preventive and management strategies and to budget around these strategies. The Deputy Minister stressed that we need to use the knowledge at our disposal to ensure practical, measurable and intelligent responses to child sex offences.

Deputy Minister Gillwald referred to the minimum sentences legislation. It was noted that this legislation does not apply to offenders under the age of 16 years and in cases involving 16 and 17-year-olds, the State must

focussed
on the future



show that there are compelling reasons to apply the minimum sentence. The work of the Law Commission Project Committee on Sentencing was also acknowledged.

The Child Justice Bill contains a section on sentencing child offenders. Deputy Minister Gillwald noted the importance of assessment for decision-making, and early intervention and treatment. The need for inter-sectoral initiatives, programmes and co-ordinated working together across sectors was stressed. The contribution of funding agencies and donors was also acknowledged.

Deputy Minister Gillwald thanked all of the donors who are making research and work into this field possible, and ended with a quote from former President Nelson Mandela, *“Any country, any society, that does not care for its children is no nation at all”*

Please see Annexure A for the Deputy Minister's complete address.

SESSION ONE > > > > > >

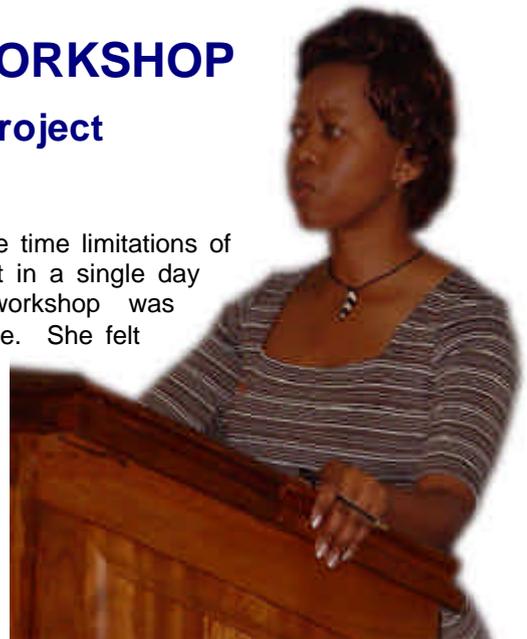
Mr Pieter Du Randt, Chief Director, Court Services, Department of Justice and Constitutional Development chaired this session.

OBJECTIVES OF THE WORKSHOP

Buyi Mbambo, Child Justice Project

Ms Mbambo acknowledged the time limitations of trying to deal with this subject in a single day and mentioned that the workshop was regarded as an exploratory one. She felt that the workshop should cover the following issues:

- To review existing projects & programmes that are presently being implemented in the “Child Sex Offender” field.
- To look at trends and statistics in this field.
- To identify the gaps in knowledge and services in this field. What are the problems? What are geographical factors that we should be considering? How to use the information to provide appropriate responses and services.
- To identify the role of the media in this regard and to ensure that it is constructive and informative.



Workshop with Service Providers for Child Sex Offenders



- To sensitise our Parliamentarians to the issues that have to be considered in respect of the child sex offender so that decision-making and debate is informed. To co-ordinate a strategy between media and government.
- To identify what else we need to do – this is a young field of intervention. How do we take what we have developed in this country and expand it to reach those areas where there are gaps.
- We need to look at the roles of the various government departments and how these roles can be integrated. How do we also integrate the activities of the NGO sector, the academics and the donors? The importance of partnerships between all role-players was stressed.
- We need to co-ordinate the various activities that are developing and who will be responsible for taking on this work.
- Outcomes – what are the other issues we need to be addressing?
- We need to develop recommendations that have continuity.

See Annexure B for the complete copy of Ms Mbambo's submission.

THE EXTENT OF THE PROBLEM

Ms Jacqueline Gallinetti, Community Law Centre, UWC

Ms Gallinetti spoke on the research “Juveniles and Sexual Offences: An analysis of some arrest and custody trends” conducted by Jean Redpath and funded by Sida, on behalf of the Children's Project, Community Law Centre, University of the Western Cape. The complete submission can be found in Annexure C.

International research conducted showed that 50% of adult sexual offenders begin their offending behaviour during childhood. This statistic underlines the importance of intervening as early as possible in the child sex offender's path of offending sexual behaviour. The Child Justice Bill (CJB) provides place in Diversion and Alternative Sentencing to deal with this, but it should be noted that the CJB doesn't differentiate between crimes. If we research this issue thoroughly we can respond appropriately. If we respond appropriately to child sex offenders we will not compromise the management of child offenders generally. In fact child sex offenders represent only a small proportion of child offenders.

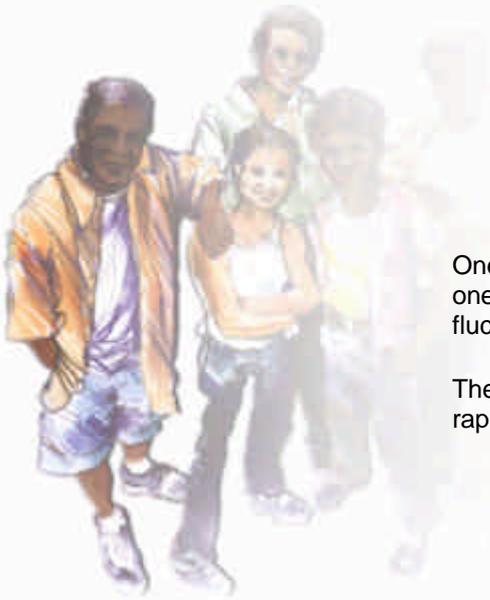
The research in this study was based in the W. Cape and the study relates to the commission of sexual offences against children. The area has 45 Child protection Units (CPUs), with the Goodwood CPU keeping a record of sex offences of child victims. The following are key statistics:

- 865 charges over 22 months – an average of 44 cases per month
- 18 - 30 age group was the largest age group
- Juveniles accounted for 201 offences, representing 23% of total arrests.



what lenses
are YOU looking
through?

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- Average of 9 juveniles per month – there was a large variation over the 22 months.

One of the trends identified was that there was an increase on average of one child perpetrator per three months. There was also a seasonal fluctuation with higher arrests from August to September.

The majority of the 865 crimes considered here were indecent assault and rape:

- 49% of perpetrators were charged with indecent assault, while rape accounted for 43% (373) of all charges. This sample represents 16% of all crimes reported in the Western Cape. Juveniles committed 25% of indecent assault cases, while juveniles committed 22% of the rape cases. Juveniles committed 35% more indecent assaults than they committed rapes.

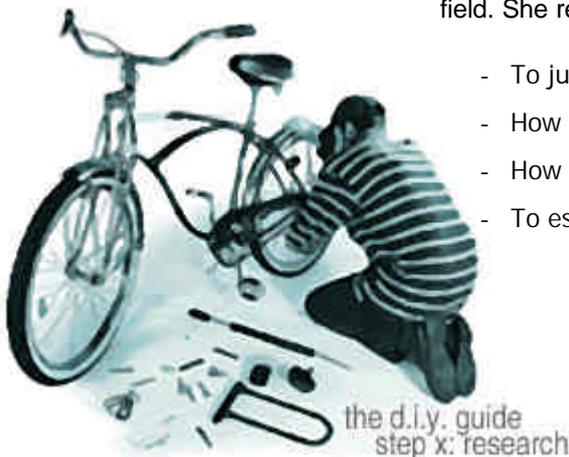
A comprehensive literature survey was not undertaken for the purposes of this report. However, comparative research studies were taken. Ms Gallinetti quoted a study carried out by the Red Cross Children's Hospital where it was discovered that in only 22% of cases was the age of the assailant known. However, of the known cases, the average age of the perpetrator was 20. Various other studies were also quoted. (See Annexure C for more detail).

In March 2001 the number of children sex offenders in custody amounted for 1.6% of the total number of sex offenders in custody. Unsented child sexual offenders have overtaken (increasing by 3 per month) sended child sex offenders in prison (increasing by 2 per month). 16 and 17 year olds make up the highest proportion.

Ms Gallinetti stated that there is a need for a national evaluation of programmes for child sexual offenders, their effectiveness and the potential for replication. The establishment of a national consortium was proposed to deal with this.

Ms Gallinetti concluded that the fact that the number of un-sented juveniles is consistently higher than that of sended juveniles since 1999 is worrying. If the aim is to keep children out of prison, it makes no sense that fewer are being sended, while more are spending time in prison un-sented. There is a need to determine whether juvenile offenders who do not go to prison are being dealt with by other options, such as Diversion. Ms Gallinetti echoed Buyi Mbambo's assertion that there is a need for a coordinated response to the problems faced in this field. She recommended a national evaluation of programmes:

- To judge their effectiveness
- How to improve them
- How to replicate them
- To establish a national consortium to develop programmes.





Questions and comments from the floor followed Ms Gallinetti's presentation.

- Joan van Niekerk of Childline noted that studies based on convicted sexual offenders are very limiting to the degree to which findings can be generalised to all sexual offenders, especially in a country which has such a low conviction rate. She also stated that many cases of child sex offending are never reported to the criminal justice system, as they are frequently committed within the family. Even when families do report them they are often turned away from the SAPS stations (the point of entry into the Criminal Justice System), as SAPS tend to regard these crimes as domestic matters or believe that the CJS cannot respond to these reports in a meaningful way. Childline's statistics show a higher number of cases.
- Ela Gandhi asked whether studies on convicted sex offenders had been conducted in prisons? Ms Gallinetti responded that there is not much research conducted in prisons in South Africa, but that there is an enormous need for this.
- Cathy Wood requested clarification on the statistics. These were provided.
- Farida Khan asked whether there was an explanation for the seasonal fluctuation in statistics? Ms Gallinetti responded that the fluctuation was difficult to explain, but could be related to the increased number of police officers on duty during these months.

SESSION 2 - POLICY & PRACTICE ISSUES > > > > > > > >

Susan Pienaar, Assistant Commissioner, SAPS chaired this session

LAW COMMISSION PROPOSALS – THE SPACE FOR PROGRAMMES & TREATMENT

Carrie Kimble, SA Law Commission

Ms Kimble stated that the Project Committee was committed to the long-term safety of children and communities and believed that sexual offending is not effectively dealt with through imprisonment; She did state, however, that efforts at treatment should be integrated into prison programmes especially





prior to the granting of parole. The risk is that offenders may attend these programmes simply to be granted parole. However attendance at a programme even with dubious motivation is better than no intervention and one hopes that the implementer of the programme will work on the issue of motivation.

She noted that sex offenders are not homogenous, and that they do need different sentencing options with regard to treatment and monitoring. She stated that child sex offenders should be integrated into programmes as early as possible after identification, and that voluntary participation in programmes should be encouraged. She stressed the importance of community-based programmes, but did mention that there are not enough of these at present.

Plea bargaining processes do offer some potential for securing participation in a treatment programme. Acquittal leaves the system disempowered with regard to participation in a programme or the protection of children and communities. Miss Kimble requested the Sentencing Council to apply their minds to the sentencing of child sex offenders as a specific group. Various options were suggested:

- Pre-trial as well as sentencing options have been considered.
- Parenting and child safety orders have been proposed to facilitate the linking of children to treatment programmes and monitoring and/or supervision.
- Drug and alcohol testing orders and dangerous sexual offender orders are also proposed, as in 90% of child abuse cases alcohol abuse is involved.

Ms Kimble ended with the fact that there is a pressing need to educate the public on treatment options for sexual offenders and to develop a long-term perspective on child and community safety. She also suggested that a multi-discipline inter-sectoral intervention should be legislated, although this would need additional funding.

THE POLICY ON THE DIVERSION AND PROSECUTION OF CHILD SEX OFFENDERS

Adv. Maggie Tserere (SOCA Unit – Nat. Prosecuting Authority)



Advocate Tserere mentioned the existence of the specialised sexual offences courts in so called “hot spots”. She stated that as service providers we could no longer ignore the growing problem of children who are sexually assaulting other children.

The National Prosecuting Authority developed policy directives on diversion for child offenders, as the National Constitution requires them.

These policy directives for child sex offenders are, however, inadequate and do not provide for diversion. The other problem is that prosecutors are not trained in the development of

diversion programmes. Despite this 10 000 diversions were organised for child offenders – however it is not known how many of these diversions were for sexual offenders.

Currently diversion is seen as inappropriate for rape, but also that this policy is in itself inappropriate.

It was noted that the policy directives are not extensive and informative enough for prosecutors in areas that do not have supportive resources and they need far more extensive assistance in applying diversion programmes. Prosecutors are experiencing problems with child offenders and their management. NGO programmes are utilised, however, the inability of NGO's to extend their services to rural areas due to lack of resources is acknowledged.

Assessment of the child sex offender is also problematic. The policy directives do have criteria for diversion – again these require revision as they are very general and sometimes exclude certain groups of children. For example, there have also been problems with street children – diverting them, without a fixed address. It is recommended that victims give their consent to diversion arrangements.

Advocate Tserere stated that we must have preventive programmes in place to prevent the development of child sex offending. In addition she called for programmes to be developed and properly resourced, especially in the rural areas.

Please see Annexure D for a more complete representation of Advocate Tserere's presentation.

THE PRACTICE REGARDING DIVERSION AND PROSECUTION OF CHILD SEX OFFENDERS

Ms Val Melis, Senior Public Prosecutor, Department of Justice, Durban Regional Court

Ms Melis stressed the importance of Restorative Justice, and explained its basic principles. She stated that Section 28(2) of the Bill of Rights in the Constitution emphasises the consideration of the child's best interests. However balancing the rights of the child victim and the child offender is a delicate and difficult process.

She pointed out that issue of diversion for rape is also a contentious issue. Sometimes going to trial is the easiest option but it does not always serve the best interests of the persons involved. When dealing with child sex offenders one needs to make the most appropriate intervention based on the individual. She remarked that one couldn't treat all offenders the same.

Ms Melis gave some practical observations:



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- Child sex offenders are often able to acknowledge the offence. This is the starting point for diversion. The process of diversion is therefore easier to organise.
- The programme has been successful – families support the child's participation in the programme as an alternative to prosecution and a criminal record. Consultation with victims, as well as families normally yields positive results.
- Crucial to the success of the diversion programme is an in-depth assessment of the child sex offender by a qualified person in order to assess risk. Socio-economic circumstances of the child are also significant. Many child offenders are themselves the victims of sexual abuse, or exposure to consensual sexual activity that has occurred because of the social context of the child.
- Appropriate programmes must be used for sexual offenders. Simple referrals to resources that routinely deal with diversion are not always appropriate. Rural communities lack these resources.

She concluded with the observation that it is important to acknowledge that acquittal results in no control over the offender whatsoever. Where this seems imminent diversion is an option that should be considered.

THE ROLE OF THE PROBATION OFFICER

Ms Thelma van den Berg, Department Social Development

Ms van den Berg indicated that the main aim of probation was to minimise the possibility of detention in a secure care facility via the use of diversion. Probation services want to see more Restorative Justice programmes running successfully.

She mentioned the importance of assessment as part of the probation officers task. The process of assessment is comprehensive and results in a recommendation being made to the Court. However other services may begin during the assessment process and may not necessarily exclude the consideration of other actions and options.

Ms van den Berg shared on the role of the probation officer, their functions, the aims and objectives of the reception, assessment and referral centre. She also gave a breakdown of the number of juvenile indecent assault and rape cases at Randburg, Wynberg, Johannesburg and Protea magistrate's courts.

She shared on the various programmes currently being used. These included:

- Victim Offender Conferencing
- Teddy Bear Clinic
- Bee Courtwise
- NICRO – Victim Offender Mediation & Family Group Conferencing
- Othandweni – Family Group Conferencing



Programmes at detention facilities:

- Dyambu (Bosaza Youth Centre)
 - ✓ Sexual offenders programme
- Walter Sisulu
 - ✓ SNAPP (skills, knowledge, aids, prevention and pregnancy)
 - ✓ Sexual awareness programme and HIV prevention
 - ✓ Self defence course for girls (Crime Busters)

Please see Annexure E for more detail.

