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LOS DERECHOS DEL NIÑO

**Informe presentado por el Sr. Juan Miguel Petit, Representante Especial
del Secretario General sobre la venta de niños, la prostitución infantil y
la utilización de los niños en la pornografía, de conformidad con la
resolución 2002/92 de la Comisión de Derechos Humanos**

Adición

MISIÓN A SUDÁFRICA*

* El resumen del presente informe se distribuye en todos los idiomas oficiales. El informe completo figura en el anexo del resumen, en el idioma que se presentó y en español solamente. Se distribuye sólo en el idioma en que se presentaron.

Resumen

En el presente informe se detalla el viaje a Sudáfrica, del 16 al 26 de septiembre de 2002, del Relator Especial sobre la venta de niños, la prostitución infantil y la utilización de niños en la pornografía. Se centró esa visita en la explotación sexual y muy en especial en la alta incidencia de violaciones de que eran víctimas niños muy jóvenes o en la primera infancia. Dado el elevado índice de VIH/SIDA en Sudáfrica y la relación entre las cuestiones pertinentes al VIH/SIDA y la explotación sexual, el centro de coordinación del ACNUDH sobre el VIH/SIDA y los derechos humanos colaboró en la visita del Relator Especial.

El informe facilita un breve resumen del marco jurídico relativo a la protección de los derechos del niño en Sudáfrica y detalla las conclusiones del Relator Especial en relación a la violación, la venta y la trata de niños, la prostitución infantil y la utilización de niños en la pornografía, haciendo especial hincapié en que la cuestión conexas del VIH/SIDA.

La violación de niños no es un fenómeno nuevo en el país, pero cada vez se tiene noticia de más casos. Tanto los niños como las niñas son víctimas de violación; según algunos cálculos, cuando se trata de niños de pecho, la proporción de víctimas de ambos sexos es del 50 por 50 y la mayoría de las violaciones son perpetradas por miembros de la familia y por sujetos que el niño conoce. Cada vez es más baja la edad de los autores de esos delitos.

Se ha prestado escasa atención a la trata de niños en Sudáfrica, a pesar de tenerse noticia de que Sudáfrica se está convirtiendo en un país de recepción y de tránsito de víctimas infantiles. La desesperada situación alimentaria de los países vecinos contribuye a incrementar la trata de niños.

La incidencia de pobreza y malos tratos domésticos y la epidemia del SIDA que ha dejado huérfanos a muchos niños, empujan a la prostitución a muchos niños, especialmente niñas. Cada vez hay mayor conciencia de los peligros que acechan a los niños con el incremento de su utilización en la pornografía.

Se tienen en cuenta las medidas adoptadas por el Gobierno y por la sociedad civil, tales como la creación de departamentos policiales para la protección del niño, tribunales especializados en delitos sexuales, líneas telefónicas directas y hogares de rehabilitación, y el informe concluye con una serie de conclusiones y recomendaciones.

El Relator Especial dirige las siguientes recomendaciones al Gobierno y a la sociedad civil de Sudáfrica:

- a) Hay que facilitar medidas profilácticas contra el VIH/SIDA a las víctimas de la violencia sexual y eso debe hacerse en escuelas, albergues y puestos de policía.
- b) Los niños que padezcan VIH/SIDA han de tener acceso a tratamiento, cuidados y apoyo.
- c) Hay que hacer serios esfuerzos para mitigar la pobreza y el desempleo, ya que muchos actos de violencia sexual contra los niños parecen ser consecuencia de la rabia y el hastío. Hay que facilitar al acceso de los adultos a la enseñanza gratuita y a

la formación profesional, especialmente en las zonas rurales donde los oficios mecánicos escasean y al mismo tiempo existe una gran cantidad de individuos sin oficio ni beneficio.

- d) La cuestión de los hogares a cargo de niños ha de plantearse con toda urgencia y hay que arbitrar soluciones duraderas para que los niños no corran peligro de ser explotados.
- e) Hay que hacer una labor de aproximación en todas las zonas para ayudar a los niños que se dedican a la prostitución, que en general se resisten a pedir ayuda, ya que se consideran delincuentes y, en algunos casos, están bajo la amenaza de las pandillas que dominan la prostitución.
- f) Hay que financiar adecuadamente y emprender campañas de información especialmente en las zonas rurales, análogas a las propuestas por la Asociación Rural de Derechos Humanos, campañas que hay que llevar a las escuelas y a otros ámbitos de la comunidad.
- g) El buen nivel de preocupación por los problemas del niño por parte de la policía y del poder judicial en las principales ciudades ha de ser emulado en toda Sudáfrica, y hay que facilitar formación a aquellos sectores que se ocupan de zonas menos desarrolladas y más aisladas.
- h) Conviene abreviar las actuaciones judiciales en casos de delitos de índole sexual, especialmente en zonas rurales.
- i) Debe extenderse a todos los niños hasta la edad de 15 años por lo menos el subsidio de R\$ 130 al mes que actualmente concede el Departamento de Fomento Social a los niños pobres hasta la edad de 7 años. Hay que estudiar la posibilidad de que una parte de ese subsidio se entregue directamente a la escuela para cubrir los gastos de matrícula.
- j) Hay que introducir la investigación policial obligatoria de los antecedentes de los maestros para impedir que los delincuentes sexuales se coloquen en otra escuela después de haber sido expulsados de la suya por abusar de los alumnos.
- k) En cuanto a la información sobre delitos sexuales, debe animarse a los periodistas a que asistan a cursillos de formación sobre los derechos del niño y a que informen de los delitos contra los niños de un modo emotivo que capacite al niño y demás víctimas jóvenes que puedan oír su información.
- l) Aunque hay muchas personas distintas y muy dedicadas que se ocupan de los derechos del niño en el país, plantea muchos problemas la coordinación de sus actividades. Actualmente no existe un centro concreto de referencia ni lugar de primera acogida a los niños que han sufrido abusos. Tiene que haber una estructura colectiva, como un ministerio multisectorial de la infancia que reúna a los diversos agentes, por ejemplo, un centro nacional sobre el abuso y abandono del niño, o un organismo autónomo para el niño, bien dotado de medios y con un personal

competente. Hay que precisar qué funciones han de desempeñar el Gobierno y la sociedad civil en la protección de los derechos del niño.

