

EMBARGO: FOR IMMEDIATE RELEASE**MEDIA STATEMENT BY THE SOUTH AFRICAN LAW COMMISSION****PROJECT 107: SEXUAL OFFENCES**

The Commission approved the publication of a discussion paper on the procedural law relating to sexual offences against children on 14 December 2001. As part of an incremental approach, the South African Law Commission is releasing the discussion paper on process and procedure relating to sexual offences, this being the second of a four part series, for general information and comment. The first discussion paper dealt with the substantive law relating to sexual offences, while the third and fourth papers will address the controversial issues of adult prostitution and pornography.

The discussion paper contains a draft Bill which embodies some progressive recommendations on the reform of the law relating to sexual offences. Although the discussion paper concentrates on aspects of the procedural law in relation to sexual offences the Bill which accompanies the discussion paper includes substantive law provisions, all of which have been revised following the integration of submissions received on the discussion paper on the substantive law. An explanatory memorandum clearly sets out the reasons for the revision of the substantive law provisions.

The release of the discussion paper on process and procedure relating to sexual offences will be followed by a joint report on both the substantive and procedural law relating to sexual offences. The joint report on sexual offences will contain the final recommendations of the Commission and will be accompanied by a Bill on Sexual Offences. The report and the Bill will, once approved by the Commission, be handed to the Minister for Justice and Constitutional Development for his consideration.

The discussion paper on the procedural law relating to sexual offences includes a discussion of the various agencies or service providers responsible for dealing with the victims and offenders of sexual offences and the procedures for disclosure, reporting and investigation of sexual offences, the court hearing, rules of evidence and sentencing of the sexual offender.

The aim of the discussion paper is to test the preliminary recommendations contained in the discussion paper and to elicit comments which will be used to assist the Commission in preparing a report.

The revised substantive law provisions now include the following:

- A revised statutory definition of the offence of rape. (See clause 3 of the attached Bill).
The revision of this offence includes the following:
 - C Penetration of a person by objects or human bodily parts should be limited to the anus and genital organs - in a manner which simulates sexual intercourse. In order to avoid any speculation as to whether penetration extends to animal bodily parts, the Commission has decided to make it clear that objects include any part of the body of an animal.
 - C The definition of indecent act now provides for the indemnification of health professionals who employ these acts for proper medical purposes.
 - C The list of factors indicating the presence of coercive circumstances, originally proposed, has now been categorised in three categories, these being coercive circumstances; circumstances in which an act of sexual penetration is committed under false pretences, and finally, circumstances in which a person is incapable in law to understand the nature of an act of sexual penetration.
- C The Commission holds the view that the non-disclosure by a person that he or she is infected with a sexually transmissible disease prior to sexual relations with another (consenting) person would amount to sexual relations by false pretences and would therefore constitute rape.
- C Child prostitution now constitutes what was previously referred to as Commercial Sexual Exploitation of Children due to the fact that the divergent role-players targeted in the original provisions are all in some way involved in child prostitution. These would include pimps, clients, brothel-keepers and people trafficking in children for purposes of sexual offences.
- C Provision has been made for the prohibition of the organisation or promotion of child sex tours. This provision criminalises the actions of both persons and bodies that facilitate such tours within or to South Africa in any way, whether by making travel arrangements for potential perpetrators or advertising such tours.
- C The Commission is of the opinion that everybody is in need of increased protection as far as sexual offences are concerned - both locally and internationally. Therefore the

original provision allowing for extra-territorial jurisdiction in respect of all offences under the Act and not only those committed in relation to children, is retained.

Some of the areas of the process and procedural law relating to sexual offences that have received attention are as follows:

- C Agencies or service providers who are involved with or play a key role in the prosecution of a sexual offence, including those tasked with providing services to victims of sexual offences, are identified and critically analysed in respect of existing practices. This analysis is followed, where applicable, by recommendations for change.
- C The Commission holds the opinion that it is the responsibility of the state to provide the financial means to cover the cost of prescribed medication for victims of rape, as well as costs for treatment and counselling as a result of the rape.
- C The Commission recommends that criminal sexual activity compounded by deliberate or reckless exposure to HIV/AIDS should be subject to criminal sanction. It provisionally endorses the view that a separate offence should be created which specifically criminalises harmful HIV-related behaviour in the context of committing a sexual offence, coupled to the proviso that HIV should not be singled out to the exclusion of any other life-threatening sexually transmissible disease or condition.
- C Due to numerous problems in practice which have been brought to the Commissions attention, it has considered the system of criminal procedure that should govern the conduct of trials in relation to sexual offences. In doing so the Commission has critically assessed the rules of evidence and procedure which govern and/or are applied in sexual offence trials. In this regard the discussion paper gives attention, amongst others, to the following:
 - o The creation of a category of vulnerable witnesses which will include all complainants in sexual offence cases and which will afford them new protective measures, in addition to protective measures already provided for in the Criminal Procedure Act, 1977 (such as *in camera* hearings, the appointment of intermediaries and the use of closed circuit television). The new protective measures would include the appointment of a support person to assist the witness during the trial as well as at pre-trial procedures.
 - o The abolition of the cautionary rule in relation to complainants in sexual offence

cases, single witnesses and children, which currently requires or allows that such evidence should or can be treated with caution.

- Some of the issues which have received attention in relation to sentencing and the post-trial phase of the criminal procedure process in relation to sexual offences are:
 - Drug and alcohol rehabilitation orders where it appears that a person convicted of a sexual offence may benefit from treatment for the misuse of alcohol and drugs.
 - Sex offender orders which will prohibit a person convicted of a sexual offence from acting in a way that may cause harm to others, from frequenting specified locations and from contacting specified persons.
 - The possibility of increasing the penalties for persons contravening the prohibition against publication of information or revealing the identities of complainants and witnesses in sexual offence cases.
 - The possibility of providing compensation to the victims of sexual offences who suffered physical, psychological or other injury, loss of income or support.
 - The placement of dangerous sexual offenders under long term supervision upon their release from imprisonment or release on parole.

These are a few of the issues that the Commission addresses in the discussion paper. It should not be seen as representative of all of its proposals.

Attached to this media statement is a copy of the executive summary of the discussion paper, the proposed sexual offences Bill and an explanatory memorandum on the revised substantive law provisions contained in the Bill.

Copies of an executive summary on the process and procedural law relating to sexual offences are available free of charge from the office of the Law Commission. The address and contact details of the Law Commission are:

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The executive summary is also available on the Internet at:

<http://www.law.wits.ac.za/salc/salc.html>. The full discussion paper may be obtained via email in a zipped file from dellene@salawcom.org.za or pkotze@salawcom.org.za.

A full media briefing will be held in early January. Details will follow in due course.

The closing date for comment on this discussion paper is **28 February 2001**.

ISSUED BY THE SECRETARY, S A LAW COMMISSION, PRETORIA

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