Questions and comments from the floor followed Ms van den Berg's presentation.

- Ela Gandhi to Maggie Tserere – Has consideration been given to providing a programme in an area where the victim is not present. Response – this is not always possible. Ann Skelton responded that an effort was being made. She also noted that this could be integrated into the offender's diversion order.
- Farida Khan noted the need to train and empower prosecutors as well as the need to have a directory of resources. Ann Skelton noted that the Child Justice Project would compile a resource manual.
- Thulani noted the need for resources in order to have more information about the offence itself. Val Melis noted that continuing contact is maintained with the organisation to which the prosecutors have referred the young offender.
- Gugu Mthembu mentioned that the services offered in Durban are centralised and that there is a need to de-centralise services especially for poor families. Lizo Cagwe, from NICRO Eastern Cape responded that programmes are being run in outlying areas in the Eastern Cape. Volunteers are used in these decentralised areas, and the victim is informed that the offender is on a diversion programme.
- Question from the chair – how is the safety of the victim ensured if one is working in the community with child sex offenders. Response from NICRO – family group conferences and court orders are used.
- Joan van Niekerk noted that decentralising programmes is often more costly than providing transport money for young offenders. She suggested trying to place services and programmes close to main bus and train routes, to increase accessibility.
- Pat Lawrence asked how we measure success. How do we monitor this and compare it to the success in prosecution? Maggie Tserere answered that there is a problem with statistics – diversions are measured as withdrawals by the CJS. This is an aspect that we need to devote more resources to.



SESSION 3 – PROGRAMMATIC INTERVENTIONS: REALITIES, CHALLENGES AND GAPS

Mr Ashley Theron, Chief Director, Department of Social Development chaired this session.

PROGRAMMES FOR CHILD SEX OFFENDERS

Ms Linda Dhavicharan, Childline, KwaZulu-Natal

Ms Dhavicharan explained about a number of programmes, which are being run - for mentally challenged children, children below the age of 12 years, and children between the ages of 13-18 years.

They focus on group programmes, which is more cost effective than individual intervention. Family and individual work often complement these programmes. Referrals come from a variety of sources.

The assessment period is negotiated, usually between 6-10 weeks and uses a variety of sources of information. The purposes are multiple and include risk assessment, development of a plan of treatment and motivation to accept help. It includes the parents/caretaker of the child, who are informed about the process. Constructive confrontation is also used. Factors considered in the assessment process are multiple.

The treatment programme and the themes addressed in this programme were briefly outlined.

Several questions then followed. Farida Khan asked whether the assessment of the prepubescent child and post-pubescent child were the same. Linda answered that there were some differences. Linda was then asked how they deal with issues of relocation. She replied that this does not happen very often. Cathy Wood asked at what point the diversion decision is made – before or after assessment. Linda replied that the final decision is made only after the assessment is complete. Cathy then mentioned that they have difficulty getting children to acknowledge their behaviour and this prevents them coming into diversion programmes. Joan van Niekerk noted the special ambiance that they have developed at Childline, which is relaxing and child friendly. This seems to help.



one step
at
a time



TOWARDS EFFECTIVE INTERVENTION WITH CHILD SEX OFFENDERS

Ms Carol Bower, SAYStOP, Cape Town

Ms Bower began with an outline on SAYStOP. Very often child sex offenders “get away with” their behaviour. The Programme was developed to try to assist child sex offenders to take responsibility for their behaviour. The first programme was implemented in 1999.

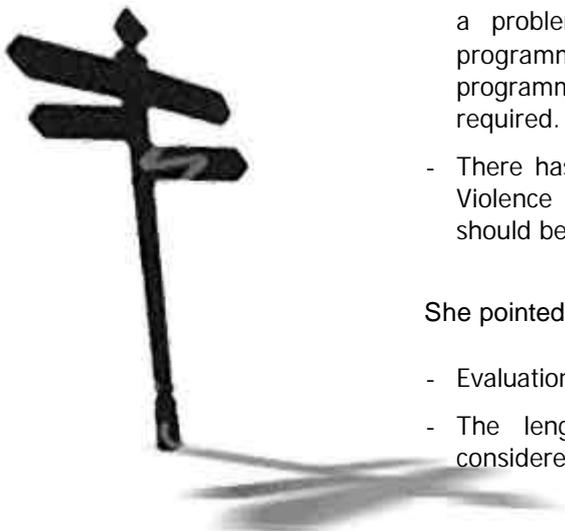
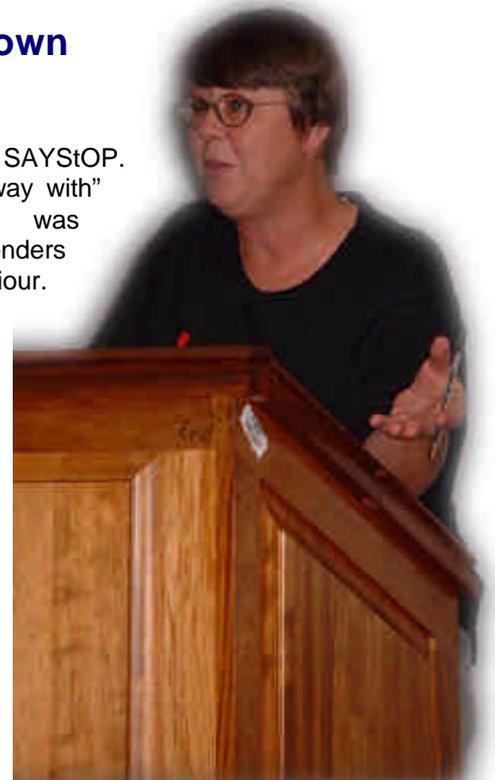
Young offenders between the ages of 12 and 16 are targeted. These include those who have committed a sex offence and first time offenders. There are basically 10 sessions. The programme focuses on very similar issues to those already outlined by the Childline programme. One has to consider the limitations of what can be achieved in a 10-session programme but balanced with the practicalities of placing children in a two-year programme.

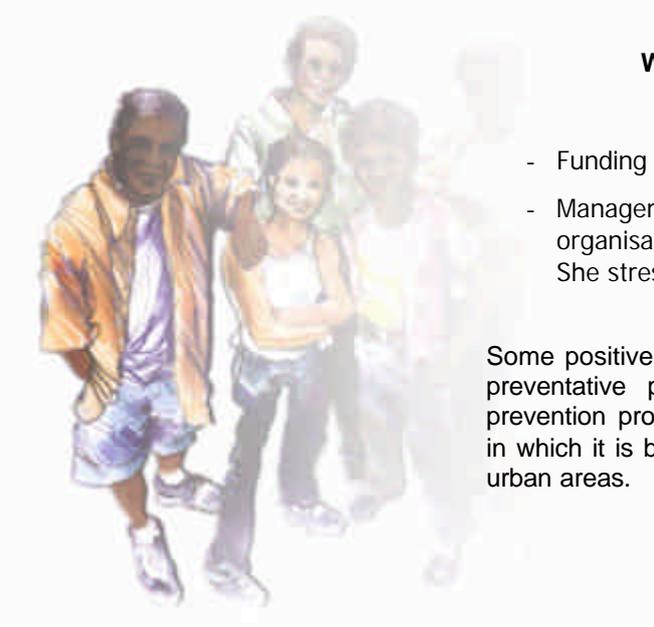
Ms Bower noted that there are some issues and problems related to the programme. These include:

- The need to evaluate the programme. One of the problems with evaluation, however, is the mobility of the child and the family.
- The appropriateness of referrals
- The length of the programme
- Problems have been experienced due to the pilot nature of the programme. These relate to the selection of participating children, as well as the training of the presenters and probation officers. The number of referrals and the distance between participants has been a problem. This led to it also being piloted as a residential programme – there are some logistical challenges here. The programme can, however, be adjusted to the setting in which it is required.
- There has been quite a strong “backlash” from the Women against Violence Sector and that if there is a shortage of resources these should be devoted to the care of victims rather than perpetrators.

She pointed out the existing challenges:

- Evaluation
- The length of the programme – Should the programme be considered as an assessment tool?





- Funding
- Management of the project has been difficult as a consortium of organisations that all have day-to-day commitments manages it. She stressed the need for a full time project coordinator.

Some positives include the fact that the SAYStOP programme also has a preventative potential and this material could easily be adapted for prevention programmes. It is also adaptable to the area and social setting in which it is being presented. It is equally effective in both urban and peri-urban areas.

THE CHALLENGES OF REPLICATING A MODEL FOR CHILD SEX OFFENDERS

Lizo Cagwe, NICRO, Port Elizabeth

Mr Cagwe shared that the pilot program was initiated last year by magistrates at Stepping Stones. 40 facilitators were trained, and programmes are run in both Afrikaans and Xhosa. However, few referrals have been made to the programme, with only 20 children referred. He indicated that they should have made a thorough needs analysis for the programme before it was initiated. (This reflects a greater need for training and education of workers within the criminal justice system). Mr Cagwe also indicated the need for a more detailed database, as at present few records, such as type of offence and age distinction, are kept at the police station.



There is also a need to carefully select the people who are trained to implement the programme. Prosecutors are not familiar with the broader diversion options – only knowing of (and referring to) NICRO's YES programme. Some of the role-players are also simply not prepared to be part of the assessment panel and many of them are not familiar with diversion options. It is suggested that all role-players should be part of the assessment team. This would include Justice personnel.

He indicated that the SAYStOP programme is also useful as a preventive programme. It is, however, difficult to implement the programme in the rural areas. Participants are scattered throughout the rural areas and they do not have enough resources to decentralise. They do make use of community structures, where possible, but do not give participants transport money, as this has been abused in the past.

PROGRAMMES FOR CHILD SEX OFFENDERS

Ms Jabu Sishuba, Dept. of Correctional Services

Ms Sishuba thanked the organisers for the opportunity to network. She mentioned that it was worrying that the number of young offenders and victims was on the increase. She did note that specific statistics are not readily available on sex offenders in prison, but that they were dealing with it. Figures, which she was able to give, included the following:

- 177 000+ prisoners
- 70 000 overpopulation in the prisons at present
- 57 000 unsentenced prisoners

- 69 050 young offenders, between the ages of 18 - 25
- 41 000 sentenced
- 27 000 unsentenced
- 4 188 children under 18 years
- 1 765 children sentenced

- Staff of 29 000 – not all are involved in rehabilitation. Only 1000 social workers, psychologists and chaplains are employed in the prisons. Community involvement is needed to assist in the management of offenders.

She stated that crimes are categorised too broadly and that they need more of a breakdown. Some of the crime statistics of the prison population included:

- 81 000+ aggressive crimes. This category needs to be broken down further
- 57 766 economic crimes
- 23 469 sexual crimes
- 4 493 narcotics
- Child sex offenders - Unknown

Ms Sishuba asked the question, "Why do people rape, or perform sexual offences? She used the example of Volgeman (1990), who argued that the desire for sex is part of the rapist's motivation, but rapists also use sex to fulfil non-sexual needs, such as the need for power, the need to dominate and the need to re-affirm masculinity.

As a service provider, the Department of Correctional Services was greatly challenged to come up with legislation and policy framework as well as strategies that would not only address remedial but also preventative aspects. In Correctional Services they had to review policies, strategies and intervention to attempt to address the current challenges



and to make sure that detention is humane and consistent with maintaining human dignity. Health care, education and recreation are all rights.

She noted that there is a need to balance safe custody and rehabilitation, as offenders will at some time be released. Some key issues included:

- To profile child sex offenders
- To develop programmes for them
- To address causal factors and focus on prevention
- To develop a comprehensive policy framework
- To conduct joint training
- To involve communities, including victims, in prevention programmes.

PROGRAMMATIC AND SERVICE DEVELOPMENT ISSUES FOR CHILD SEX OFFENDERS

Mr Brian Stout, Lecturer, University of Fort Hare

Mr Stout stated that effective programmes should consider the following:

- Risk classification – match risk assessment with the nature of the problem. There is a continuum of risk. Research indicates that many juvenile sex offenders do not repeat offend.
- Programmes should focus on criminogenic behaviour.
- Programmes should respond to the individual needs of the children.
- Programmes should be community based, which are more effective than programmes in institutions.
- Effective interagency work is the key to community safety issues.
- Treatment Modality – a variety of programmes should be used.
- Programme Integrity – Programmes must be properly run and have properly trained staff.

He informed the participants that as an increasingly global field we should learn from what is happening in other countries. Some important questions apply

- Does effective practice apply in South Africa – there is a need for adaptation.
- Assessment – child sex offenders need to be assessed in a comprehensive manner – this happens if you live in the right place. There are questionnaires that can be used – the actuarial model

Workshop with Service Providers for Child Sex Offenders



may be more reasonable to implement in SA.

- Custody versus community – what is achieved by sending children to prison. Prison culture encourages violence and sexual exploitation. Can community safety be assured in any other way?
- Training of staff – what is training building on? Is there sufficient base training on which more advanced training can be built.

Mr Stout's complete presentation can be found in Annexure F

Questions and comments to the panel followed Mr Stout's presentation.

- Why does government not fund these programmes? Has this been tried? Carol Bower responded that she agreed that this was work that the government should be funding and doing, but that there were gaps between policy and practice at present. Cas Salojee responded by noting that the work on the new funding policy has been prioritised. Lottery Funds should also be allocated with more discretion. Trade and Industry has to account to Parliament for funding allocation. It has also been requested that Social Development participate in the allocation of funds from the lottery. Jacqui Gallinetti noted that SAYStOP already works closely with the Department of Social Services.
- In terms of interagency co-operation Brian's responded that in Northern Ireland interagency co-operation is well entrenched. Every area has local child protection committees, which assist in the co-ordination of this work. Case Conferencing procedures were also intersectoral.



SESSION 4 > > > > > >

SUMMING UP OF THE MORNING SESSIONS: POSITIONING SOUTH AFRICA IN INTERNATIONAL TRENDS AND PRACTICES

Ms Joan van Niekerk, Childline KwaZulu-Natal

The Deputy Minister of Justice Cheryl Gillwald expressed support for the development of programmes for child sex offenders and this was encouraging. However it is essential that those involved in this field of work take cognisance of her comments about our need to work with the media and encourage them to be ethical, responsible and inform the public meaningfully about issues of child sex offending.

Buyi Mbambo's emphasis that the workshop was exploratory was helpful as each of the objectives that she outlined in her input does require at least a day's full workshoping process. Each of the objectives she outlined has relevance to work in this field and requires debate and input from the participants of this workshop.

Jacqui Gallinetti's paper underlined the difficulties in researching this area – comprehensive research has not been done and many organisations working in this field lack the resources for this. However it is noted that comprehensive research is essential for the planning, development, implementation and resourcing of these programmes.

The papers on policy development presented by Carrie Kimble and Maggie Tserere highlighted the fact that legislation and policy provide the framework within which programmes are developed and implemented. However it must be noted that some significant policy development occurs without consultation and therefore role-players in this field either may remain ignorant of the policy or fail to have a sense of ownership – or even experience the policy as not implementation friendly.

It is also of note that many of the programmes discussed at the workshop this morning have developed despite outdated policy and this says much for the creativity of the programme developers and implementers. It is doubtful that any policy will be perfect or fit every situation so it is essential that all role-players in this difficult field of work remain creative in adapting policy to fit the individual needs of each child rather than try and shape children to fit policy. Policies should thus be widely networked, allow for creativity and adaptation to specific situations where necessary.

Perhaps the most important gift we can give our children and the most important aspect of training should be that of lateral and creative thinking – the ability to problem solve in innovative and productive ways.

Val Melis' paper underlined the importance of intersectoral working together. In the early days of Childline's relationship with Val Melis and her team of prosecutors we viewed each other with great suspicion. Over the years we have learned the importance of communication, respect for



each other's viewpoints and inputs – even when we do not agree, as well as respect for and understanding of our different roles in helping children and families.