- m) Hay que implantar una red de centros de derechos humanos en diversas poblaciones, en los que se reúnan la policía, los miembros del poder judicial y la sociedad civil, de suerte que la población pueda con toda confianza plantear sus problemas. Esos centros han de ser apoyados por el Gobierno sin menoscabo de su independencia. Los propios niños han de intervenir como participantes y ser capacitados para colaborar en pie de igualdad.

Annex

**Report submitted by Mr. Juan Miguel Petit, Special Rapporteur on the sale of
children, child prostitution and child pornography**

Mission to South Africa

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Introduction

The Special Rapporteur on the sale of children, child prostitution and child pornography visited South Africa from 16 to 26 September 2002 at the invitation of the Government. He visited Gauteng (Pretoria and Johannesburg), Western Cape (Cape Town and Atlantis) and KwaZulu Natal (Durban). He would like to thank the Government for accepting his request to carry out this visit, for preparing the programme of meetings for him, and for the open and frank dialogue he was able to have with the representatives with whom he met from various ministries, with the National Commissioner of the South African Police Services, Parliament, the South African Human Rights Commissioner, as well as with NGOs, United Nations agencies and academics. He visited several shelters and drop-in centres for women and children victims of abuse and individuals seeking HIV/AIDS testing.

The Special Rapporteur would also like to thank UNDP and UNICEF for the assistance they provided with his mission, and give a particular acknowledgement to the ILO for its interest and support to his mission.

This report is a summary of his visit, his impressions of the difficulties facing South African children and the attempts being made by various sectors to resolve continuing concerns, and a summary of his conclusions and recommendations. It is not a detailed study into the various issues affecting children in the country. The Special Rapporteur has been able to provide certain relevant statistics, for which he thanks those organizations who provided these, notably the South African Police Services (SAPS) and NGOs, particularly Childline, Molo Songololo and those of the National Children's Rights Committee.

Constraints of the mission

The Special Rapporteur appreciates the interest shown by the Government in his visit and welcomes the very informative and open dialogues he was able to have with representatives of the various ministries and departments. However, he regrets that he was only able to have one high-level meeting - with the National Police Commissioner - and that none of the other meetings were at ministerial level. Similarly, some lapses of coordination between relevant Government departments affected the scheduling of important meetings. Of particular regret was that the media briefing, scheduled to take place on the last day of the mission, did not in fact take place. The Special Rapporteur would have welcomed the opportunity to assist in raising public awareness about some very serious concerns facing South African children as well as informing the nation that the United Nations was taking an interest in assisting South Africa to find solutions to these issues.

General impressions

Leaving behind a past of ethnic hatred and lack of freedom, South Africa is now in the middle of an absorbing process of reconstruction in which the leading political actor in the country - the National African Congress - faces the challenge of building a modern and democratic State capable of addressing the enormous social challenges accumulated over the decades.

Apartheid ended in South Africa just eight years ago, but in spite of the hatred which accumulated, the transition led by President Mandela set the basis for a profound reconciliation capable of focusing the efforts of Government and civil society on the future rather than in the past. In a few years an amazing level of social investment has improved the quality of life for many sectors of the population, providing them with water, adequate sewage facilities, housing and electricity, which are also fundamental for the realization of the right of people to a dignified life in which their potentials can be fully developed.

However, the magnitude of the social problems faced by any country could jeopardize efforts to build a democracy. In this context the vulnerability of South African children is of particular concern. The Government has declared that youth is its priority and has developed a National Plan of Action for Childhood to provide coordination among public entities and civil society. However, in spite of this willingness, which is real and palpable in the efforts realized by public bodies, social problems can have their own speed, which surpasses that of the implementation of public policies.

The violence towards children still existing in various social sectors is alarming. Many still see children as a problem to be tolerated and not as a new gift of life to cherish and enjoy. The number of violations suffered by children is troubling, both in the private and public spheres, such as in schools. At times this is at the hands of those responsible for taking care of them, namely the teachers. The existence of sex transactions, whereby children have sex in exchange for money, material goods or simply transportation to school, is also alarming. The reports of the existence of the so-called “*mutti* killings” - murders committed by persons practicing black magic rituals to obtain the organs of children, is shocking. It is disconcerting that policies for dealing with HIV/AIDS do not include the free administration of antiretroviral medicines. The existence of rumours suggesting that having sex with a young boy or a girl prevents or cures HIV/AIDS is also alarming. The number of children who have become orphans because of HIV/AIDS and who live in child-headed households or are in the care of grandparents or, third persons is also troubling.

Some of the serious problems indicated are linked to the lack of public freedoms and equality among citizens in the past decades. Hatred has accumulated. Violence has accumulated. The traditional relations of family harmony were seriously damaged by decades of oppression and contempt, and their present manifestations in devious forms are shocking.

A vigorous effort to create a new culture of human rights, with respect and tolerance at the core of this culture is vital. Many South African children are not aware that they are equal citizens, and are holders of rights, and this needs to be emphasized by all possible means.

I. LEGAL FRAMEWORK

International and regional instruments

South Africa acceded to the Convention on the Rights of the Child in 1995, thereby incurring the obligations to protect the child from all forms of violence, injury, abuse, neglect, from all forms of sexual exploitation and unlawful sexual activity, from use in prostitution and

pornography, to prevent the abduction, sale or traffic in children, and to take all appropriate measures to promote physical and psychological recovery and social integration of a child victim.

South Africa has ratified or acceded to the following other international instruments: the Convention on the Elimination of All Forms of Discrimination against Women, the International Covenant on Civil and Political Rights, the Convention on the Elimination of Racial Discrimination, the Convention against Torture, International Labour Organization (ILO) Convention No. 182 (1999) on eliminating the worst forms of child labour, the African Charter on the Rights and Welfare of the Child, and the United Nations Convention against Transnational Organized Crime.

At the time of the visit, South Africa was in the process of acceding to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and pornography.

National legislation

The Constitution of the Republic of South Africa Act, No. 108 of 1996, enumerates rights specific to children in section 28 (1). These include the rights to be protected from maltreatment, neglect, abuse or degradation, and from exploitative labour practices. There is no specific provision for protection against sexual abuse, but “abuse” is intended to cover all forms of abuse.

