



# DLP

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Leaders, Elites and Coalitions

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Research Paper 13

## Structure and Agency in the Politics of a Women's Rights Coalition in South Africa

The Making of the South African Sexual Offences Act, 2007

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## 1. Abstract

How do women's rights groups campaign for vital institutional reform of archaic laws on sexual violence in new democracies? How can they best 'work politically' to achieve positive outcomes? What lessons are there for donors and supporters?

The National Working Group on Sexual Offences (NWGSO), established to influence the progressive reform of national rape laws, became the largest civil society coalition to have collaborated on law reform in South Africa. It emerged at a time of profound change to South Africa's political settlement, and was a product of the new political processes that unfolded in the early years of the democratic transition.

This research paper uses findings from a study of this women's coalition to demonstrate how civil society coalitions may draw on and expand their elite networks and exploit political and institutional arrangements to build developmental partnerships. It examines the strategies used by the coalition to broaden its support base and to achieve its objectives, as well as the factors influencing those areas where the coalition was less successful.

In analysing the successes and setbacks of this groundbreaking coalition, this study offers lessons for civil society leaders, policy makers and developmental partners in how best to support developmental coalitions and strengthen their capacity to promote long-term, sustainable social change.

## 2. Acknowledgements

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### 3. Executive Summary

How do women's rights groups campaign for vital institutional reform of archaic laws on sexual violence in new democracies? How can they best 'work politically' to achieve positive outcomes? What lessons are there for donors and supporters?

This research paper presents the findings from a study of a women's coalition in South Africa. The National Working Group on Sexual Offences (NWGSO) was established to influence the progressive reform of national rape laws and it became the largest civil society coalition to have collaborated on law reform in South Africa. The Working Group emerged at a time of profound change in South Africa's political settlement, and was a product of the new political processes and institutional arrangements that unfolded in the early years of the democratic transition. The research thus represents a case study that explores the relations between structure and agency in the politics of reform. In analysing the successes and setbacks of this groundbreaking coalition, this study offers lessons for civil society leaders, policy makers and developmental partners in how best to support developmental coalitions and strengthen their capacity to promote long-term, sustainable social change.

Key findings are summarised as:

- Critical overarching themes from the research
- Factors that facilitate the formation of coalitions
- Potential success factors for women's coalitions
- Coalition strategies for greater influence
- Key elements of effective donor support for women's coalitions and more widely across civil society
- The identifiable successes of this particular coalition.

#### Eleven overarching themes

- 'Critical junctures' such as national political change may provide opportunities for civil society to redefine its rules of engagement with the state. Knowing when and how to seize such opportunities is crucial.
- Many factors account for the emergence of coalitions, including: new opportunities for political engagement during political transition; how local actors form collective initiatives and their motivation to initiate meaningful social change; the existence of prior networks and experience; the ability to mobilise popular civil society support; donor support.
- New spaces for policy influence may be opened through engaging in law reform. This study shows how the coalition's extensive experience in women's advocacy and in-depth understanding of the law contributed to their success.
- Strategies of 'judicial/legislative advocacy' can assist the process of legal reform, but success depends on the existence of a relatively free judiciary.
- Women's coalitions may draw on and expand their elite networks and exploit political and institutional arrangements to build developmental partnerships.
- Co-operative networks between elite actors that span both civil society and government may initiate new processes of legal reform.
- The building of elite networks between national and international advocates at high-ranking meetings (such as UN Conferences) may have positive developmental outcomes - if the right people are involved.
- 'Soft advocacy' or 'backstage politics' may be more effective strategies where co-operative relationships exist between high-ranking state actors and civil society leaders.
- In dominant one-party states such as South Africa, 'adversarial advocacy' such as monitoring govern-

ment's fulfilment of laws and policies or criticising political elites in the media may antagonise the party and reduce engagement.

- A coalition's leadership structures and functioning must be determined through consensual processes and not automatically assumed or enacted by its key figures.
- Competition over funding may lead to disruptive tensions and there are strong grounds for ensuring transparency about a coalition's funding.