It is also seen that when it comes to children acknowledging their aberrant sexual behaviour the interaction between members of the criminal justice system and the child is as crucial as in any other relationships. These professionals also need to develop skills in relating to children and skills in constructive confrontation.

I also want to emphasise Val Melis' input on the importance of working together as a multi-sectoral team.

I would like to add to **Thelma van den Berg's** input on the role of the Probation Officer – this should not just be limited to assessment but also to monitoring and here I should also like to add that the roles of monitoring and "policing" any sexual offender, child or adult, should be separated, whether the monitoring is provided by the Probation service or Correctional Services. However these professionals should communicate and work as a team.

Looking at the input on the existing treatment programmes for child sex offenders, one is impressed by and respects the creativity of programme developers in the face of such limited resources.

However some further comments:

- Working with child sex offenders requires a special kind of person – we should be looking at careful selection of these role-players, rigorous training and ongoing support.
- Because work in this field is arduous and unpopular, professionals who provide these programmes require active debriefing and professional consultation.
- Relationship is a critical aspect of any work with children – but particularly with child sex offenders. Research into this population of children indicates that they are relationship deprived – how can we expect children to develop empathy and an appreciation of the impact of their behaviour on others if they are not dealt with in the context of an empathic and understanding relationship? This underlines the importance of selecting carefully the professionals who work in this field.
- These problems have to be properly resourced and implemented – failed sex offender treatment contributes to a high risk of re-offence. If we provide inadequate funding for these programmes, this will impact on their implementation and effectiveness – and then we are setting children up to offend again.
- We need to create more opportunities to share practice, content and experiences across the existing programmes to facilitate the development of best practice models that can be adapted to particular contexts and children as services to child offenders are expanded.

The paper by **Jabu Sishuba** underlined the enormous challenges faced by Correctional Services in providing services to sex offenders in general and child sex offenders in particular. This paper did not clarify existing services other than give us a glimpse of the overwhelming numbers in the





face of minimal resources. However it is essential for imprisoned sexual offenders to be given opportunities to participate in treatment programmes in prison to prepare the way for linking with and benefiting from those few programmes that do exist in a limited number of communities when they are released from prison.

Brian Stout's paper gave sound input on the basics of child sex offender treatment programmes. This useful input underlines the fact that child sex offender programmes need careful development and implementation and should be specific to the child and sex offence.

THE INTERNATIONAL CONTEXT

Work with child sex offenders – even at an international context is a relatively new field of work. Programmes around the world for child sexual offenders do not therefore have lengthy track records with extensive longitudinal studies of effectiveness attached to their evaluation. However there does appear to be agreement on the following issues:

- Child sex offenders should be actively targeted and involved in rehabilitation programmes in order to prevent the development of adult patterns of sexually exploitive behaviour. This contributes to the sexual, physical and psychological safety of children and communities. For those who object to the allocation of resources to the child offender it is important to remind them and ourselves that where we can prevent an incident of sexual offending this is far more economic and humane than dealing with victimisation after it has occurred.
- Normal childhood sexual experimentation should not be confused with sexual offending. The behaviour must be seen and understood in the context in which it occurs and looked at in detail.
- No programme has all the answers – programmes need to be adapted to the individual needs of each child and each child needs to be individualised. It is clear that some children already present with clear and well-entrenched patterns of sexual offending, whilst others have acted in an “out of character” and impulsive way.
- The programmes need to include the caretaker of the child involved. It is clear from the limited research we have that many child sex offenders come from families and communities that are unable to provide a context to promote and support healthy development. Caretakers are our partners in the treatment effort and have far more extensive contact with the child offender that we do as therapists.



SESSION 5 – GROUP DISCUSSIONS

In the last session of the day the participants divided into three groups to discuss some of the finer details of programmes dealing with child sex offenders. The following questions and answers were the result of the session.

1. What research has already been undertaken?

- There is relatively little research – Cathy Woods has profiled 20 children from the Western Cape, plus has documented the implementation of the SAYStOP programmes.
- Childline – National overview of statistics drawn from the crisis line 2000 (Childline discovered that 43% of calls involve children under age 18), two completed studies of adolescent sex offenders 1993, Rostan Chorn, University of Natal, Durban, 1994, Leigh Pettigrew, University of Natal, Pietermaritzburg, and currently Linda Dhavicharan, University of Natal Durban. All three dissertations are Masters Research Projects.
- SAYStOP has documented its process, for example Web Art 60 (in progress May '02)
- SAYStOP – Evaluation and documentation
- HIV/Sexual practices Research

2. What are the research gaps?

- Longitudinal studies / Programme Evaluation
- Regional gaps in basic information
- Attitudes of Professionals
- University training input – What do universities teach their students?
- Assessment of risk
- Factors and the kind of child management strategies that facilitate disclosure (and their impact on diversion)
- Children's legal rights - diversion / due process / denial
- Attitudes towards women
- Gang rape and child offending
- Can research into other fields be applied to the problem of child sex offending – e.g. gang research, HIV/AIDS?
- Statistical data - Large scale, multi-sourced, co-ordinated, contextualised
- Children under 10 years - Etiology
- Children living in residential care / children living on the streets
- Lack of co-ordination of research and large scale studies



3. What disciplines have been involved?

- People who should be involved, but that aren't incl. lawyers, social workers, psychologists
- Research efforts need to be co-ordinated
- GAP: EDUCATION. Education tends to be left out
- Child and Youth Care workers need to be involved, because there are high rates of abuse by children of children in Children's homes and Places of Safety

4. Is there a need for integration of the work done by different sectors?

- Yes – we could use the Schools of Social Work for this. However their training programmes also need to be re-developed and re-structured.
- NGOs tend to be fragmented, but implementation (and therefore integration) is a key factor in the roll-out of programmes
- Tertiary Institutes need to be involved to emphasise research, and to ensure reduction in gaps between policy and practice

5. Is there a need for more international comparative research?

- Yes, but it is not urgent
- SA research is more urgent
- We need to be cautious when adapting material
- We need to be confident that we can come up with our own, local responses

6. Partnerships and Funding

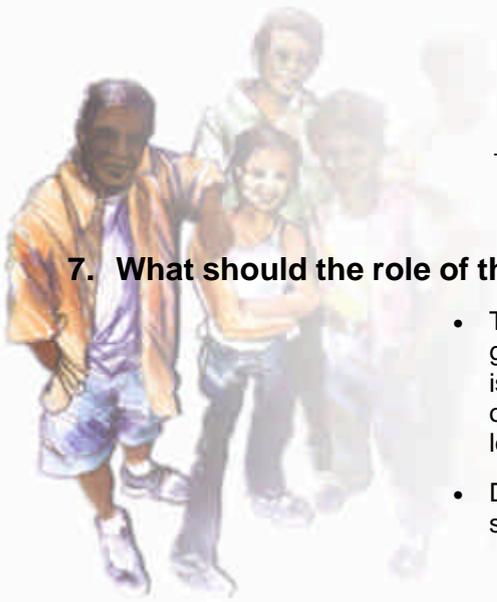
- There are no formal structures for government purchasing services to/from NGO's (that is, contracting services)
- There are few clear guidelines for NGO's to develop programmes and to hand them over to government

National

There are collaborations, which include:

- SAYSTOP consortium partnership
- A formalised contract with the Department of Social Welfare – Western Cape
- Childline's relationships with Welfare – there are partnerships with DPP but not clear whether they are formal
- NICRO has an existing partnership with the Government especially with the Department of Social Development
- Childline has a relationship with both Welfare and Prosecution in KZN





7. What should the role of the International Donor be?

- This is a secondary role, as they do not fund long-term projects. It is government's role to fund the programmes, as these deal with social issues, and not the development of programmes. International donor organisations would fund research, development, and evaluation levels.
- Donors can support projects and help to facilitate how service delivery should run.

8. What are the roles of South African Donors?

- We need to investigate their role into the future, as we become less reliant on international donors.

9. Are we able to use International experience in this field?

- Yes, as there are similar programmes running in both the USA and Europe
- We should use their expertise to assist us
- The American Embassy has a video conferencing exchange for people working with child sex offenders
- We are aware that these First world models are not appropriate to the South African context as they stand. We do need local expertise to be able to use and balance the expertise, which is available internationally.

10. What are the existing strengths we have in programmes & how do we build on these?

- Sharing of resources – we should not need to reinvent the wheel
- We have trained people and programmes that work. We should use both to develop criteria in replicating and developing programmes.
- We have different types of programmes looking at children's different needs, for example long term vs. short-term programmes. This diversity is important in developing new programmes.
- Probation officers are available throughout the country
- Some of the programmes do have preventative measures
- Diversion options exist already. These can be modified for child sex offender programmes.





ANNEXURE A

Address by Ms C.E. Gillwald (MP)

**Address by the Deputy Minister for Justice and Constitutional
Development Ms Cheryl Gillwald (MP)
South African Law Commission, Pretoria
Thursday, 4 April 2002**

Honoured guests, members of the legal fraternity, members of the extended justice family, ladies and gentlemen. Thank you for inviting me to be with you today.

Children are this country's most precious assets. Ironically, this special status does not automatically afford them the protection we all know to be their birthright. On the contrary, we are all too aware of how vulnerable they are to the vagaries of poverty, discrimination, abuse, violence and drugs to name but a few of the threats to the security of the child with which we have all sadly become familiar.

As a society and as Government, we need to make a particular effort to provide a living environment that is conducive to normal and happy growth and development for the child. Children must be valued, nurtured and prepared for the many challenges that will face them as adults of the future.

These values have held sway amongst African leaders over the centuries and in 1995 a newly democratic South Africa joined its continental and international counterparts by ratifying the United Nations Convention on the Rights of the Child. By including a dedicated section on Children's Rights in the South African Constitution in 1996 and by ratifying the African Charter on the Rights and Welfare of the Child in 2000 our Government clearly demonstrated its commitment to entrenching in our country a human rights framework that is tailor-made for the special needs of children.

Given this new framework and ethic, what then should our response be when a child hurts other children? These situations almost always throw society into a dilemma. We know that children should be loved and valued and yet, how should we respond when one of our children hurts another of our children? This is a difficult enough question in itself, but it is compounded when the hurting includes behaviour of a sexual nature. We are inclined not to see children as sexual beings — not until adolescence, at any rate. But there seem to be indications that young children — pre-pubertal children — are also committing sexual offences that go way beyond the normal bounds of sexual experimentation.

Recent months have seen a dramatic increase in media coverage of the sexual abuse of children, and the issue of children who commit sexual offences against other children has been highlighted. The April edition of *Marie Claire* magazine published a feature article dedicated to the topic of children committing sexual offences against other children, and on Human Rights Day, a thirty-minute feature on the same topic was aired on the SABC's radio programme, *Women Today*. These matters are no longer the preserve of academic journals and specialist tomes — they are debated hotly in the popular press and analysed — often in lurid detail — on our television screens.

I am not suggesting for a moment that we should take our lead from media reports. Indeed, such reports should be treated with some caution, and sensationalism is rarely helpful. However, the attention that this issue is receiving indicates a high degree of public interest in the matter and the debate - to a greater or lesser extent - is on everyone's lips. If sensitively and transparently managed, I believe this creates an opportunity to ensure that the work already done in this field is built upon and strengthened. This workshop is itself an example of an opportunity being grasped, bringing together as it does experts and service delivery organisations, government policy makers, international organisations and donor agencies. Allow me now to express the appreciation of my department for your presence here today.

I would caution though against the temptation to reinvent the wheel. Much good work has been done in the field, with pioneering organisations (represented here) such as *Childline* and the *Teddy Bear Clinic*, and programmes such as *SAYSTOP* and *CATTS*. I think it is fair to say, though, lacking in these various initiatives has been the element of co-ordination with programmes having developed from the ground, as the needs arose. This workshop offers an opportunity for improved integration and co-ordination between the various role-players. We all know and appreciate the benefits derived from sharing knowledge and experiences. Initiatives like this will surely result in renewed vigour, improved capacity and strengthened programmes on the ground.

Workshop with Service Providers for Child Sex Offenders

Government too, has progressed admirably in respect of policy and practice relating to sexual offences against children, On 14 November 2001 the National Assembly passed a motion calling for the establishment of a Task Group on Sexual Abuse of Children. The members of the Task Group are drawn from different political parties and disciplines. Five portfolio committees and two joint monitoring committees are represented on the Task Group. Mr Gas Saloojee (MP) was unanimously elected as chairperson, and he took responsibility for setting up a series of special hearings at which the relevant government departments and other role-players briefed Parliament about their varied experiences in the field. These briefings detailed the many approaches utilised in combating the sexual abuse of children and described the legislative frameworks within which these programmes operate.

The Department of Justice and Constitutional Development proffered a substantial submission, some aspects of which I would like to highlight here today. With regard to policies and legislation, the Department highlighted the South African Law Commission's (SALC) review of Sexual Offences legislation that is currently underway. A discussion paper and draft Bill was recently made public.

The discussion paper contains a draft Bill that embodies some of the progressive recommendations made by the Commission in respect of reforming the law as it pertains to sexual offences. Although the discussion paper concentrates on aspects of the procedural law in relation to sexual offences, the Bill that accompanies the discussion paper includes some substantive law provisions.

The final report will contain recommendations to transform both the substantive law and procedure relating to sexual offences. This report will be submitted to the Minister for approval before proceeding to Cabinet and then on to Parliament for final vetting and processing. I will not go into any further detail about the Sexual Offences law reform process, as a researcher from the Law Commission will be addressing you on that later in today's programme.

The Department of Justice submission to the hearings also included a reference to the Child Justice Bill and I will quote the following:

The Child Justice Bill, which deals with child offenders, has been approved by Cabinet and will be debated in Parliament this year. The Bill provides a balanced approach to the issue of children who commit crimes and allows for each child to be treated as an individual. The Bill calls for a flexible approach to this issue. This implies that serious offences will be dealt with firmly and appropriate attention will be given to the rights of victims and communities. At the same time children who are themselves vulnerable and who have committed less serious crimes, will be guided away from the activities and behaviours that got them into trouble in the first place. The Bill hopes to guide these young individuals towards more responsible patterns of behaviour. A complex area in the protection of children's rights is the issue of what to do when children commit offences against other children. The competing interests are difficult to resolve, and a carefully thought through response is required.

The submission went on to make the point that work in this field is relatively new in South Africa. We need to further develop appropriate responses in such situations and this workshop will, I am certain, prove to be a powerful vehicle for such development.

In respect of policy issues, the department's submission included information about the recent establishment of the Inter-departmental Management Team on Rape and Sexual Offences. The National Prosecuting Authority leads this intersectoral process. In February 2002, this team approached Cabinet for approval of a draft action plan for a reduction in the incidence of rape. It also made proposals in respect of improving the sectoral responses to rape and sexual offences.

The submission made by the Department of Justice and Constitutional Development also included some interesting information about minimum sentences and once again I quote from the hearings

Parliament unanimously adopted provisions on mandatory minimum sentences in the 1997 Criminal Law Amendment Act. This Act was intended to ensure both increased severity and consistency in the sentences imposed for serious crimes. It requires that where specific factors are present in certain offences, such as the rape of a child under the age of 16 years, specified sentences, in this instance life imprisonment, be imposed. Only if the court finds 'substantial and compelling circumstances' justifying a lesser sentence may it depart from the prescribed minimum sentence.

Workshop with Service Providers for Child Sex Offenders

When the proposed legislation was debated in Parliament, arguments were raised that offenders under the age of 18 should not be subjected to the provisions of the Bill. Parliament partially conceded this point, and the minimum sentences legislation does thus not apply at all to accused persons under the age of 16 years. Whilst 16 and 17 year olds are treated differently from adults - they may only be given the minimum sentence if the State can show substantial and compelling circumstances why the minimum sentence should be imposed, rather than a lesser sentence. In the cases involving 16 and 17 year old offenders that have come before the High Courts, the courts have generally not applied the minimum sentence, indicating that in the case of young offenders they prefer to use their discretion in setting an appropriate sentence.