A number of domestic legislation and policies seek to practically implement government obligations aimed at protecting children from sexual abuse. These include: the Child Care Act, No. 74 of 1983 (as amended), Domestic Violence Act, No. 116 of 1998, the Criminal Procedure, Act 51 of 1977, the National Policy Guidelines for Sexual Offences, and the Multi-Disciplinary Child Protection and Treatment Protocol. The Sexual Offences Act, No. 23 of 1957 was amended to provide for a definition of commercial sexual exploitation as “the procurement of a child to perform a sexual act for a financial or other reward payable to the child, the parents or guardian of the child, the procurer or any other person”. The act makes it a criminal offence for any person to be involved in the commercial, sexual exploitation of children and failure to report commercial sexual exploitation of children to the police constitutes a criminal offence. The act prescribes 16 years of age as the age of consent to sexual intercourse and prohibits various activities relating to procurement, keeping brothels and prostitution.

The Special Rapporteur was advised that the act was currently subject for further revision in order to adequately address the issue of trafficking of children. Currently “trafficking” is not recognized as a criminal offence under any domestic South African legislation. The act is also under review concerning its definition of “rape”, which currently can only apply to female victims.

Concerning child pornography, the Films and Publications Act makes the importation, production, possession and distribution of child pornography an offence. Films, drawings and scripts can constitute pornography. This act is also under review in order to address the misuse of the Internet for accessing and trading in child pornography.

Draft legislation

The Special Rapporteur attended a working meeting of the South African Law Commission, which since 1997 has been in the process of drafting a “Children’s Bill”. The Commission has been mandated to carry out a comprehensive review of existing childcare legislation, starting with the existing Child Care Act of 1983, and reviewing all legislation affecting children (26 pieces in all), with a view to codifying most elements in one instrument. Certain pieces of legislation, such as the School Act, child justice legislation, domestic violence legislation and certain sexual offences legislation will not be included within the new Children’s Bill. The South African Law Commission reported that it intended to present the Minister of Justice with the draft Children’s Bill by the end of 2002.

The Special Rapporteur was advised that, following the ratification of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, the Department of Justice would develop new legislation to implement South Africa’s obligations in this respect.

In the years following the end of apartheid, the Government of South Africa has made great efforts to develop a comprehensive network of legislation for the protection of children’s rights. Crucial gaps remain: the failure to criminalize trafficking and to legally recognize male rape are of particular concern to the Special Rapporteur, as is the failure to entrench the right to HIV/AIDS treatment in legislation or policy. However it should be acknowledged that efforts to address these and other legislative gaps are continuing. Welcome developments have taken place recently through the case law of South African courts. Of particular importance is the decision of the South African Constitutional Court in *Minister of Health and others v. Treatment Action Campaign and others* (Constitutional Court of South Africa, Case CCT 8/02), which affirms government obligations in relation to access to health-care services (including reproductive health care), in particular national programmes to prevent mother-to-child transmission of HIV, and creates favourable access to treatment for children. The Special Rapporteur would now encourage the Government of South Africa to channel the same effort into an era of implementation of legislation and complying with relevant court decisions to make a reality of the rights protected on paper.

II. SPECIFIC CONCERNS

1. Rape and sexual abuse

The massive national and international publicity surrounding the rape of a 9-month-old baby in October 2001 drew attention to an apparent rapid increase in the number of reports of sexual violence against children in the country. In April 2002, the South African Human Rights Commission released a report entitled “Report on sexual offences against children - Does the criminal justice system protect children?”^a which stated that “almost one third of South African children had been subjected to sex abuse before the age of 18”, and that “20 per cent of females and 13 per cent of males” were abused yearly. On 15 May 2002, the Minister of Safety and Security, Steve Tshwete, gave the following figures in Parliament: between January and September 2001, 15,650 rapes of children were reported to the South Africa Police Services (SAPS). Of these, 5,859 were under the age of 11, and 9,791 were aged from 11 to 17.^b The

Child Protection Unit (CPU) of the Durban SAPS reported that they receive between 37 and 40 new cases of child rape every week. The CPU in Johannesburg reported a similar figure of 200 new cases every month.

The nature of abuse

According to information provided by Childline, an NGO which has offices in six of the nine provinces and provides a 24-hour toll-free telephone helpline giving counselling to young callers, children in South Africa are exposed to every type of sexual abuse imaginable, from rape, anal rape, indecent assault and exposure to adult and child pornography. Crimes are perpetrated by both individuals and by groups - incidences of gang rape are reportedly increasing. Sometimes children are severely beaten or even killed during these assaults, in order to maintain the child's silence.

The victims

Both boys and girls are victims. Where very young children and babies are concerned, one paediatrician with whom the Special Rapporteur met reported that the ratio of boys to girls was approximately 50:50. Childline KwaZulu Natal (KZN) reported that the age of victims was decreasing. In 1991, the average age of a child victim of rape was between 10 and 12, now it is 7. The Durban CPU reported that the youngest victim they had dealt with was just three weeks old, and reported a recent case in which a child aged 3 had been raped and was left tied to a tree amongst bushes. Within the older age groups, most of the *reported* cases of rape and sexual assault involve female victims, although most sources agreed that the extent to which male children are suffering is largely unknown. As well as the reasons outlined below for the failure to report these cases, rape of boys is not yet legally recognized, and the patriarchal nature of South African society in which a boy will not admit to being raped, coupled with the stigma attached to homosexual activity, ensures that he will rarely speak out about any sexual abuse.

The perpetrators

Poverty appears to play a substantial role in the situation of child rapes, and the Special Rapporteur was advised both by prosecutors and NGOs that in most cases involving the rape of a young child or baby, the perpetrator was an unemployed man living in a particularly poor area. In such areas, unskilled women are more likely to be able to find work than are unskilled men, for example, in domestic service. Many of these men do nothing all day except drink alcohol and perhaps also take drugs. Such men have a lot of access to young pre-school children - either those playing nearby or those whom they are supposed to be taking care of whilst the mothers are working. The high unemployment rate, the squalid conditions in which many poor people live, boredom, alcohol and drug abuse and the anger and frustration which many men feel were frequently cited to the Special Rapporteur as being contributory factors or causal elements when rapes take place.