### Factors which facilitate the formation and evolution of civil society coalitions

- Democratic transition may create 'triggers' for the emergence of coalitions. These may include retrogressive state actions, such as implementing policies that violate the rights of women, or progressive state actions, such as the opening of new spaces for engagement with the government.
- Civil society leaders and donors need key political analytical skills in order to systematically scan the political landscape, identify and seize opportunities for political participation and define realistic limits.
- Prior networks between individuals, civil society organizations and parliament often play a key role, helping to establish synergy between influential state actors and civil society elites. Newer coalitions can learn from such past strategies.
- 'Rolling triggers' - new, high profile events (in this case study, the rape allegations and court case against South Africa's Deputy President, Jacob Zuma) may galvanise greater action by civil society, often inspiring changes in strategic direction.
- Organisations join coalitions to increase their own capacity and skill base, establish wider networks (regionally and/or nationally) and expand their sphere of influence. Pre-existing social networks between individual leaders may help but, if the leadership and organisation of the coalition are not seen as accountable to all of its members, they may also hinder.
- Organisations with the greatest expertise, broadest networks and strongest resource base are more likely to drive the establishment and evolution of coalitions.
- Donors should make funds available specifically for promoting collective action between sectors within civil society. Funding earmarked by international development agencies and other funders for the establishment of a coalition, and early consensus-building between members, played a crucial role in the formation of the Working Group.

### Factors that facilitate the *relative* 'success' of women's coalitions

- **Expertise within the fields of legal advocacy and women's rights:** Understanding parliamentary procedures and demonstrable experience and understanding of advocacy on women's issues, concrete legal and policy recommendations, and an ability to 'speak the language' of parliamentarians and law-makers all strengthen a coalition's potential impact.
- **Demographic diversity:** Where state elites value affirmative action and the empowerment of previously marginalised populations, the issue of positionality (or perceived identity) is vital. Their perception of the 'authenticity' of a coalition's leaders, and their 'true' representation of their 'constituents', may enhance prospects for success.
- **Establishing a broad support base:** This can, potentially be an important factor, given that civil society has historically had the greatest impact when campaigns have been expressed as mass social movements. However, maintaining solidarity across a large coalition may reduce its objectives to the 'lowest common denominator'. There may thus be a trade-off between inclusion and extensiveness of the coalition, on the one hand, and the ability to agree on a clear program, on the other hand.
- **Building internal consensus:** Accountable and transparent leadership is essential for maintaining the solidarity, motivation and active participation of a coalition's members. For example, distribution of

clear, accessible information helps to encourage participation and build consensus.

- **Invoking the ‘human rights’ framework:** The coalition in this study situated (hence framed) rape law reform within the broader framework of human rights and constitutional imperatives – areas prioritised by leaders of the transition. It was thus able to link rape law reform symbolically with democracy, constitutionalism and modernity.
- **Maintaining and deploying political alliances** and appropriate advocacy strategies (ranging from ‘soft advocacy’ to more direct legislative advocacy).

### Coalition strategies for greater influence

- Strategies to elicit change through collective action must be determined from within a coalition, and according to the local context.
- Building consensus and solidarity among members, and innovative techniques to empower ‘weaker’ organisations within a collective, enable a coalition to better represent all its partners.
- Past collaborations with elite political actors, particularly those with ‘activist sympathies’, can provide valuable political leverage.
- Civil society participation in state ratification of international conventions may instigate increased political commitment to fulfilling its tenets. However, civil society leaders may need to tread a fine line between collaborating privately with state elites and publicly opposing state inadequacies.

### Key elements of effective donor support for women’s coalitions

This study has identified key elements that could make the role of donors in supporting coalitions – particularly women’s coalitions - more effective:

- Detailed understanding of local gender history and politics. Donors that emphasise monitoring and oversight of state entities may be eager to fund ‘adversarial advocacy’ without enough consideration of negative impacts.
- Engaging with a diverse range of key players and understanding the political landscape. Donors need a trained workforce, both local and international, with political analytical skills in the gender field that enable them to ‘think and work politically’.
- Brokering opportunities for women’s leaders to meet and to articulate and aggregate their collective objectives. Providing operational costs for community-based organisations is vital to ensure their continued inclusion and active participation.
- ‘Donor transience’ has a negative impact on developmental coalitions. Donors should sustain commitments to organisations that continue to deliver on their indicators, rather than shifting attention and resources to more currently fashionable causes.
- Donors need to change their focus from being ‘project oriented’ to being ‘goal oriented’, investing less in supporting short-term projects with sharply delineated boundaries and more in promoting systemic social change through innovative funding mechanisms.
- It is important for donor evaluation to focus also on processes as well as outputs or outcomes, as internal governance and decision-making may affect performance on the ground.
- Donors need to collaborate with each other to avoid duplication, conflict or gaps in funding women’s coalitions, and to ensure more strategic direction for specific sectors of civil society.
- Donors need to ensure that there is a high level of financial transparency regarding all parties involved in funding contracts.