It is accepted that prescribing minimum sentences is not necessarily the ideal way to regulate sentencing. Government accordingly announced that the legislation would be a temporary measure and requested the SALC to produce a comprehensive report on a new sentencing framework for South Africa. The Child Justice Bill contains a chapter on sentencing child offenders and the intention is that children will, in the future, be sentenced in terms of that legislation.

The submission contained other useful information and a full text of the submission is available on request from the Directorate: Children and Youth Affairs.

The Child Justice Project located in the Directorate: Children and Youth Affairs also made a submission at the Parliamentary hearings. That submission focussed specifically on the issue of children who commit sexual offences against other children. It stressed the importance of an early intervention and prevention approach. The submission also raised a word of caution in respect of "criminalizing" sexual abuse by children. I will again refer to a transcript reference:

Criminalising the behaviour of child sex offenders has the potential of driving such behaviour underground. Shame, guilt and the stigma associated with sexual offences militate against the criminalisation route. Diversion for many of these children into appropriate programmes would be an apposite way to deal with them. This however, does not mean that children who commit sexual offences should never be taken through the criminal justice system. Under the current law this is possible and in the proposed child justice system it will continue, but we need to be careful when assessing children who have committed sexual offences. We must be alert to the child's developmental capacity, we must take note of the age difference between the affected children and we must ensure that children's therapeutic needs have been met when they have been victims of sexual abuse, whatever the age of the perpetrator

When an assessment is done a distinction should be drawn between a 'calculated sexual act' and a youthful exploration, which is part of the child's development. For the sake of the victims and other potential victims we need to change this pattern of behaviour through treatment. Early intervention and treatment can be more effective for many child offenders because children are not yet set in their patterns of sexual behaviour. It is easier to change the behaviour patterns of children than it is to impact on the entrenched behavioural patterns of adults. We have all therefore, to conclude that providing the right treatment services early enough to children who commit sexual offences becomes a major component of a strategy to prevent child sexual abuse.

Other government departments and civil society institutions made submissions to the Task Group on Sexual Abuse of Children. The Task Group intends to table its final report in the National Assembly during the upcoming parliamentary session this year. The report will provide comprehensive recommendations for future implementation initiatives in this exceedingly challenging field of work.

This is a field of work that brings together a number of departments including the Departments of Justice, Social Development, Health, Education, Correctional Services and the South African Police Services. An integrated plan of action is the only appropriate response to providing a seamless service for our child clients — both victims and offenders. It is extremely encouraging to see such a wide range of relevant service providing departments present at this workshop today.

I would like to thank the Child Justice Project for conceptualising and organising this workshop. The project is a United Nations technical assistance project, situated in the Directorate of Children and Youth Affairs, and it is funded by the *Swiss Development Co-operation* and the *UNDP*.

International organisations and donors have a vital role to play in the ongoing expansion of our

Workshop with Service Providers for Child Sex Offenders

specialised services to vulnerable groups. A number of international organisations, including *UNICEF* and *Save the Children* have committed their institutions to building a Global Movement for Children. This Global Movement has mobilised support all over the world for a 10-point agenda that targets the protection of children's human rights.

In May this year, the UN General Assembly's Special Session on Children is to take place. This important session will be attended by some of the government officials attending here today. The issue of child sexual abuse should be given priority. The need for appropriate programmes for prevention and early intervention should also be stressed.

UNICEF's State of the World's Children Report, 2002, has recently been released. Our former president, Nelson Mandela is quoted in the introduction to the report as saying

Any country, any society, that does not care for its children is no nation at all.

Let us affirm our nationhood by making every effort to care for our children, and in the process, let us teach our children and their families to care for one another.

I thank you.



ANNEXURE B

Address by Ms Buyi Mbambo

Child Justice Project

CHILD JUSTICE PROJECT

**A UN Technical Assistance Project Of the Government Of South Africa
Directorate: Children And Youth, Dept Of Justice and Constitutional Development**

SUBMISSION TO PUBLIC HEARINGS ON SEXUAL ABUSE OF CHILDREN BY THE CHILD JUSTICE PROJECT, A UNITED NATIONS TECHNICAL ASSISTANCE PROJECT TO THE GOVERNMENT OF SOUTH AFRICA FOR THE IMPLEMENTATION OF THE PROPOSED CHILD JUSTICE LEGISLATION

Ms Buyi Mbambo, (012) 315 1735/1204/ 1205 bmbambo@un.org.za

1. Introduction

This submission seeks to address the issue of protecting children from sexual abuse by treating child sexual offenders. The submission addresses:

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

2. An early intervention and prevention approach towards child sex offenders

International research evidence indicates that between 50% and 65% of adult sex offenders commit their first sexual offences as children and young persons. Children who commit sexual offences are typically aged between 13 and 17 years and most of them are males. There are anecdotal reports of children younger than 13 committing crimes and courts are reporting cases involving children under the age of 13, and in practice such cases are usually withdrawn on the grounds of age on the grounds of the young age of the child. However, the matter of children under 13 committing sexual offences in South Africa is an area for urgent research and analysis.

Although there is a the lack of clear research evidence on the extent of and issues around children committing sexual offences in South Africa, one cannot ignore the fact that there is an increase in the number of reported cases of a range of sexual crimes committed on children by other children, as organisations such as Childline are finding through their crisis line. However if one looks at the overall sex offending population that includes children and adults - both waiting trial and sentenced, it is evident that children still constitute a very small percentage of the sex offending population. This provides us with a window of opportunity to intervene effectively with children. For example statistics from the Department of Correctional Services for the month of October 2001 indicate that there were 292 children between 13 and 17 years awaiting trial for sexual offences. In the same category there were 7447 adults. During the same month there were 233 children sentenced for sexual offences as compared to 14303 adults during the same month.

When it comes to understanding sex offending as it pertains to children, it is important to note that although children may know that hurting other children is wrong, they do not always understand the implications of sexual acts since sexuality is part of the adult world. Often children do not get adult guidance on sexual behaviour, what is appropriate and problematic sexual conduct. When children commit sexual acts on other children, they might be acting out things they have observed in their homes, in their communities, on TV. At times children commit sexual acts as a way of acting out things done to them by adults or older children. Studies attest to the fact that when younger children are subjected to early sexual victimisation it increases their probability of engaging in sexually inappropriate behaviour. In such cases

there is a thin line between a victim and a perpetrator of a sexual act. Childhood sexual victimisation has a devastating impact, which includes internalisation of inappropriate behaviours and acting - out disorders, and there should be recognition that effective prevention and early intervention and treatment can end the cycle of both victimisation and perpetration.

3. Criminalising child sex offenders

The criminalisation of child sex offenders has potential of driving such behaviour underground due to the shame, guilt and stigma associated with sex offenders. Diversion for many of these children into appropriate programmes would be an appropriate way to deal with them. This however, does not mean that children who commit sexual offences should never be taken through the criminal justice system. Under the current law this is possible and in the proposed child justice system it will continue, but we need to be careful when assessing children who have committed sexual offences — to be alert to the child's developmental capacity, the age difference between the children as well as looking at whether children's therapeutic needs have been met if they have been victims of sexual abuse.

Age is also another factor to consider when dealing with child sex offenders. Children who commit sexual offences may be developmentally delayed, e.g. a child whose chronological age is 16 but who is developmentally functioning as a 12 year old. This phenomenon is common especially among child offenders. In such cases it is important that professionals who deal with these children are especially trained in assessments and when making decisions about child sex offenders the distinction between a child's chronological and developmental age is quite important. The Child Justice Bill address age and criminal capacity by proposing that:

- A child who at the time of the alleged offence is below the age of 10 years cannot be prosecuted.
- A child, who at the time of the alleged offence is between 10 and 14 years of age, is presumed not to have had the capacity to appreciate the consequences of his/her actions, unless it is proven beyond reasonable doubt that at the time of the alleged offence the child had such capacity. This allows child sex offenders between these ages to be treated cautiously and to be directed to appropriate treatment programmes instead of being criminalized.
- Between the ages 14 and 18 there is an assumption of criminal capacity but several factors should be taken into consideration when making decisions for the criminal justice system, such as the age difference between the offender and the victim, developmental age, past relationship between children, etc. In such cases the discretion of the professionals who do assessments and those who make decisions is very important.

When an assessment is done there should be a distinction between a "calculated sexual act" and childhood/youthful exploration, which is part of the child's development. For the sake of the victims and other potential victims we need to change this pattern of behaviour through treatment. Early intervention and treatment can be more effective for many child offenders because children are not yet set in their patterns of sexual behaviour, it is therefore easier to work with them to change their behaviour patterns than it is to change adult patterns and formed habits. Therefore providing the right treatment services early enough to children who commit sexual offences becomes a major component of a strategy to prevent child sexual abuse.

4. The Child Justice Bill

The Child Justice Bill that deals with children accused of crimes has been approved by the cabinet and is due for parliamentary debates this year, 2002. The Bill allows for children who commit crimes to be dealt with in an individualised way. It also allows for a balanced and flexible approach to dealing with children in that based on the individual assessment of circumstances surrounding the child and the crime, children could be afforded opportunities to learn appropriate behaviours through programmes but also allows children who have committed crimes to be dealt with firmly by the criminal justice system. The Bill also promotes the rights of the victims of crimes by children through the use of restorative justice processes.

The Bill places emphasis on the use of the diversion and alternative sentencing. Diversion refers to the channelling of cases away from the criminal justice system into programmes that make children accountable for their actions.

The Bill further sets out a range of diversion options by proposing three levels of diversion for children aged 10 years and older. Level one diversion includes less intense interventions that can be implemented through a range of orders issued at the preliminary inquiry.

Level two diversions include any options under level one. In this case the maximum period of diversion should not exceed six months. The diversion options at this level are more intense than those at level one.

Level three diversions are more intense and they can only be applied in cases of children of 14 years or older if the court believes that upon conviction of the child would impose a sentence involving detention of the child for a period not exceeding six months. Options at this level include referral to counselling or therapeutic intervention for treatment of problematic behaviour patterns.

Seen in this way, diversion offers an opportunity to children who have committed sexual offences as they can be diverted to therapeutic programmes as level three options. Again any level can be an appropriate option depending on the nature and the circumstances around the child and the offence.

- Alternative sentencing applies to those children do not get diverted, so they stand trial. The Bill allows for programmes to be used as alternative sentencing options.

As proposed in the Bill, child sex offenders could be sentenced to a community-based programme to receive specialised therapeutic and treatment intervention in conjunction with any other option. Also a sentence involving correctional supervision for some child sex offenders could be imposed, as is the case in the current system.

5. Current use of programmes to deal with child sex offenders

The Child Justice Project is conducting an audit of programmes for diversion and alternative sentencing. The audit has identified that there is a gap in the availability of specialised programmes for child sex offenders. Two examples of programmes that are currently used, as diversion and sentencing of child sex offenders are Childline in Durban, KwaZulu-Natal and SAYStOP in the Western Cape.

- Childline

The majority of child offenders in the Childline programme are referred by the criminal justice system. The programme is used as a diversion option as well as a community based sentence involving correctional supervision. The programme works through contractual arrangements between the child and the courts and there are two main forms of contracts:

- Diversion contracts (prior trial) where the child offender is offered an opportunity of having the charges withdrawn subject to strict conditions.
- Probation or Correctional Supervision contracts when a child has gone through a trial and has been sentenced to Correctional Supervision and/or attendance at a treatment programme as a condition of a suspended sentence. Sometimes children go through trial and receive a custodial sentence and are referred to the Childline programme on parole.

Childline has qualified counsellors and therapists who work with children individually, through group therapy and also with the caretakers and families of the children. Working with the families is a critical component for reintegration. They also interact with a number of sectors such as Justice, Police and Correctional Services. Childline practitioners have recognised that the individual needs of the child determine the duration of the intervention. Assessment alone is a lengthy process, let alone the therapeutic intervention.

- SAYStOP

The SAYStOP programme focuses on child sex offenders who are under the age of 18. There are stringent entry requirements into the programme - children should be first time offenders, no violence should have been used when the offence was committed, to mention just a few. Children go through a programme consisting of 10 sessions covering aspects such as crime awareness, sexuality, understanding your body, socialisation, gender and sexual myths, etc. SAYStOP has also done an evaluation of their model and found that although it works for many children, there are children who do not fully benefit from it, attending the sessions serves as an assessment and an intensive therapeutic intervention could be required to address the needs of the child. This is a component that is lacking for this programme.

There are a few other programmes that deal with child sex offenders such as that offered by the Johannesburg Child Welfare Society. What should be noted is that existing programmes are located in a few big cities, and not accessible to many children who could benefit from them. Many provinces do not have such programmes that could respond to the treatment needs of child sex offenders. Specialised programmes of this nature also require a healthy injection of funding as well as trained and committed staff. Working with child sex offenders is a relatively new and young field in this country but it is essential if child sexual abuse is to be curbed in the long run.

The Child Justice Project recognises the need to develop this field and as a result is organising an exploratory workshop with service providers to look at amongst other things, research and information gaps, programmatic as well as geographic gaps, to develop a coordinated strategy for replication and expansion of effective models, to look at funding issues and other issues pertaining to working with child sex offenders such as training and support for service providers. The outcomes of the workshop include getting an understanding of the extent of the problem and issues pertaining to young sex offenders; developing a coordinated plan for bridging the programmatic and service gaps in the sector; developing a coordinated plan for addressing research gaps so that the development of programmes could be data-driven and relevant as well strengthening partnerships between government, civil society and donors and integration of plans into government strategy, to mention just a few.

6. Conclusion

To conclude, this submission is pleading for an approach that looks at child sex offenders as a unique population, with special needs that can be addressed through early intervention treatment efforts. Adopting such an approach will have benefit for the offenders themselves, potential victims and society a whole. The systemic approach to preventing child sexual abuse should be adopted and this involves not just children who commit these crimes, but their families and other systems they interact with, schools, their peers and the media. Although this is a relatively young and new approach in this country, there is evidence to suggest that treatment and prevention will prevent child sex offenders from becoming adult career sex offenders, which will put more children at risk of being abused in the future. This approach does not allow children to "get away with their actions" as they will be appropriately dealt with through avenues provided for in the legislation. Indeed some children may need to be prosecuted and serve custodial sentences but even then there is a need to ensure that whilst in custody they receive the necessary treatment that prepares them for their integration back into their families and communities as responsible, caring and non-abusive citizens. What is required is a balanced and careful approach that will ensure the protection and safety of children in the future.

APPENDIX

PROPOSALS OF THE CHILD JUSTICE BILL REGARDING DIVERSION AND ALTERNATIVE SENTENCING

The Bill places emphasis on the use of programmes for diversion and alternative sentencing. The purposes of diversion include:

- Encouraging the child to be accountable for the harm caused;

- Meeting the particular needs of the individual child;
- Promote the reintegration of the child into family, community and society;
- Provide an opportunity of those affected by the crime to express their views on the impact of the crime on them
- Prevent stigmatising the child and prevent adverse consequences flowing from being subject to the criminal justice system and preventing a child from having a criminal record.

The Bill further sets out a range of diversion options by proposing three levels of diversion for children aged 10 years and older. Level one diversion includes less intense interventions that can be implemented through a range of orders issued at the preliminary inquiry. Examples of orders include compulsory school attendance orders, family time orders, placement under guidance or supervision and a compulsory school attendance order. These orders are meant to encourage positive behaviour in children and are meant amongst other things to support parents in their parenting and guidance functions. Even though these orders may look uncomplicated, they are serious and serve a serious function. There has to be an individual in the community or a community-based organisation or a community leader to supervise the implementation of these orders.