Of great concern is that the age of the perpetrators of rape appears to be decreasing. Even young boys and teenagers are being implicated in acts of sexual violence. Prosecutors at the Department of Justice in Durban reported one case in which a 6-year-old boy, X, was implicated in a rape of a young girl with a teenage friend. The two boys captured the young girl and the

teenager raped her whilst X watched. X was then encouraged to try. When the prosecutor talked to X, it was apparent that he had no idea that he did anything wrong, to him it had been presented as a “sport” or leisure activity. For X at least, the story had a successful outcome in that, following a period of counselling by Childline, the boy was once again brought to the prosecutor - this time as a witness when he had tried to prevent another rape, telling the boy involved to “stop it, you are hurting her”.

Even teenage boys reportedly fail to understand the criminal nature of rape, and some who are sent to Childline for assessment following charges of date rape, alluding to peer pressure and the need to prove one’s manhood, even stated that they felt that forcing sex upon their date was expected of them. Counselling done through a perpetrator programme run by Childline for 20 young offenders aged between 9 and 12 who have been involved in gang rape, usually reveals a pattern in which the boy’s emotional needs have not been met, they have been exposed to bad role models, exposed to pornography and highly violent images in the news. Many say they had seen others commit rape and just thought it was a normal thing to do.

The Special Rapporteur was advised that teenage girls generally become more aware at a younger age about their rights, particularly concerning relationships, as well as issues relating to their health, as a result of reading magazines and sharing information with each other. However, they often cannot physically protect themselves. Teenage boys usually do not have a similar medium through which to receive this sort of information, and are less likely to discuss such issues with their peers.

Reporting sexual offences

In 1996, the Special Rapporteur on violence against women, Radhika Coomaraswamy, visited South Africa in the context of her mandate to examine specifically the issue of rape of women in the country.^c At that time she reported that although almost 37,000 cases of rape were being reported annually, police believed that the figure represented only 1 in 36 cases of actual rape. During the visit of the Special Rapporteur despite statistics from Childline indicating a massive increase of 400 per cent of reported cases of child sexual abuse over the past eight or nine years, he was advised that in some areas, more than 80 per cent of rapes were still not being reported.

The alleged reasons for the continued failure to report rape cases, or subsequent withdrawal of the cases include the following:

- (a) As most sex crimes against children are committed within the family or by individuals known to the family, family members may block the child’s access to the criminal justice system;
- (b) Many families are threatened or bribed into not reporting the offence;
- (c) Many children do not reveal what has happened to them out of shame, guilt and confusion about the perpetrator, who may have previously befriended the victim;

(d) The legal failure to recognize male rape, coupled with the stigma attached to homosexual activity and perceptions of male vulnerability;

(e) Many children and those caring for them do not have access to police stations, particularly in rural areas;

(f) Even where this access is facilitated, there is often a lack of confidence in the local SAPS and criminal justice system, and the belief that the child will suffer secondary victimization at the hands of the justice system remains high; and

(g) The very slow pace with which cases are dealt coupled with the difficulty that especially young children have in remembering events in the order in which they happened.

However, in urban areas, the Special Rapporteur was advised that there had been an increase in the reporting of offences, which could be attributed to a combination of the improvements in the police and criminal justice system, with the result that people were starting to have the confidence to report crimes of rape and sexual assault, as well as increased awareness about sexual abuse of children.

2. Sale and trafficking of children

The issue of trafficking of children in South Africa has received very little attention, and generally, the Special Rapporteur felt that there was an alarming lack of awareness about the issue by most sectors with whom he met. The absence of trafficking legislation means that certain individuals may, as a result of being trafficked, find themselves guilty of related crimes, for example, relating to their status as illegal migrants, or of being forced to sell drugs by their trafficker, and hence are not recognized as victims.

The Special Rapporteur met with Molo Songololo, an NGO which carried out research into this issue in 2000, and published a detailed report^d concluding that South Africa is becoming both a receiving and a transit country for child victims of trafficking, both from other parts of Africa and from Asian countries.

The report found that children, particularly from Angola and Mozambique, but also from as far afield as Senegal, Kenya, Ethiopia and Uganda are being tempted or trafficked and end up as prostitutes on the streets of Johannesburg and Cape Town. Angolan, Congolese and Nigerian syndicates are reportedly responsible for much of the trafficking, but criminal groups from Bulgaria and Thailand, Chinese triads and even the Russian mafia are also involved. Children from Eastern Europe, Thailand and China are being brought to South Africa and sold.

The very desperate food shortages in countries bordering South Africa is contributing to an increase in trafficking of children.

3. Child prostitution

The main reasons for entry into prostitution as outlined to the Special Rapporteur fall into the following broad categories: (a) as outlined above, victims of trafficking are generally forced

into prostitution; (b) teenage girls enter prostitution because of a lack of other opportunities, often with parental knowledge and consent; and (c) those in child-headed households turn to prostitution in order to feed themselves and their siblings. Finally, the issue of exploitative sex in connection with a child's education will also be dealt with in this section.

Victims of trafficking forced into prostitution

Perhaps the most violent circumstances of child prostitution are suffered by the victims of trafficking who are under the control of gangs. The report by Molo Songololo details the lives of a sample of 18 children, mainly girls, and one young woman who had all been kidnapped and trafficked into a specific gang and held prisoner. The report alleges that there are 30 gangs operating in Cape Town city centre, who fight for control of drug dealing and child prostitution on the streets. All the girls reported being physically and sexually assaulted by male gang members, four of them had borne children for the gang leader. All the money they made through prostitution or stealing from their clients had to go to the gang leader, and they were watched, "protected", beaten, and gang-raped by male members of the gang. They were forcibly tattooed on the hand with the insignia of the gang.

In Johannesburg and Durban, NGOs reported a similar situation concerning gang control of prostitution. The gangs operating there were reported to be big syndicates from different parts of Africa and beyond. In particular, Nigerians were reported to be very active in such syndicates, particularly in the Hillbrow area of Johannesburg, where they reportedly use the children to sell drugs, for prostitution and to recruit other children. These children are both South Africans and from neighbouring countries.