Level two diversions include any options under level one. In this case the maximum period of diversion should not exceed six months. The diversion options at this level are more intense than those at level one. They include, for instance, compulsory attendance at a specified centre or place for specified vocational training, performance of duties without remuneration for the benefit of the community under the supervision of an individual or an institution. Referral to a Family Group Conference or a Victim Offender Mediation programme is also an option at this level

Level three diversions are more intense and they can only be applied in cases of children of 14 years or older if the court believes that upon conviction of the child would impose a sentence involving detention of the child for a period not exceeding six months. At this level, diversion options include referral to a programme with a residential component, performance of duties without remuneration and referral to counselling or therapeutic intervention for treatment of problematic behaviour patterns.

Seen in this way, diversion offers an opportunity to children who have committed sexual offences as they can be diverted to therapeutic programmes as level three options. Again any level can be an appropriate option depending on the nature and the circumstances around the child and the offence.

Alternative sentencing applies to some children do not get diverted, so they stand trial. The Bill allows for programmes to be used as alternative sentencing options. In the proposed system sentencing has the following purposes:

- Encouraging the child to understand the implications of and be accountable for the harm caused;
- Promote an individualised response that is appropriate to the child's circumstances and proportionate to the circumstances surrounding the harm caused by the offence;
- Promote the reintegration of the child into the family and the community;
- Ensure that any necessary supervision, guidance, treatment or services, which form part of the sentence, can assist the child in the process of reintegration.
- When viewing sentencing in this way, child sex offenders could be sentenced to a community-based programme to receive specialised therapeutic and treatment intervention in conjunction with any other option. Also a sentence involving correctional supervision for some child sex offenders could be imposed, as is the case in the current system.



ANNEXURE C

Address by Ms Jacqui Gallinetti

Community Law Centre, UWC

***Juveniles and Sexual Offences:
An analysis of some arrest and custody trends****

***On behalf of the Children's Project, Community Law Centre, University of the
Western Cape***

***Jean Redpath
2 April 2002***

*Please note that this is a work-in-progress. Statistics on arrests of juveniles for the whole of the Western Cape have been requested from the South African Police Service. Should they be available, they will be incorporated in the final document. Insights, comments, corrections and suggestions on this first draft are welcome; please e-mail redpath@iafrica.com

Table of contents

Executive Summary	35
Arrests by the East Metro CPU	36
Analysis by age of alleged perpetrators	36
Analysis of juvenile and adult alleged perpetrators: variation with time	37
Analysis by type of offence: indecent assault and rape.....	38
Some Comparative Research.....	40
'Social Fabric Crime in the Northern Cape'	40
Selected findings of other research	41
Sex Offenders in Custody	42
All Sex Offenders	42
Juvenile Sex Offenders	43
Conclusions	46

Executive Summary

- The number of juveniles sentenced for sexual offences in South African prisons is decreasing.
- The number of juveniles in custody for sexual offences, but not sentenced, is increasing.
- Since January 1999, more juveniles in custody for sexual offences are un-sentenced than sentenced, which is the reverse of the norm.
- The number of juveniles in prison at any time 1998-2001 did not exceed 700: less than 4% of sexual offenders in prison are juveniles.
- The number of all sexual offenders in prison is increasing at a rate of 138 a month.
- Juveniles were arrested in 23% of arrests by the East Metro CPU for crimes against other juveniles,

with large monthly fluctuations.

- The number of such crimes committed by juveniles is increasing, but at a lower rate than for adults.
- Juveniles were arrested for a larger proportion of cases of indecent assault than their average for all crimes recorded.
- Juveniles were arrested for a smaller proportion of cases of rape than their average for all crimes recorded.
- The 18-30 age group is responsible for most rapes and contributes more to such crimes than predicted by their share of the population.
- A study on social fabric crime in the Northern Cape is consistent with these East Metro findings.

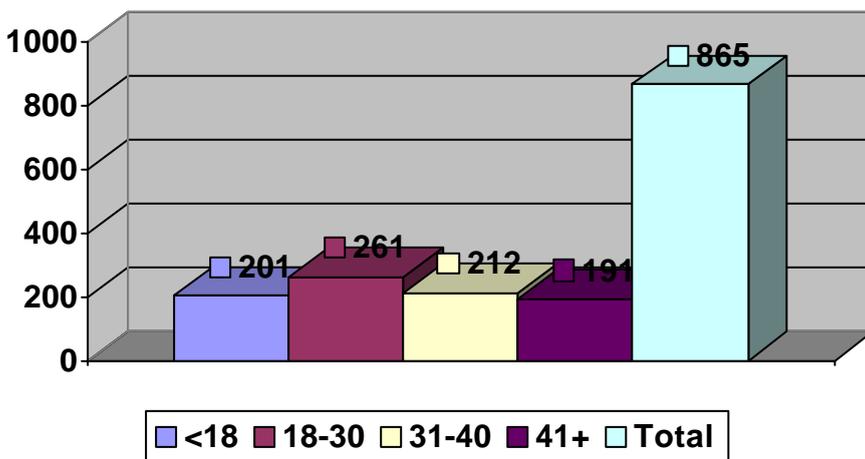
Arrests by the East Metro CPU

There are 45 Child Protection or Family Violence, Child Protection and Sexual Offences Units (CPU's and FCS's) in South Africa. There are two in the Western Cape, one located in Mitchell's Plain, which serves the West Metropole of the Western Cape, and the other at Goodwood, which serves the East Metropole. The Goodwood CPU has, since April 2000, kept a handwritten record of the ages of all alleged perpetrators arrested in cases referred to the CPU where the victim is under the age of eighteen – a juvenile.

An analysis of this data, which covers the period from April 2000 to end January 2002, by age of the person charged with the crime, provides an indication of the extent to which adults or juveniles are responsible for sexual crimes against other juveniles in metropolitan Western Cape.

Analysis by age of alleged perpetrators

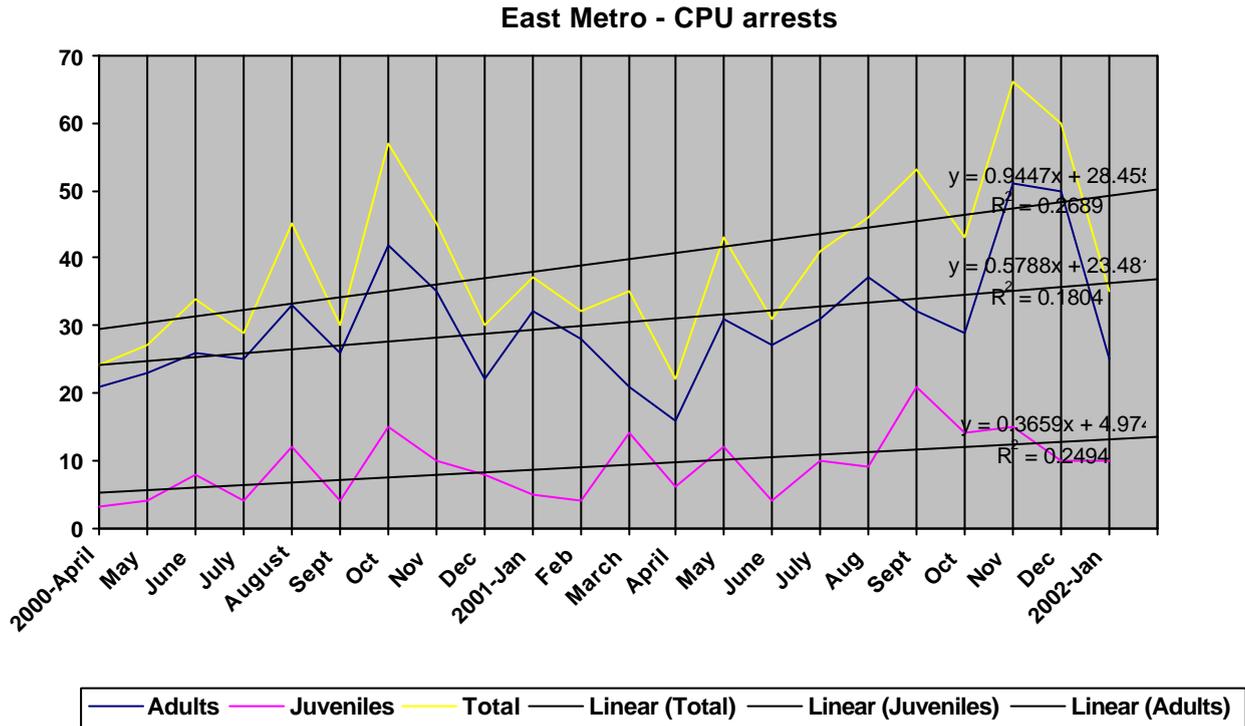
All Offences



A total of 865 charges were broken down by age, date, and type of offence. The record covered 22 months, which implies an average of 44 cases per month. The ages of persons arrested, ranged from 3 to 83 years of age. The 18-30 age group was the largest group by age, accounting for 37% (261) charges, followed by the 31-40 age group with 24%, and juveniles with 23% (201).

Juveniles (persons 17 or younger) were charged in 201 cases (23%), implying an average of 9 cases per month. However, averages obscure

the large variation recorded from month to month. The graph on page 5 shows, *inter alia*, the number of offences in each month.



Analysis of juvenile and adult alleged perpetrators: variation with time

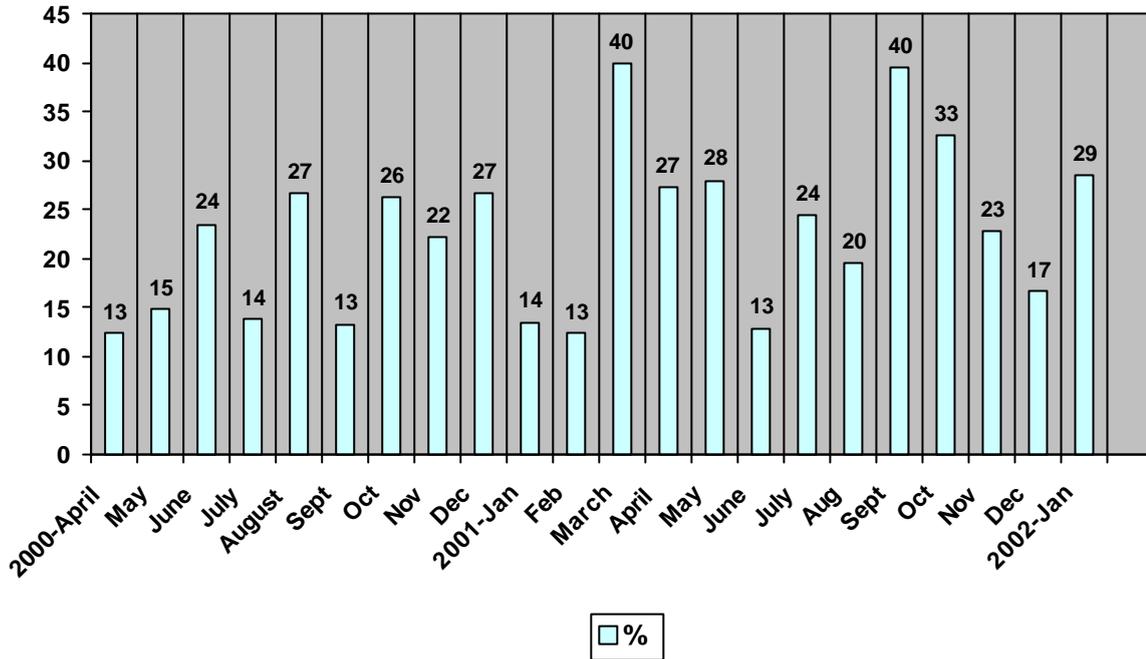
The variation is from a minimum of 22 cases in April 2001 to three times as many, that is, 66 cases in November 2001. With respect to juvenile perpetrators, the minimum is 3 cases (April 2000) and the maximum is 21, seven times as many (September 2001). However, various other local peaks and troughs occur before after these high and low points.

However, despite this variation a trend can be discerned. Linear equations fitted to the data show that the trend is toward an increase in total perpetrators of almost one extra perpetrator per month ($m=0.9447$). The trend with respect to juveniles is toward an increase of on average one perpetrator every three months ($m=0.3659$), while the trend for adult perpetrators is approximately one every second month ($m=0.5788$). The fit to a straight line graph is poor for all three ($R^2 < 0.3$), so these rates of increase must be seen only as showing trends, and the equations cannot be used to predict values in a particular future month.

Note that there does also appear to be a suggestion of a seasonal pattern, with higher values in the latter part of the year (August to December). However, as we only have just under two year's worth of data available, there is not enough to see whether this trend is valid. What is clear is that a number of other factors must contribute to the highly fluctuating number of arrests per month – which may also relate to factors other than causal factors, such as the number of officers on duty.

What proportion of crimes per month dealt with by the East Metro CPU do juveniles commit? The graph on page 7 shows the percentage of crimes recorded against juveniles allegedly committed by juveniles, for each month. This graph again shows large amount of fluctuation, with a maximum value of 40% allegedly committed by juveniles in March and September 2001, while a minimum of 13% is recorded in April and September 2000, and February 2001. As noted above, on average juveniles were arrested in 23% of crimes.

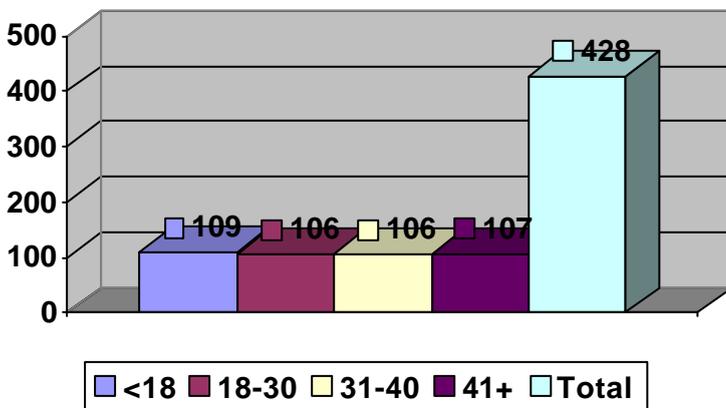
East Metro - CPU Arrests - % Juveniles



Analysis by type of offence: indecent assault & rape

The majority of the 865 crimes considered here were indecent assault and rape: 49% (428) of perpetrators were charged with indecent assault, while rape (excluding attempts, but including statutory rapes and 'sodomy') accounted for 43% (373) of all charges. Other crimes included were attempted murder, assault with intent to cause grievous bodily harm, assault, kidnapping, abduction, and cruelty towards children.

Indecent Assault

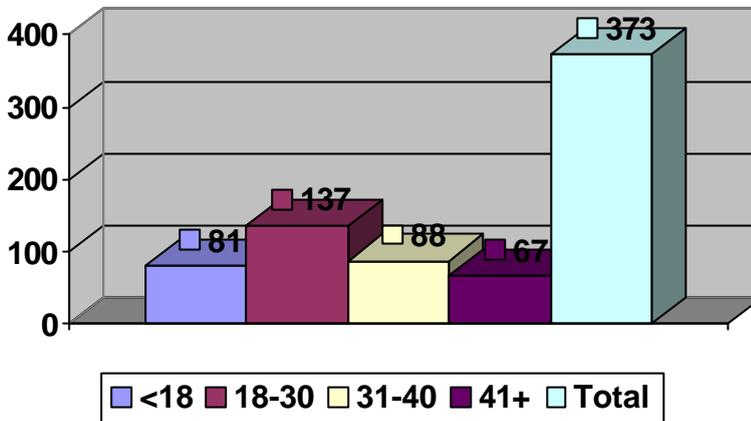


What proportion of all rapes and indecent assault (where the victims were both adults and children) in the East Metro does this sample represent? Of the 801 cases considered in this section, 468 cases occurred in 2000. According to SAPS statistics, there were 2156 rapes and 728 indecent assaults in the East Metro region during 2000.¹ In other words, 16% of the total cases (adult and juvenile victims) reported in the region during 2000 year, were referred to the East Metro CPU. Therefore, this sample represents in the region of 16% of all such crimes reported.

¹ CIAC, SAPS. Crime per police area for the period January to December 1994 - 2000: Province: Western Cape; Area: Eastern Metropole

Of all the indecent assault cases, in 25% (109) a juvenile was charged, which is a slightly higher proportion than the average percentage for juveniles for all crimes. In other words, a slightly higher proportion of juveniles are charged for indecent assault than are charged for all the crimes in the sample. The age groups 18-30, 31-40 and 41+ each accounted for 25% of indecent assault cases.

Rape



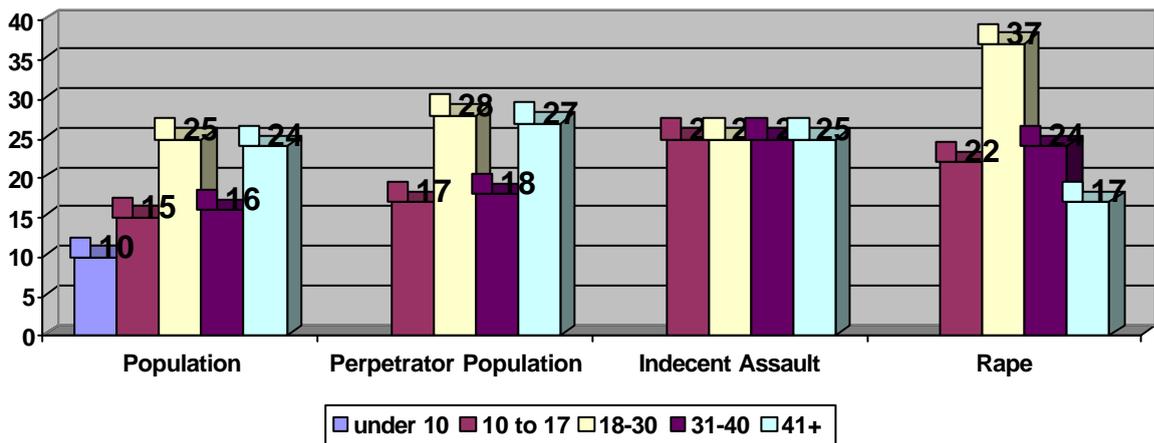
Of the rape cases, 22% (81) were committed by juveniles. This is a slightly lower proportion than the average proportion for juveniles. In other words, a slightly lower proportion of juveniles are charged for rape than are charged for all the crimes in the sample.

The 18-30 age group was charged with 37% of rapes, while the 31-40 age group accounted for 24% of rapes. The smallest group was the 41+ age group, recording 17%.

Juveniles committed 35% more indecent assaults than they committed rapes, whereas those 18-30 committed 29% more rapes than they committed indecent assaults.

The population of the Western Cape is made up largely of young people. It may be useful to investigate to what extent certain age groups contribute to sexual crimes against juveniles in the East Metro, as compared to the amount they might have been expected to contribute, according to their share of the population in the Western Cape.

Comparative Percentages

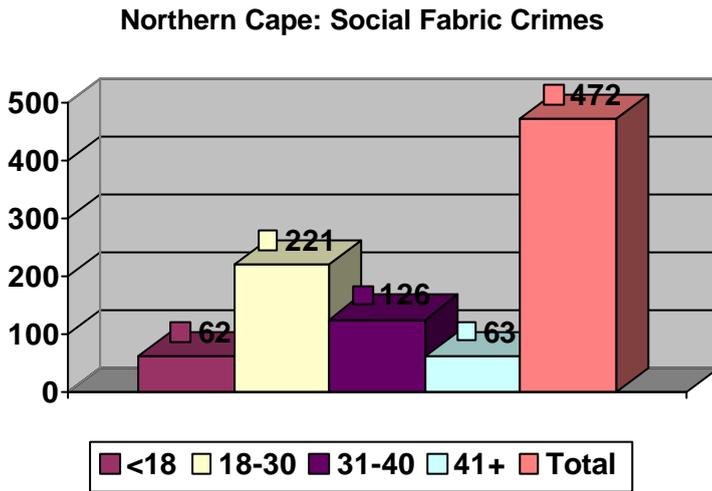


The first set of columns in the above graph shows the actual share of the population for each population group in the Western Cape in 2000.² The second set of columns, titled 'perpetrator population' works out

² All provincial population estimates were calculated on the basis of Census 96 and the predictive table compiled by Calle Hedberg, HISP. The predictions take into account deaths due to HIV/AIDS.

the same percentages but excludes the under 10 population, as these form a negligible number of perpetrators (0.2%), to arrive at the population percentages of possible perpetrators. We are then able to compare the relative share of each age group of possible perpetrators with the actual share in the crimes of indecent assault and rape (columns three and four), committed against juveniles in the Western Cape.

It is clear that juveniles aged 10 to 17 contribute more to these kinds of crimes than might have been expected purely on the basis of their relative share of the population. However, that is largely to be expected, as here we are considering only crimes committed against other juveniles, and it is more likely that if a juvenile is to commit a sexual crime, that he commit it against someone of comparable age or younger than himself. It is also noteworthy that the contribution is higher for indecent assault than for rape.



Older people (41+) appear to contribute less to sexual crimes against juveniles than their share of the population would predict. While persons 18-30 surprisingly contribute less to indecent assault than population share predicts, that is largely explained by their very high contribution to rape: it is possible that persons in this age group are more likely to rape a juvenile than to stop at indecent assault. Persons 31-40 also contribute somewhat more to both indecent assault and rape than population would predict, and to a slightly greater extent than do juveniles.

Some Comparative Research

A comprehensive literature survey was not undertaken for the purposes of this report. However, some findings of a few relevant projects are mentioned below.

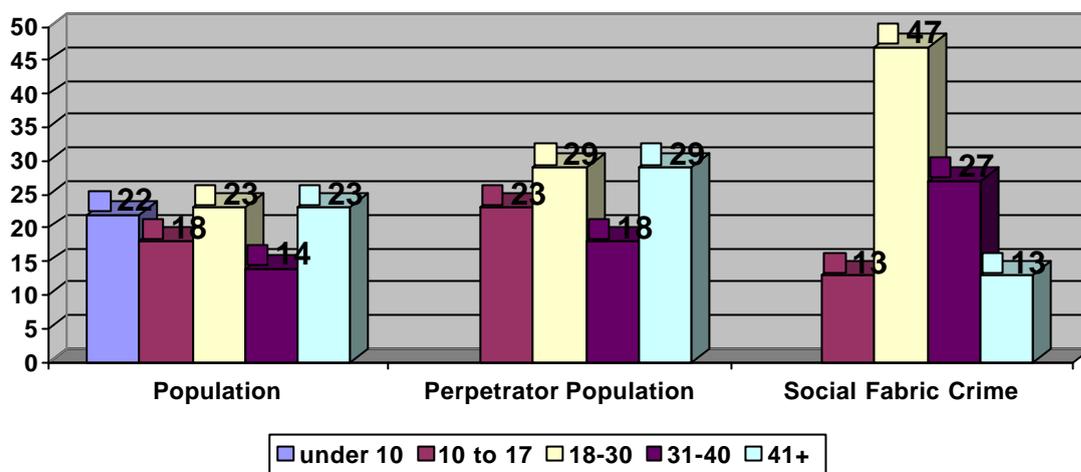
‘Social Fabric Crime in the Northern Cape’

This study describes a docket analysis of 774 crimes selected from a total of 5869 social fabric crimes (murder, rape, assault GBH, indecent assault) committed between January and December 1997 in five major areas of the Northern Cape.³

In 472 of these cases the age of the perpetrator was recorded, and the results appear in the graph above. Note that unlike the East Metro CPU analysis above, this study considers crimes in which victims were of all ages, and not just juvenile victims. Consequently, it is of no surprise that in this study only 13% (62) of perpetrators were juveniles, while 47% (221) were in the 18-30 age group.

³ Mistry, D, Snyman, R, & Van Zyl, M. Social Fabric Crime in the Northern Cape. Technikon South Africa. September 2001

Comparative Percentages



Carrying out the same exercise as for the East Metro data, (again persons younger than 10 accounted for less than 1% of perpetrators), comparing this with population data for the Northern Cape in 1997, we find that both juveniles and persons over 40 committed fewer crimes than their share of the population might suggest, while persons 18-30 and 31-40 are committing far more social fabric crime than their share of the Northern Cape population might suggest.

Selected findings of other research

- A study by the Red Cross Children's Hospital on sexually assaulted children seen between January 1991 and December 1999 at the hospital's trauma unit traced the records of 200 such children (450-500 children were seen each year; however, all their records could not be traced). In only 22% of cases was the age of the assailant known. However, of the known cases, the average age of the perpetrator was 20.⁴
- The 1998 Demographic and Health Survey found that schoolteachers committed 33% of rapes of under 15 year olds.⁵
- An SAPS docket analysis of crimes against children in Gauteng in 1996 and 1997 found that 46% of offenders were aged between 12 and 25. Further breakdown by age was not done, and commentators suggest that the 18-25 age group is likely to be responsible for the majority of such cases.⁶
- A pilot study by the Psychological Society of South Africa of 180 reported cases of sex abuse where the victims were 11 or younger found the largest group of perpetrators to be in the 25-35 age group, followed by the 35-50 age group.⁷

⁴ Van As, AB, & Du Toit, N. Child Accident Prevention Foundation of South Africa and Red Cross Children's Hospital Submission to Parliament on Sexual Abuse of Children, March 2002

⁵ Quoted in Jewkes, R, MRC Gender and Health Group Submission to Parliament on Sexual Abuse of Children, March 2002

⁶ Quoted in Dawes, A, UCT Children's Institute Submission to Parliament on Sexual Abuse of Children, March 2002

⁷ Cooper, S & Watts, A, Submission to Parliament on Sexual Abuse of Children, March 2002

- Childline statistics show that 43% of offenders identified in calls to the organisation were under the age of 18.⁸

Sex Offenders in Custody

The Department of Correctional Services has provided figures on sexual offenders in custody in South Africa. The figures provided show the average number of sentenced and un-sentenced prisoners (adults and children, men and women) in custody in each month in respect of sexual offences for the period January 1998 to December 2001. The Department has also provided the same information for children in custody (boys only). They have also provided subtotals for children of different ages. The term 'sentenced' appears to include those awaiting trial and those convicted but not yet sentenced.



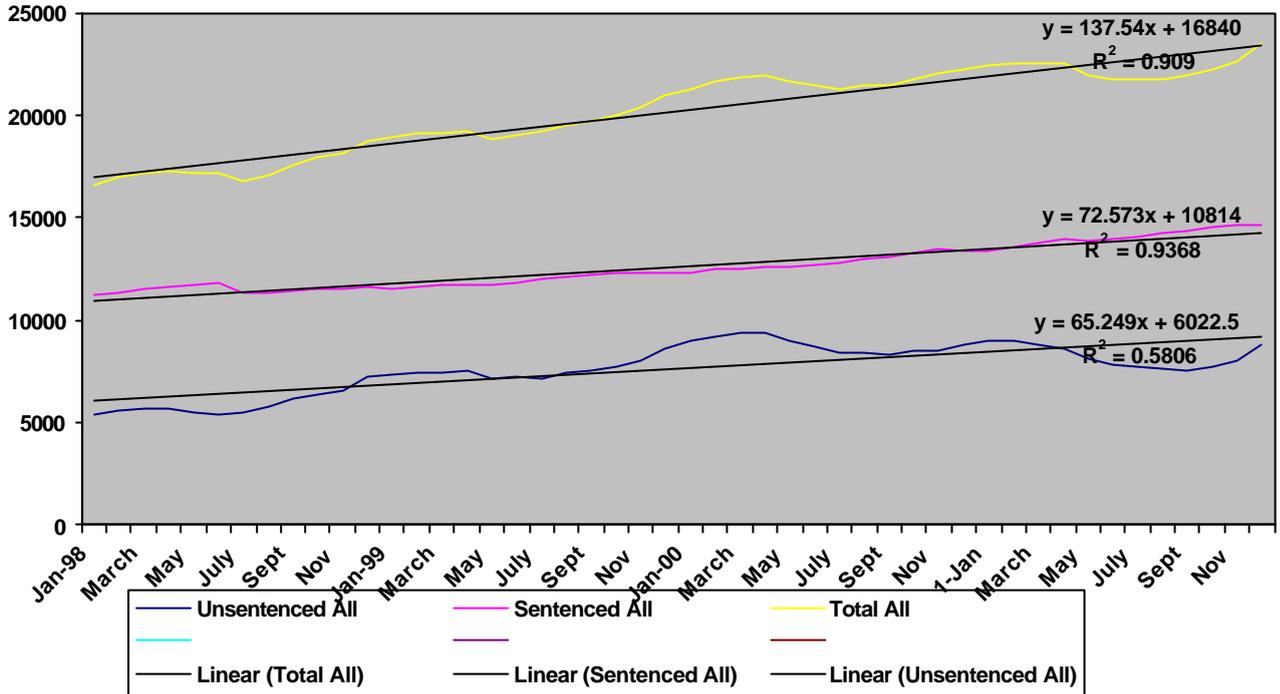
All Sex Offenders

The table on the left shows total numbers of sentenced, un-sentenced and all sexual offenders in prison at March 2001. It also shows the number of all prisoners in custody in those categories. Sex offenders comprise 13% of all prisoners, 12% of sentenced prisoners, but 16% of un-sentenced prisoners. This might be a reflection of the difficulty in obtaining convictions for sexual offences.

The next graph plots the number of sexual offenders in prison on a month-by-month basis, beginning in January 1998.

⁸ Van Niekerk, J, Childline Submission to Parliament on Sexual Abuse of Children, March 2002

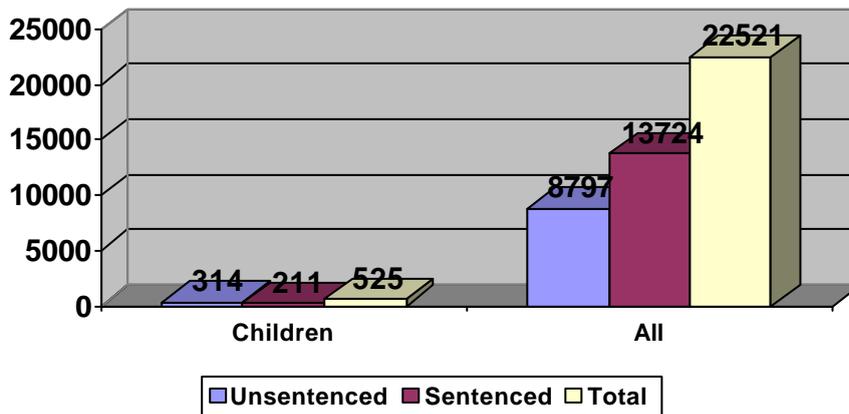
Prisoners in Custody - Sexual Offences



A linear equation plotted to the total numbers shows that the total number of sexual offenders in prison is increasing at a rate of 138 prisoners a month ($m=137.54$). The numbers fit a straight line almost perfectly ($R^2= 0.909$) which means we can use the equation to predict numbers of prisoners in future months. The number of prisoners sentenced for sexual offences is increasing at a rate of 72 prisoners per month ($m=72.573$), and the fit to a straight line is even better ($R^2=0.9368$) than for total prisoners, showing a very steady predictable increase.

There are fewer un-sentenced sexual offenders in prison at any particular time than there are sentenced, and the difference is growing. Un-sentenced prisoners are increasing at a rate 65 of prisoners a month. However, the number of un-sentenced prisoners fluctuates more widely with time than do sentenced prisoners ($R^2=0.5806$). Local peaks seem to occur in the period November to March of each year. This coincides with the court recess and the summer months in South Africa.