Entry into prostitution from a lack of opportunities

Other children enter prostitution because no other opportunities appear to be available to them. Their parents may or may not be aware of the activities, but in many cases the parents reportedly actually encourage or force the child to earn money this way. When the home itself is an abusive environment, children run away and then have no alternative but prostitution. The School Act provides for free primary school education, but in practice every school governing body can decide what it wants to charge each pupil for services such as electricity in the school, so in effect, each child does have to pay a fee. On average, this charge is approximately R\$ 100 (US\$ 10) per month, which is more than many parents can afford to pay. A grant of R\$ 130 per month is given by the Department of Social Development but this is only available to poor children up to the age of 7 and reportedly is often spent on alcohol instead.

Child-headed household and survival sex

Of great concern to many individuals with whom the Special Rapporteur met is the issue of child-headed households in South Africa. The AIDS epidemic has left many children orphaned, and the breakdown of traditional extended family structures has led to a rise in the number of such households in which girls may resort to prostitution in order to feed siblings. This was particularly problematic in KwaZulu Natal.

Several NGOs reported difficulties trying to assist children who are in prostitution. These children will rarely report abuses committed against them to the police for fear of being treated as criminals, and NGOs who try to extend safe-house projects to children in prostitution have great difficulty finding anyone who will offer the children a temporary home.

Exploitative sex and access to education

The issue of prostitution, exploitative sex and rape perpetrated in connection with a child's access to education was raised as a serious and ongoing concern. The Special Rapporteur was advised of situations in which a family friend, neighbour or relative would contribute to the costs of a girl's education, and in return would expect to have sex with her. For many girls, merely getting to school can be dangerous if it involves a long walk each day, and the phenomena of "taxi queens" has arisen, whereby girls will have sex with a taxi driver in return for being driven to school.

Even when the girl has reached her school, she may still be vulnerable. Rape and gender-based violence perpetrated at school remains an issue of concern in South Africa. Teachers may coerce a girl into having sex in return for giving her a good grade or waiving her school "fees", and the Special Rapporteur was advised of one case in which a head teacher had made seven girls pregnant.

In March 2001, Human Rights Watch released a report entitled "Scared at school: sexual violence against girls in South African schools", in which they reported that "sexual abuse and harassment of girls by both teachers and other students is widespread in South Africa. In each of the three provinces visited, we documented cases of rape, assault, and sexual harassment of girls committed by both teachers and male students. Girls who encountered sexual violence at school were raped in school toilets, in empty classrooms and hallways, and in hostels and dormitories. Girls were also fondled, subjected to aggressive sexual advances, and verbally degraded at school. We found that girls from all levels of society and among all ethnic groups are affected by sexual violence at school." Human Rights Watch found that sexual violence has a profoundly destabilizing effect on the education of girl children. All the rape survivors Human Rights Watch interviewed reported that their school performance suffered: "All of the girls told us it was harder to concentrate on their work after their assaults. Some girls reported losing interest in school altogether, many girls transferred to new schools, others simply left school entirely."

The Department of Education is attempting to make schools a safer place. Security has improved in that gates are now locked during school hours and teachers have been trained to look out and protect girls from attacks. Relationships between teachers and students have been outlawed as has corporal punishment, but regrettably both are still very common in schools.

4. Child pornography

The extent to which South African children are affected by the distribution of or exposure to child pornography is unknown but the awareness of and reaction to the problem by critical sectors appears to be markedly better than to the problem of sale and trafficking. No detailed information was available concerning the involvement of South African children in the creation of child pornography but the SAPS informed the Special Rapporteur that their colleagues abroad

reported that child pornography is being distributed to South Africa. In 1998, the Coalition against Trafficking in Women reported that South Africa is a transit zone for international child pornography and prostitution.

Childline KZN had carried out a recent study among the adolescent sex offenders in the treatment programme which revealed that 80 per cent had been exposed to pornography prior to committing their offence. Both adult offenders and child victims reported that offenders use child pornographic images and materials to “normalize” and de-sensitize the child to sexual acts as well as to stimulate the fantasies of the offender.

5. HIV/AIDS

The impact of HIV/AIDS on children in South Africa is devastating. About one in nine South Africans is living with HIV/AIDS; 662,000 children under 14 have lost one or both parents to AIDS. According to UNAIDS, there are some signs of improvement including a recent decline in HIV prevalence rates for pregnant women under 20,^e which suggests that prevention efforts, information and awareness campaigns are paying off in some areas. While welcoming these encouraging developments, the Special Rapporteur is concerned that HIV infection levels continue to rise among the population generally and among older pregnant women, particularly in light of the impact of this trend on children. The Special Rapporteur is equally alarmed by the widespread lack of access to appropriate HIV/AIDS treatment, care and support in South Africa, which violates the human right to health of those affected and worsens the impact of HIV/AIDS on children.

Representatives of the Child Rights Division in the Office of the Presidency cited HIV/AIDS, poverty and sexual violence against children as key immediate challenges. These issues are interconnected and require a comprehensive, multisectoral response. The loss of parents, teachers and other role models to HIV/AIDS has an immeasurably negative impact. Children orphaned by HIV/AIDS are often traumatized by loss and dislocation, and face exclusion and discrimination due to the stigma associated with HIV and AIDS. Their futures are jeopardized by a lack of access to health, education and other social services. Poverty, a lack of access to food and other basic rights may force them to support themselves and other family members, and they may give up their education and work opportunities in order to do so. Children orphaned by HIV/AIDS are vulnerable to exploitation and abuse as a result.

Girls are particularly hard hit as they are vulnerable due to biological factors and often have limited control over decision-making in sexual relations. The Special Rapporteur was advised that both boys and girls may be equally at risk when they are very young, however, as they grow older girls are more likely to face sexual coercion and rape than boys. Girls who are forced into prostitution are at a higher risk of infection. Some reports suggest that child rape may increase the likelihood of unsafe sexual practices during later years including multiple partners and engagement in prostitution, which add to the risk of HIV infection.

The Special Rapporteur is also concerned with reports that young children are being targeted as sexual partners in order to reduce the risk of contracting HIV/AIDS. Particularly worrying are reported incidents of child rape which, according to some sources, are committed based on a belief by the perpetrator that having sex with a virgin or young child may cure him of

HIV/AIDS. While there is insufficient evidence on this, these reports merit careful consideration and further investigation. The Special Rapporteur urges the Government to address public misconceptions related to HIV/AIDS and to ensure that children and adults have access to accurate information and education on HIV/AIDS through all appropriate means.