Sex Offenders in Custody as at 31 March 2001



Juvenile Sex Offenders

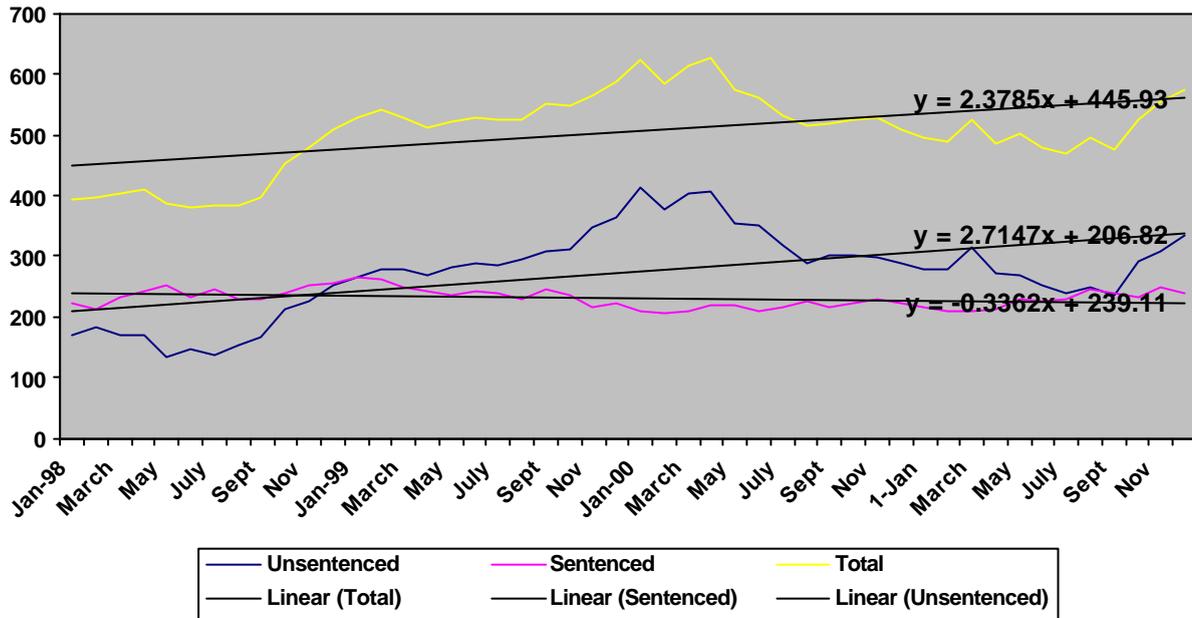
The table on the left shows the number of sex offenders in custody in March 2001, comparing values for children and the total number.

It is immediately clear that children make up a very small proportion. They make up only 2.3% of the total, 1.6% of sentenced prisoners, and 3.6% of un-sentenced prisoners.

How does this compare with child offenders of all crimes? There were 6062 child offenders in prison in March 2001, which is 3.5% of all prisoners (170959).

The graphs below will look at child sex offenders in custody in more detail.

Children in Custody - Sexual Offences

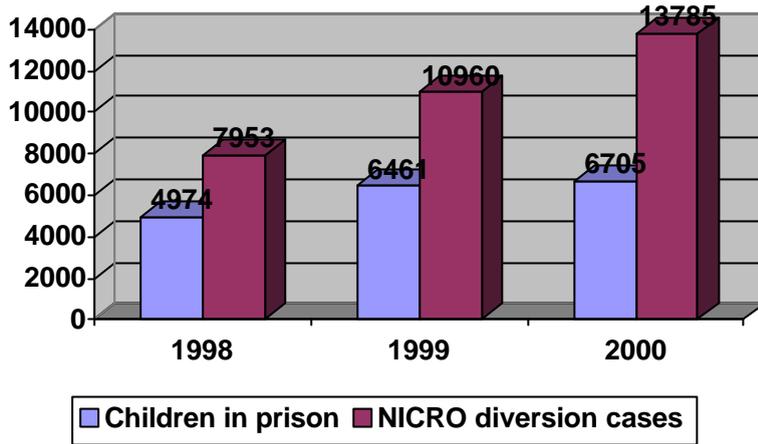


The graph on the previous page plots the total number of children in custody for sexual offences on a month-by-month basis from January 1998 to December 2001. The first thing to note is that in January 1999, the number of un-sentenced child sex offenders overtook sentenced child sex offenders, climbing to a peak in January 2000, and remained higher than sentenced offenders, apart from a brief dip at the end of 2001. This is the reverse of the situation for prisoners generally, and may relate to policy changes and controversy around juvenile prisoners over that period.

The total number of child sex offenders in prison is increasing at an approximate rate of 2 per month ($m=2.3785$), but the straight line is a poor fit ($R^2 < 3$) so the equations for all three lines are not predictive, but can show an increasing or decreasing trend. Un-sentenced child sex offenders are increasing a rate of almost 3 per month ($m=2.873$). By contrast, sentenced child sex offenders are decreasing at a rate of about 1 every three months ($m=-0.3362$).

The two graphs on the following pages further break down the un-sentenced and sentenced child sex offenders by age. Both of these graphs show the overwhelming contribution of children aged sixteen and seventeen. It is interesting to note that for sentenced child sex offenders, the seventeen year olds make by far the greater contribution, in the region of 60%, while the un-sentenced graph shows sixteen and seventeen year old to be closer in contribution (indeed sixteen year olds overtake seventeen year olds briefly in September 1999).

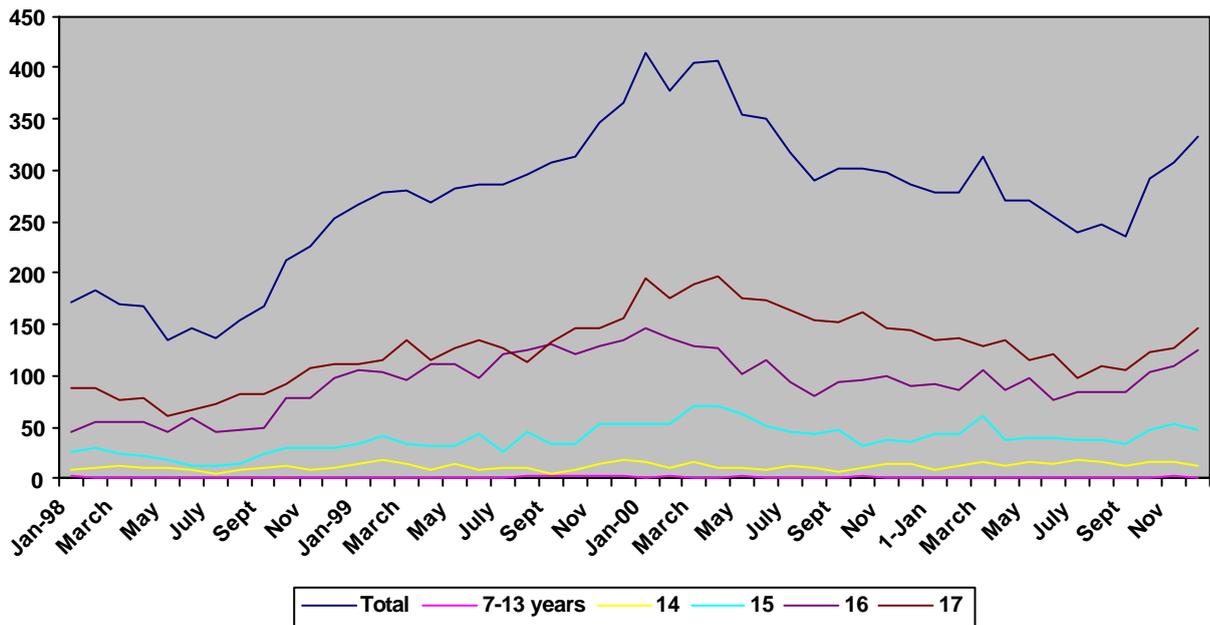
Workshop with Service Providers for Child Sex Offenders



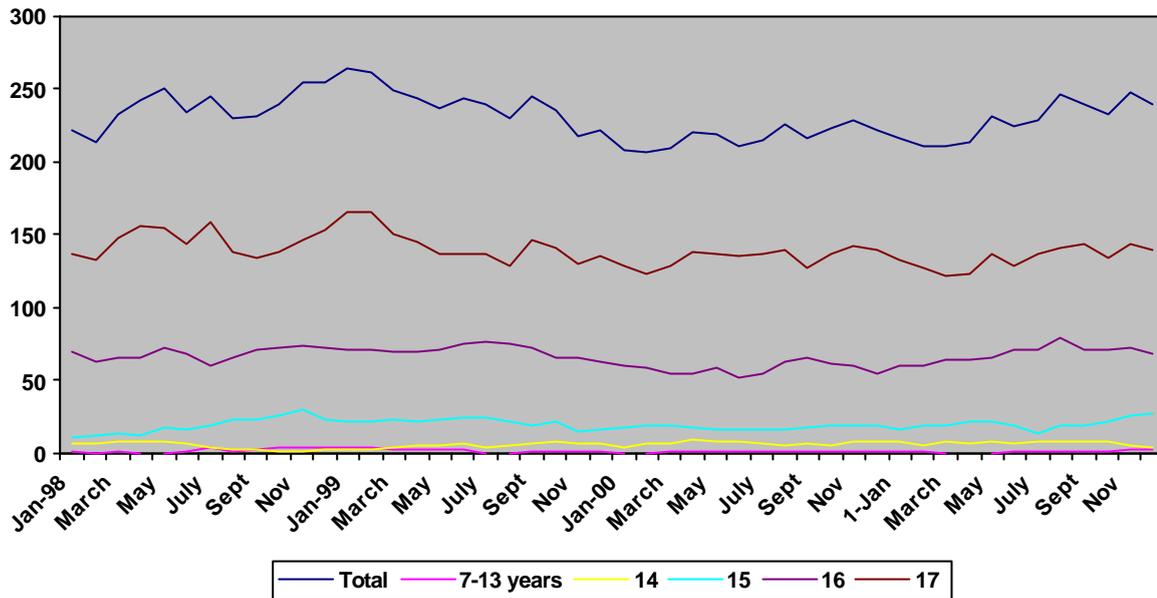
It is clear that juveniles are perpetrating more than 3% of sexual crimes, yet only about 3% of persons in prison for sexual offences are juveniles. The table at left shows that NICRO diverts more children each year than are in prison at a chosen point in a year. However, about 73% of NICRO's diversion cases are for property-related crimes.

The table also does not strictly compare the same things: NICRO records the total number of children it dealt with in a year; the prison numbers reflect the number in prison at a particular time. Correctional services does record the total number passing through its doors in a year, but rather, the average number in prison in each month.

Unsentenced Children in Custody - Sexual Offences



Sentenced Children in Custody - Sexual Offences



Conclusions

The fact that the number of un-sentenced juveniles is consistently higher than that of sentenced juveniles since 1999 is worrying. It suggests that a large number of children, whom the courts are loath to sentence with prison time, are spending time in prison. If the aim is to keep children out of prison as far as possible, it makes no sense that fewer are being sentenced, while more are spending time in prison un-sentenced. It also implies that children are spending time in prison in accordance with the vagaries of the criminal justice system, rather than after a court of law has duly considered a case and chosen prison time as the most appropriate punishment.

The fact that the 'adult' graph of sex offenders in custody over time is smooth compared to the juvenile graph, also suggests erratic management of juvenile offenders. There is a need to determine what is happening to juvenile offenders who do not go to prison; it appears a significant proportion do not. This is not necessarily a problem if they are being appropriately addressed by diversion or other means, but it is not clear to what extent that is occurring.

The arrest figures do show that the number of arrests of juveniles for sexual crimes committed against other juveniles is increasing; however, the number of all arrests for such crimes is also increasing, and at a faster rate. This analysis therefore does not provide evidence of an 'epidemic' of juvenile sex offenders, even against other juveniles. However, it is recognised that significant under-reporting may occur; the question is whether under-reporting is more likely where the perpetrator is an adult, or where he is a juvenile?

Juveniles do nevertheless commit a significant portion of all sexual crimes against other juveniles; however, this is lower for rape than for indecent assault. For all sexual crimes, the 18-30 age group remains the most problematic in respect of sexual crimes and this is largely confirmed by the findings of other research.

Nothing in this analysis suggests that the provisions of the Child Justice Bill are inappropriate for juvenile sex offenders; on the contrary, the analysis suggests better management of such persons is necessary.

Jean Redpath - 2 April 2002.



ANNEXURE D

Address by Adv. Maggie Tserere

SOCA Unit

(National Prosecuting Authority)

THE POLICY ON DIVERSION AND PROSECUTION OF CHILD SEX OFFENDERS by Adv Maggie Tserere (SOCA Unit - National Prosecuting Authority)

The increase of sexual violence by and against children is alarming in our country as a result attracting media's attention and forcing politicians to come up with quick fix solutions alongside the long-term strategies. It is from this premise that sexual offences courts have been established in the so-called "hot spots" areas whereby specialist prosecutors prosecute cases of sexual assault. As service providers we can no longer ignore the growing problem whereby children are sexually assaulting other children. It is so unfortunate that all the attention and resources are directed towards the victims of sexual violence while little effort or few intervention methods to deal with perpetrators in order to prevent reoffending are in place. It is high time for service providers who are working with victims to merge their ideas and collaborate with those who work with child offenders and not to work in isolation.

The commission of sexual offences by children is a complex, which is influenced by socio – economic factors. For instance a child who live in a domestic violence home and are witnessing these atrocities ended up abusing their peers in return. This is also applicable in case where parents are neglecting or denying maintenance to their children, the resentment and the consequences from those children can never be overemphasised, and hence we have children in the streets.

Though there are programmes offered in big cities to rehabilitate child sexual offenders they are not enough. To add to that organisation like SAYSTOP in Western Cape, Childline in Durban and CATTs – Johannesburg Child Welfare Society are not having enough funds to reach out to each and every child. This also applies to NICRO though they have offices in all the provinces it is impossible for them to spread to each and every court. This is a challenge to the government sector to do something. Therefore prosecutors in the rural areas are prosecuting these children not because they want to, but due to lack of programmes to refer to and the fact that the current criminal justice system by its nature does not cater for children.

The Constitution of South Africa requires the National Director of Public Prosecutor with agreement with the Minister of Justice and after consultation with the Directors of Public Prosecutions to determine a prosecution policy, which must be observed in the prosecution process.

⁹ These policy directives are tabled in parliament and the National Prosecuting Authority Act requires the United Nation Guidelines on the role of prosecutors to be observed. The purpose of the Prosecution Policy is to guide prosecutors when they perform their functions, in the exercise of their powers and the way they carry out their duties.

⁹ NATIONAL PROSECUTING AUTHORITY OF SOUTH AFRICA POLICY DIRECTIVES

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It is therefore from this premises that the National Prosecuting Authority developed policy directives on diversion for child offenders on Part 7 of the Policy Manual. The current policy defines diversion clearly. Restorative justice is the main objective for diversion. The circumstances under which diversion may occur. We all know that with all schedule 1 offences they can be diverted. But now our policy when it comes to schedule 5 and 6 offences it provides that diversion is inappropriate where the charge is murder, robbery with aggravating circumstances and rape or similar offence. This provision is very restrictive and we have also identified many other gaps, hence we are in the process of amending the policy. We have proposed amendment that diversion **may be** in the above charges.

The policy lays down the selection criteria to be followed, but states that prosecutors are not bound by hard and fast rule on using the selection criteria, but it is mainly to guide prosecutors in exercising their discretion in determining whether or not offender qualifies for a programme. We also have a problem that currently we cannot divert street children since they do not have fixed addresses and parents nor guardians then we find out that in implementing our policy we discriminate against these children. To be able to monitor the number of cases diverted and for statistic purposes, prosecutors are required to keep a register for all children who are screened for diversion. Diversion therefore implies that in suitable and deserving cases the normal manner of disposal of the criminal case is altered.