In addition to dealing with the burden of the disease, children living with HIV/AIDS often suffer discrimination at the hands of family members, health-care workers, teachers and peers. In discussing the impact of HIV/AIDS on children, Department of Health officials expressed a particular concern regarding the rehabilitation of children living with HIV/AIDS and the impact it had on the ability of children to learn and thrive. According to these officials, there is a widespread assumption that because there is no available treatment, HIV-positive children will die, so there is little need for rehabilitation efforts. These concerns reveal the complex and profound consequences of HIV/AIDS on children.

The Special Rapporteur commends the Government for its prevention efforts, in particular through innovative initiatives such as the “LoveLife” programme which promotes healthy living and sexual responsibility among young people. The Special Rapporteur urges the Government to scale up these prevention efforts and to implement a comprehensive, multisectoral strategy for the prevention, treatment and care of people affected by HIV/AIDS, with particular attention to children. Efforts to promote the rights of children are urgently needed, including access to education and information for the prevention of HIV transmission; access to medical facilities and reproductive health services; prevention efforts through peer education programmes, including to street children and other vulnerable groups; access to treatment, including antiretroviral medication; and promotion of the rights of girls to equality in education, inheritance, marriage laws and sexual and reproductive decision-making. Reproductive health services for children and young people including voluntary testing and counselling; access to condoms, and diagnosis and treatment of sexually transmitted infections, are essential. These efforts should include access to prevention and treatment goods, services and information for victims of child sexual abuse.

The particular vulnerability of women and girls to HIV/AIDS due to gender inequalities and discrimination is highlighted in the International Guidelines on HIV/AIDS and Human Rights.^f The Guidelines suggest that measures for the elimination of sexual violence and coercion in the family and in public life should not only protect women from human rights violations but also from HIV infection that may result from such violations. They urge Governments to promote a supportive and enabling environment for women and children by addressing underlying prejudices and inequalities (Guideline 8). The Guidelines further suggest that legislation, policies, programmes, plans and practices include positive measures to address factors that hinder the equal access of children, and particularly girls, to prevention, treatment, care and support (Revised Guideline 6, paragraph (e)). The Special Rapporteur urges the Government to make use of the Guidelines in the development and implementation of its national HIV/AIDS policies and strategies, with the participation and involvement of children and young people in policy initiatives which affect them.

III. RESPONSES OF GOVERNMENT AND CIVIL SOCIETY

1. Government

The Government has made some very positive efforts in the short period since the end of apartheid to deal with some extremely difficult problems. Child protection units and sexual offences courts have been created, an office on the Rights of the Child now exists in the Office of the Presidency and there is a National Plan of Action for Children. However, there is currently no specific office that can centralize and coordinate so many dispersed efforts to assist children, and the Special Rapporteur would strongly recommend that this be addressed.

NGOs are another extremely important partner in the work to protect children's rights and in South Africa efforts need to be made to improve the relationship between the non-governmental and the governmental sectors. Greater resources and responsibilities need to be transferred to NGOs and a strategy of shared action should be established.

2. Responses of Government and civil society

Child Protection Units

In 1986, the first Child Protection Unit (CPU) in South Africa was opened in Durban with police trained to a higher degree of sensitivity dealing with child survivors of any crime, including sex crimes. In 1996, this was extended to dealing with the emotional side of sex crimes perpetrated against adults. There are currently 33 CPUs in South Africa, and 12 units which deal with both adult and child victims.

Police working in the units have a four-week training programme learning about and how to deal with the emotional reactions of children and adults. Four hundred police officers were to be trained in the months following the Special Rapporteur's visit, and the Johannesburg unit expected to receive 30 new staff at the end of 2002.

The Special Rapporteur met with staff from the Durban CPU, and visited a Johannesburg centre which receives both children and adults who have been subjected to sexual violence and abuse. Half the cases dealt with are referred to the CPUs from police stations, others come from hospitals, doctors, teachers, social workers, and from Childline. Although the unit currently does not have the capacity to be staffed on a 24-hour basis, someone is always on standby with a cell phone.

The Johannesburg unit is divided into two sections, the child section appearing particularly welcoming to children, with a small playground between the offices being the first thing the children see as they enter the premises. On arrival at the unit, all survivors are immediately given a kit with items such as a toothbrush, hairbrush, shampoo, etc. The contents vary for different age groups.

The police are assisted in this work by other professionals such as psychiatrists and social workers who help victims deal with their trauma through a victim-empowerment programme.

Before the case comes to court, victims can have access to the Johannesburg Magistrate Court one Saturday per month where they can be briefed about their court appearance on issues such as how to dress and how to answer questions. For younger victims there is a “Teddy Bear clinic”, which is similar and prepares the child for the court experience.

The CPU and accompanying system in Johannesburg is extremely impressive, and if it can be emulated throughout South Africa, it will go a long way to increase public confidence that victims of sex offences will not be further traumatized by their decision to report an offence. It would appear that there is still much work to be done before this becomes a reality, as the reports of police behaviour in other parts of the country were disturbing. The Special Rapporteur visited Atlantis, a small town close to Cape Town, where he was informed that the police were regular customers of the many young prostitutes living there. Other reports also suggested a huge disparity between the conduct of the police working in the largest cities and their rural counterparts.

Sex offences courts

In Durban, the Special Rapporteur visited the Child Abuse Court, which is currently the only one in the country specially designed to deal with sex offences against children. The court uses video link facilities so that the child can give his or her testimony in a different room and does not have to face the accused. A social worker sits with the child, and the prosecutors, who are specialists in dealing with child victims, address their questions to the child with sensitivity and patience.

In Durban, there are a number of such specialized prosecutors, but these reported that this is not the case in other areas. Particularly problematic again are the rural areas, where in general the level of expertise amongst prosecutors is reportedly low.

The non-governmental sector

Children’s centres and shelters

The Special Rapporteur visited a number of children’s shelters and centres during his visit, in Johannesburg, Atlantis in Western Cape, and in Durban, which housed either children who had run away from abuse, former street children, or children in conflict with the law. The shelters and centres were run by the Government, by NGOs and by religious organizations and the Special Rapporteur was extremely impressed by the dedication of the staff in each of them. The Government-run centres, notably the Walter Sisulu centre in Gauteng, were very well resourced and the children were kept occupied throughout the day.

Staff working in NGO shelters do a particularly impressive job in that many of them give their services voluntarily. The results of their love shown to the troubled children living in the shelters could be seen in that dignity and a sense of self worth had started to return to some of these children’s lives. However, these shelters suffer a serious lack of resources. In several, the children’s beds were little more than a mattress on the floor, many windows were broken, there were few resources available to provide children with educational materials such as books, pens and paper, and the directors of several reported great difficulties in paying their bills every

month. Given the critical work done by these shelters in helping to turn a young person's life around and empowering him or her to deal with an abusive past and look to a brighter future, the provision of adequate resources to NGO shelters and programmes should be addressed as a matter of utmost urgency.

Children's rights in rural areas

In Western Cape, the Special Rapporteur met with the Rural Association for Human Rights who briefed him about some of the difficulties working to protect the human rights of those living in rural areas. There are very few NGOs working in rural areas and this organization covers an area of 44 towns. Most of these are poor areas, and transport is not available for many of the inhabitants, leaving many unable to find work and having no access to any form of adult education. Children are in danger every day when they make the long walk to and from school, and access to the judicial process when a child is raped is both extremely difficult and very slow. Children in the rural areas do not have access to a CPU, and in Atlantis the Special Rapporteur was advised that the police there were regular clients of the young prostitutes.

At the time of the visit, the Rural Association for Human Rights was seeking resources in order to be able to launch an awareness campaign about sexual violence and abuse in the rural areas and to take it to schools. The Special Rapporteur would encourage donors to support this and other similar important initiatives.

The media

The manner in which any country's media reports violations against children plays a vital role in shaping public opinion and policy response to such abuses. Sensitive and accurate reporting in which the best interests of the child are truly deemed paramount can serve to protect the dignity of the child whilst conveying the seriousness of the crime. However, when the primary goal is to sensationalize and shock one's audience, further victimization is inflicted upon the child when explicit details of his or her abuse is made public, representing him or her as entirely helpless and disempowered.

In South Africa, the media has paid a great deal of attention to the issue of rape, particularly and understandably where this has involved very young victims. Little attention has been focused upon children who are victims of sale, prostitution and pornography. The lack of interest and awareness about these issues was very evident through the questions put to the Special Rapporteur by several journalists who interviewed him during his visit.

Concerning the portrayal of rape victims, some elements of the South African media, which have in many cases chosen sensationalist reporting rather than protecting the privacy of the victim, now appear to be seeking to strike an appropriate balance in their reporting. During the time of the Special Rapporteur's visit, disagreements had arisen between the media and the police over the release of a photograph of a 6-year-old female rape victim, clearly showing horrific injuries to her lower body. Whilst the Special Rapporteur understands the actions of the paediatrician who, in utter despair having operated upon many severely injured young rape victims, released the photo in the hope of shocking the nation into action, he also shares the concerns of the Police Commissioner that the release of such images does nothing to restore the

dignity of the victim and is highly likely to end up circulating on the most hard-core child pornography networks for the rest of the child's life.

The Special Rapporteur met with the Media Monitoring Project, an NGO which monitors all media, including newspapers, radio and television, examining how social issues including child abuse are reported. Where they consider that a certain report has been handled inappropriately, the Project will contact the journalist concerned. Whilst the project reported a big improvement in the nature of such reporting in recent years, they expressed concern that children are usually still just portrayed as victims in a very disempowering manner, conveying that for the child, his or her life is now ruined. Rapes are reported very factually and are not usually accompanied by any information advising children about their rights, what they can do to protect themselves, and most importantly, who they can turn to if they are victims of abuse.

IV. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

On the human rights situation generally

The Government of South Africa has made tremendous efforts in the eight years since the ending of apartheid to begin creating a culture of respect for human rights in the country. A remarkable level of progress, both in terms of legislation and policy development, as well as access to water, sanitation, and electricity in many areas has now been achieved.

The continuing progress and future development of the country is under serious threat by the AIDS epidemic which is weakening many communities, adding to the severe skills shortages in the population, and reversing development gains.

Although progress has been made in raising awareness of HIV/AIDS in South Africa, the stigma and discrimination associated with the disease continue to be driving forces behind its spread and impact. Access to treatment for people living with HIV/AIDS is extremely limited. The limited access to treatment is, in turn, hampering prevention efforts as people have little incentive to make use of voluntary HIV testing facilities, where these are available.

Concerning the rape of children

The rape of children, including very young children and babies in South Africa is not a new phenomenon in the country. The increase in the reporting of rape cases is a welcome development, compared to the situation prior to the ending of the apartheid regime in 1994, before which time very few of the many rapes occurring were ever reported.

Both boy and girl children are victims of rape, some estimates suggesting that where babies are concerned, the ratio of boy to girl victims is 50:50. As children grow older, girls are at greater risk than boys of being raped or sexually abused.

The majority of rapes are reportedly committed by family members or individuals who are known to the child.

Of great concern is that the age of the perpetrators of rape is getting younger - even young boys and teenagers are now being implicated in acts of sexual violence. Similarly, reported instances of gang rape are increasing.

The phenomenon of rape in the country cannot be attributed to any one cause, but to a combination of the following factors:

- (a) The generally high incidence of violence in South Africa;**
- (b) The culture of patriarchy in South African society;**
- (c) The treatment of children as commodities;**
- (d) High levels of unemployment, coupled with a limited pool of skilled workers;**
- (e) High levels of alcoholism - several sources reported that in every rape of a child, the perpetrator was drunk; and**
- (f) HIV/AIDS: in some cases there are reports that instances of child rape are being committed by individuals who believe that sex with a virgin will cure them of HIV/AIDS. While there is insufficient evidence on this, these reports cannot be discounted. It is also reported that young children are being targeted as sexual partners in order to reduce the risk of contracting HIV/AIDS.**

The media is playing an important role in mobilizing public awareness about the phenomenon of child rapes in the country, but the manner in which it is doing so is a cause for concern, particularly the disempowering way in which it is portraying the child victims.