It is true ladies and gentlemen that when it comes to implementation we do encounter some problems as I have indicated earlier on. Prosecutors cannot implement diversion in a vacuum; we need the cooperation of other role players in the criminal justice system. For instance, some of the investigating officers think that after all their investigation diversion is a soft option. We need a thorough assessment report from the Department of Social Development that is Probation Officers. In some areas there are no assessments being done due to the absence of Probation Officers and the generic social workers available are loaded with other activities. We have received lots of calls from prosecutors working in courts who are having problem with children under 13 years who are committing sexual offences and they feel they cannot prosecute, but there are no appropriate programmes to refer to.

With all these programmes we really appreciate the work that has been done by prosecutors from 1999 to 2000 they manage to divert more than 10 000 children, though our statistics is not broken down to indicate how many were sex offenders. This is true due to the fact that they never received any formal training from us on how to implement the policy and its only now that we have offered a formal training to them on how to implement the policy and introducing them to service providers in their areas.

We do recommend the work done in KwaZulu-Natal where our prosecutors are really diverting young sex offenders and in other parts of the country where there are programmes available.

Ladies and gentlemen when it comes to prosecuting child sex offenders we are guided by Sexual Offences Act 23 of 1957, the Criminal Law Amendment Act, Minimum Sentences Act 105 of 1997 in particular section 51, 52 and 53. For prosecutors when deciding to divert child sex offenders they must consider many factors, whether the offender acknowledges responsibility for his or her actions, the impact of the offence to the victim (social, emotional and financial) and the consent of

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the victim and his or her family to diversion. To look at the nature of the offence, that it is sexual offence and then to determine what kind of sexual offence. The court will also look at the substantial and compelling circumstances surrounding the commission of the offence, that is the seriousness of the incidence that contributed to the offence, the age of the offender and whether is the first offender or repeat offender.

If the child is charged with indecent assault of another child without injuries and with the above mentioned factors the case can be diverted. With attempted rape having serious injuries it is unlikely for diversion to be recommended.

There are two High Court decided cases where the offenders one was below the age of 18 and another one was 18 years old. In **S v Boer 2000 (2) SACR w14 NCD**, the three accused aged 21, 20 and 17 years raped a 14-year-old young girl and she sustained serious injuries. It was gang rape. The 17-year-old boy was under the influence of liquor he raped the girl and also strangled the girl while the two accused raped her. On sentencing the High court sentenced the 2 to life imprisonment and the 17 year old was given a prison sentence of 15 years. The court considered the age of the accused and the fact that two adults influenced him.

In **S v Blaauw 2001 (2) SACR PG 255 CPD**, a 5-year-old girl was raped by an 18 year old who was under the influence of liquor, and the girl sustained injuries and the boy was first offender and in this instance he was sentenced to 25 years old.

Therefore it is important for us to amend our guidelines on diversion and to devise means of empowering our prosecutors on how to deal with child sex offenders. Because at the end of the day these children have the constitutional rights as laid in section 28 of our Constitution that in every case concerning the child we have to look at the "best interest" of that child. An ongoing training of prosecutors is essential and the fair distribution of resources to rural areas where most of these cases are not reported and are regarded as family issue.

Lastly the challenge as well as an opportunity is upon us as role players in the criminal justice system and our partners in the private sector to develop coordinated strategies and policies that will tackle this problem in a more effective and efficient manner. Prevention measures and intervention through intensive and structured rehabilitative programmes must be prioritised. All in all training of service providers on how to deal effectively with child sex offenders and the creation of more programmes will bring us close to a solution. I thank you.



ANNEXURE E

**Address by Ms Thelma van den Berg,
Department Social Development**

**“THE ROLE OF THE PROBATION
OFFICER”**

All officials dealing with a child in conflict with the law must consider diverting the child out of the criminal justice system. The assessment is the key to diversion and avoidance of pre-trial detention. A probation officer, who is a social worker in employment of the state, does this assessment. Probation services is therefore concerned with the establishment and implementation of programmes aimed at combating crime, the rendering of assistance to and treatment of certain persons involved in crime and for matters connected therewith.

The probation officer will do an assessment of the child as well as the circumstances of the alleged offence and the interest of the complaint. An assessment means the process of developmental assessment and evaluation.

- Of a child or persons
- The family circumstances of the child/persons
- The nature and circumstances surrounding the alleged commission of the offence
- The impact on the victim
- The intention of the child/persons to acknowledge responsibility for the offence or any other relevant factors.

SUMMARY OF FUNCTIONS OF THE PROBATION OFFICER

Prevention services/programmes

- Programmes aimed at the prevention of crime

Early intervention services/programmes

- Reception, assessment and referral of an accused person
- Mandatory assessment of every child in conflict with the law
- Provision of an assessment report recommending diversion, conversion and placement
- Development and implementation of diversion programmes
- Conversion of a criminal court case into a children's court or rehabilitation court enquiry
- Provision of a pre-trial report recommending the desirability of prosecution
- Age estimation of children in conflict with the law

Statutory services

- Investigation of circumstances of a convicted person,
- The compiling of a pre-sentence report,
- The recommendation of an appropriate sentence, and
- The giving of evidence before court

Continuums of care services/programmes

- The conducting of information classes
- Rendering of services to a probationer in complying with his probation conditions

- Monitoring of cases of children awaiting trial

AIMS AND OBJECTIVES OF THE RECEPTION, ASSESSMENT AND REFERRAL CENTRE

Aims

- To do an assessment of the child under the age of 18 years who is in conflict with the law, in order to decide on the correct disposition of the case, as well as to be of assistance to the courts
- Attempt to minimise the number of children being kept in custody while awaiting trial

Objectives

- The assessment process will be with regards to the age of the child, the child's circumstances and his/her motivation for the offence committed
- To ensure the rights and safety of all children in conflict with the law and abide by the UN Convention
- To assist courts with an appropriate assessment and decision-making regarding the correct disposition of the case
- To do a developmental assessment of the child within a child-friendly environment
- To ensure that the child is not discriminated against, on the grounds of race, gender, ethnic or social origin, sexual orientation, disability, religion, culture or language
- To ensure that the parent/guardian is traced and informed of the child's arrest
- To inform the child his/her rights and also his/her right to legal representation
- To keep record of each child assessed in order to prevent duplication and to establish if the child is known to the centre
- The best interest of the child is of paramount importance
- To deliver an effective and efficient service to the child, family and the court
- To recommend an appropriate placement
- To obtain evidence regarding the child's age

NUMBER OF CHILDREN AT RANDBURG, WYNBERG, JOHANNESBURG AND PROTEA MAGISTRATE'S COURTS

	Indecent Assault	Rape
January 2001	10	79
February 2001	7	74
March 2001	15	35
April 2001	11	41
May 2001	17	68
June 2001	17	65

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July 2001	16	42
August 2001	16	42
September 2001	0	53
October 2001	22	62
November 2001	5	47
December 2001	8	27
January 2002	8	40
February 2002	3	41

Please note:

- The number includes old and new cases for that particular month
- These numbers should only be seen as an indication as it is only the cases that the probation officers are aware of

The principles of Restorative Justice are also taken into account during the assessment as well as the planning regarding the disposition of the case.

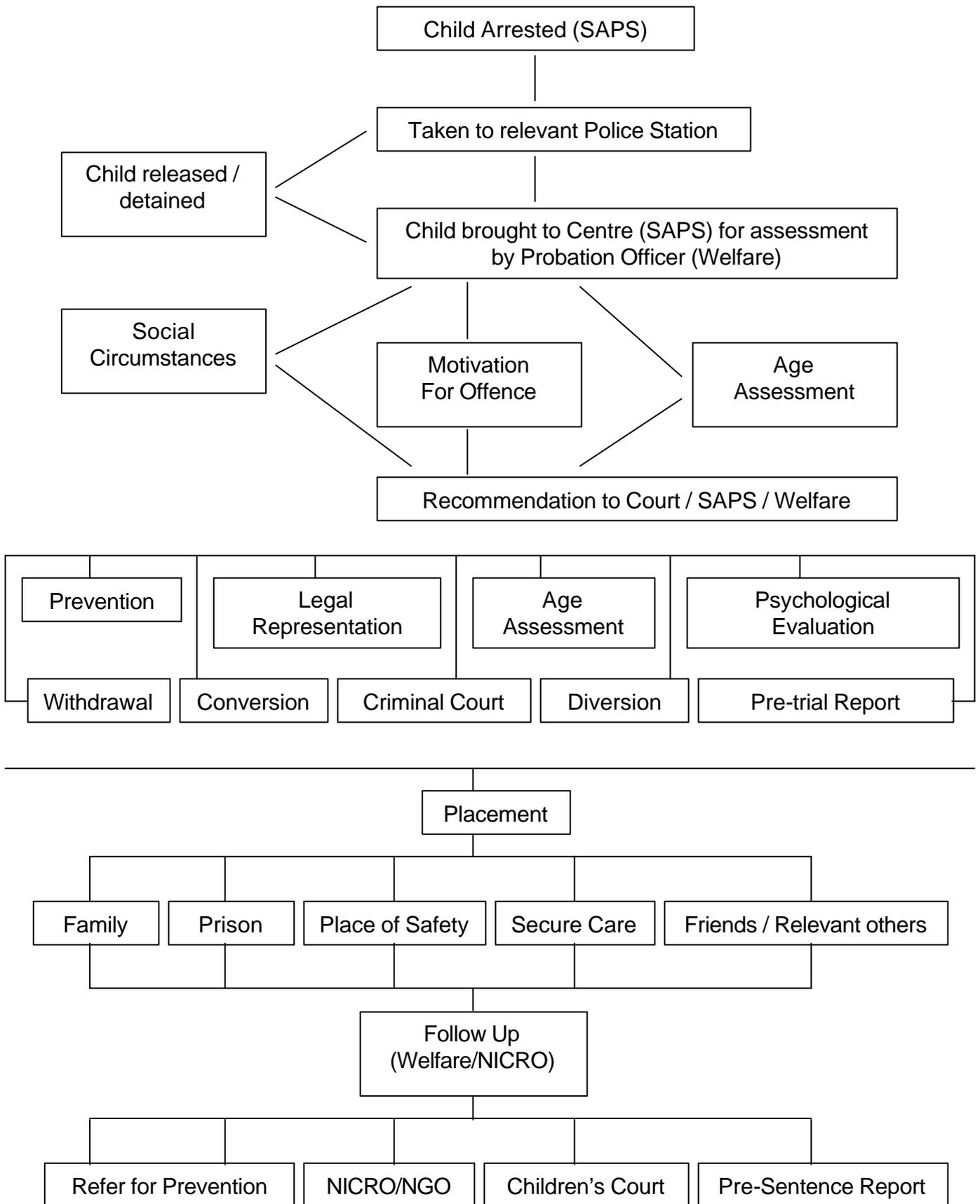
Programmes presently in use:

- Victim Offender Conferencing
- Teddy Bear Clinic
- Bee Courtwise
- NICRO - Victim Offender Mediation
- Family Group Conferencing
- Othandweni - Family Group Conferencing

Programmes at detention facilities:

- Dyambu (Bosaza Youth Centre)
- Sexual offenders programme
- Walter Sisulu
- SNAPP (skills, knowledge, aids, prevention and pregnancy)
- Sexual awareness programme and HIV prevention
- Self defence course for girls (Crime Busters)

MAIN PROCESSES & ACTIVITIES





ANNEXURE F

**Address by Mr Brian Stout,
Lecturer, University of Fort Hare**

Programmatic and Service Development Issues for Child Sex Offenders

Introduction

Before coming to teach at Fort Hare I worked in Northern Ireland as a youth justice probation officer. I worked solely with young offenders (17 years and younger) and was seconded part-time to a project working with young sex offenders. My main interest was in programme development and I co-wrote the Youth Development Programme, an assessment programme that is now used with all young offenders in Northern Ireland. I will briefly describe the theory behind the programme, the process of devising it and suggest some possible lessons for South Africa.

Effective Practice

The Youth Development Programme is based on the principles of effective practice. It is informed by the findings of meta-analysis conducted by Andrews et al (1990) and Lipsey (1992). These findings furnish us with some clear guidelines as to the interventions that are effective with young offenders, including young sex offenders, in reducing re-offending. Both studies concluded that the features that appear to distinguish effective from ineffective interventions are that the former take into account:

- Risk classification. In more effective programmes there is a matching between offender risk and degree of service intervention. Therefore more intensive programmes should be targeted at high-risk offenders. Lower risk should receive less intervention. There is often an assumption made that all sex offenders are high-risk, but this is not true, there is a continuum of risk, as with other forms of offending. Recent research has shown that there are many young sex offenders who will avoid future offending with little or no professional intervention.
- Targeting criminogenic needs. Programmes should focus directly on criminogenic behaviour. This can be more complicated with young sex offenders than with other client groups, as there can be many varied factors in their lives contributing to their offending.
- Responsivity Principle. The style of the programme should match the style and needs of the offender. The learning capacities of most child sex offenders require an active participatory style. Many have little or no knowledge about sexual matters, and can be extremely uncomfortable discussing the issues that need to be addressed. The use of videos, age-appropriate literature, group work and role-play is often not just useful, but necessary.
- Community Based. Programmes based in the community appear to yield more effective outcomes than those in institutions. The greater the integration with an individual's community, the greater the prospects of real-life learning. In the area of Northern Ireland where I worked no child sex offenders were sentenced to custody. There is often an understandable disquiet about releasing such offenders into the community. We had both an effective programme and sufficient monitoring and protection mechanisms to allow such children to be safely supervised. Effective interagency work is the key to safe supervision of young people in the community. It was standard practice that a care plan for a young sex offender would be drawn up, involving Social Services, the Probation Board, the NSPCC, the school, the family and any other relevant parties. This plan was then approved by the court and implemented. It is currently being proposed in Northern Ireland that adolescent sex offenders be dealt with as part of children's services, rather than by the criminal justice system.
- Treatment Modality. The more effective programmes appear to use a variety of methods to address the variety of offenders' problems, including cognitive behavioural methods. The interagency approach was a significant contributing factor to an effective multi-modal programme, a young person might attend a group at the project for one weekly contact, an individual session with his key worker for a second contact, and his third contact might be a meeting involving his probation officer and his family.

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- Programme integrity. Programmes should be properly managed, use trained staff and be run with clearly identified aims and objectives which are adhered to consistently. Achieving programme integrity in any area of work with young people is a massive undertaking, and something that professionals in Northern Ireland often struggle with.

Conclusions and Issues For South Africa

In an increasingly global field, it is important that practitioners learn from what is happening in other countries. South African youth justice practice is in many ways quite advanced but based on my experience in Northern Ireland and what I have seen in South Africa, I would suggest that there are four key issues that could be addressed in working with adolescent sex offenders:

- Does effective practice apply in South Africa? Most of the research on effectiveness has been carried out in Europe and America. There is a need for specific South African research. In the absence of this research, however, it may be reasonable to base programmatic interventions on the findings of international research. While many South African programmes meet some effective practice criteria there appears to be a reluctance to target community resources at high-risk offenders.
- Assessment. Child sex offenders need to be assessed in an extremely sophisticated manner, and there are actuarial tools available for this assessment. The advantage of actuarial, as opposed to clinical assessment is that it is often more accurate and it is easier to standardise assessment throughout the country. Interventions should be based on the needs of adolescent sex offenders and an assessment of the risk that they present.
- Custody/community. What purpose is served by sending child sex offenders to prison? Prison culture will be hugely damaging to any rehabilitative work that could be done. This is particularly true with relation to young sex offenders, the prison culture which encourages aggression and often models sexual violence will reinforce rather than challenge the attitudes which lead to sexual offending. If the purpose of imprisonment is to provide community safety then the question needs to be asked whether this can be done in another way.
- Training of staff. Social Workers are trained in working with sex offenders (e.g. by SAYStOP) but what is that training building on? Are University Social Work courses providing adequate basic training to allow further more specialised training to be productive?

Conclusion

If there is one key principle to programme development with child sex offenders, it is the importance of getting it right from the start. Developing programmes grounded in the principles of effective practice and based on inter-agency cooperation is often a difficult and laborious process but experience and research has shown that that approach produces the most successful long-term outcomes.