Concerning the sale of children

The issue of trafficking of children in South Africa has received very little attention, and “trafficking” itself is not yet recognized as a criminal offence. However, there are reports of South Africa becoming both a receiving and a transit country for child victims of trafficking, both from other parts of Africa and from Asian countries. The very desperate food shortages, particularly in countries bordering South Africa, is contributing to an increase in trafficking of children.

Concerning child prostitution

High levels of poverty coupled with domestic abuse are forcing children, mainly girls, into prostitution. As the children's grant ends, when the child reaches the age of 7, many children drop out of school as their parents are unable to afford to pay the schools fees. In some cases, a family friend or relative assists the child to attend school in return for sex.

The AIDS epidemic has left many children orphaned, and the breakdown of traditional extended family structures has led to a rise in the number of child-headed households in South Africa. In many of these families, girls may resort to prostitution in order to feed her siblings.

Concerning child pornography

There are some reports of child pornography being created and/or disseminated in South Africa. The response and awareness of this problem is better than that of sale of children.

B. Recommendations

The Special Rapporteur addresses the following recommendations to the Government and civil society of South Africa:

(a) Victims of sexual violence must be provided with prophylaxis against HIV/AIDS. These should be made available at schools, shelters and police stations;

(b) Access to treatment, care and support must be made available to children living with and affected by HIV/AIDS;

(c) Serious efforts need to be made to alleviate poverty and unemployment, as many acts of sexual violence against children appear to result from anger and boredom. Access to free adult education and skills training must be facilitated, particularly in rural areas where there is a serious skills shortage coupled with a huge number of unemployable individuals;

(d) The issue of child-headed households must be addressed as a matter of urgency and durable solutions in which each child is not at risk of exploitation must be found;

(e) Outreach work is needed in all areas to help children engaged in prostitution, who are usually reluctant to come forward for assistance, believing themselves to be criminals, and in some cases, under threat from the gangs who control the prostitution;

- (f) Awareness campaigns, similar to that proposed by the Rural Association for Human Rights, need to be properly resourced and launched particularly in rural areas, and taken to schools and other community forums;**
- (g) The good level of commitment to children's concerns by the police and judiciary in the main cities must be emulated throughout South Africa, and training provided to these sectors working in less developed and more isolated areas;**
- (h) The judicial process for dealing with crimes of a sexual nature must be speeded up, particularly in rural areas;**
- (i) The grant of R\$ 130 per month which is currently given by the Department of Social Development for poor children up to the age of 7 should be extended and made available to all children at least up to age 15. The possibility of part of the grant going directly to the school to cover school fees should be explored;**
- (j) Compulsory police checks on the backgrounds of teachers should be introduced to avoid sex offenders merely taking up employment in a new school following dismissal for abusing students;**
- (k) Concerning the reporting of sex offences, journalists should be encouraged to attend training courses about children's rights, and should report crimes against children in a sensitive way which empowers the child and other young victims who may hear the report;**
- (l) Although there are many different and very committed actors working on behalf of children's rights in the country, there are many problems concerning the coordination of their activities. There is currently no specific referral centre, no first entry point for children who have been abused. There needs to be a collective structure, such as a multi-sectoral children's ministry to bring the many actors together, for example a National Centre on Child Abuse and Neglect, or an autonomous agency for children, fully resourced and with qualified staff. The exact roles to be played by Government and civil society in the protection of children's rights need to be clarified;**
- (m) A network of human rights forums in different towns, bringing together police, members of the judiciary, and civil society should be established in a manner in which people can feel confident to raise concerns. These should be supported by Government whilst retaining their independence. Children themselves need to be involved as participants, to be trained to offer peer support.**

Notes

- ^a See http://www.sahrc.org.za/main_frameset.htm.
- ^b See SABCTV2, Morninglive 15 May 2002, Report from Parliament.
- ^c E/CN.4/1997/47/Add.3.
- ^d The Trafficking of Children for Purposes of Sexual Exploitation: South Africa, ref. Molo Songololo, 2000 (<http://www.gov.za/reports/2000/childtraff/cintro.pdf>).
- ^e AIDS Epidemic Report update: December 2002, available at www.unaids.org.
- ^f The International Guidelines on HIV/AIDS and Human Rights were published by the United Nations Joint Programme on HIV/AIDS and the Office of the High Commissioner for Human Rights in 1998. These Guidelines were the outcome of an expert consultation process, including participation by the Government of South Africa, in integrating existing international human rights law and related principles and standards into the HIV/AIDS response. Guideline 6 on access to prevention, treatment, care and support was revised in 2002 to reflect recent developments and provide up-to-date policy guidance. The Guidelines and revised Guideline 6 are available at www.unhchr.ch.

Appendix

List of selected individuals and organizations with whom the Special Rapporteur met

Jesper Mørch, representative, and staff of UNICEF

E. Kenneth Andoh, director, and staff of ILO

Sandra Anderson, Senior Intercountry Programme Adviser - Care and Support UNAIDS

Jacob Selebi, National Commissioner, and staff, South African Police Services

South African Department of Social Welfare and Population Development

Department of Education

Department of Justice

Department of Health

Department of Environment and Tourism

Ministry of Foreign Affairs

Office of the Rights of the Child in the Presidency

National Prosecution Authority

Department of Correctional Services

Parliamentary Joint Monitoring Committee

NGOs of the National Children's Rights Committee in Gauteng representing children and family issues, sex abuse, commercial sexual exploitation, HIV/AIDS, mental health, disabilities, parent and student networks

Shelters housing victims of sexual and physical abuse, street children and children in conflict with the law

Childline

Molo Songololo and other NGOs in Western Cape representing missing children, volunteers who provide safe homes, youth groups, and human rights in rural areas

Media Monitoring Project

Lennert Reinuis, Regional Representative, Save the Children

Meadowlands Voluntary Counselling and Testing, Soweto

Gordon Hollamby and members of the South African Law Commission

Shirley Mabusela, South African Human Rights Commissioner

Rose September, Institute for Child and Family Development, Western Cape University

Mary Crewe, Director of the Centre for the study of AIDS, University of Pretoria