**Evidence and indicators of the successes of this coalition:**

- Substantive improvements achieved on rape laws and attendant policies in South Africa.
- ‘Elevated organisation’ of civil society – that is, an establishment and expansion of collaborative networks within the women’s sector.
- Strengthened alliances across the women’s sector, and new alliances with other sectors. However, disagreements over funding and strategic direction, leading to the departure of some key actors, were detrimental to the coalition.
- Cultivating knowledge of legislative reform processes and of civil society’s opportunities (or lack thereof) for political participation in these.
- Deepening and extending public discussion and debate on issues about sexual offences.
- The creation of future opportunities for judicial/legislative and other forms of advocacy to challenge the inadequate aspects of Sexual Offences Law and attendant policies. The coalition has already developed a new monitoring campaign called *Shukumisa* (‘Shake Things Up’) which oversees the state’s delivery of services mandated by the Act and related policies.

## 4. Introduction<sup>1</sup>

This study forms part of a wider research programme, the Developmental Leadership Programme (DLP), which explores the hypothesis that effective leadership and the collective action of a relatively small number of leaders and elites, across the public and private sectors, are critical for building effective states, ensuring stability and promoting economic growth (Leftwich and Hogg, 2007). Major challenges of development are conceived as collective action problems, and agential, rather than technical or institutional factors, are understood as paramount in enacting the political processes that lead to long term, progressive social change. The larger research project aims to chart the role of human agency in shaping the institutions which promote economic growth, political stability, human rights and inclusive social development.<sup>2</sup> It seeks to understand the provenance, nature and forms of effective leadership in order to support the emergence and expansion of pro-development leadership and growth coalitions (Leftwich and Hogg, 2007).

In South Africa, women's coalitions have formed around a broad spectrum of development and human rights issues encompassing sexual and domestic violence, women's livelihoods, education and the law. These organisations have made significant strides for women's rights and access to improved services, including comprehensive reproductive healthcare, the increased protection of women in the workplace, better education for women and girls, and the reform of rape laws. This study focuses on the role of a coalition of civil society organisations, primarily women's rights organisations, in the passing of South Africa's Criminal Law (Sexual Offences) Amendment Act (2007). Using the coalition of the National Working Group on Sexual Offences (hereafter the 'Working Group') as a case study, this research explores the hypothesis that: 'successful and sustained development depends crucially on whether and how various leaders and elites within and across the public and private domains are able to form sufficiently inclusive 'developmental coalitions' (Leftwich, 2009: 8).

South Africa has a celebrated constitution which enshrines women's rights, and the post-apartheid government has improved women's representation at executive political levels. These official changes are at odds with continuing high rates of violence against women, which rank among the worst in the world. This study documents how the Working Group emerged with the developmental objectives of reforming South Africa's rape laws. The Working Group functioned as a coalition with the primary goal of uniting and organising spheres of civil society to influence the content of the Sexual Offences Act and to expedite its passage through state structures of legislative reform.

## 5. Methodology

In the preliminary stages of this case study, researchers identified key government officials and civil society leaders involved in the genesis of the Sexual Offences Act as potential sources of information about the Working Group's establishment and impact. As these figures included cabinet ministers and civil society leaders, not all the requests for interviews were successful. In the cases in which informants agreed to be interviewed, researchers conducted telephonic or electronic interviews based on the questionnaire provided below as Appendix A.

<sup>1</sup> The terminology surrounding 'rape', 'sexual assault' and 'criminal sexual conduct' is contested. Taking our cue from researchers at the University of Cape Town's Gender Health and Justice Unit, we have chosen to use the word 'rape' rather than the phrase 'sexual assault', because we believe it most appropriately reflects the act as a crime of violence rather than a sexual crime. In abbreviations pertaining to informants, NWG stands for the National Working Group, and JC for parliament's Portfolio Committee on Justice, or the 'Justice Committee'.

<sup>2</sup> 'Human agency' in this context refers to the role of people – principally leaders, elites and coalitions – in forging developmental institutions. 'Inclusive social development' refers not only to the provision of services on an equitable basis, but also the promotion and protection of human rights and gender equality. These are among the United Nations' primary developmental objectives articulated in the Millennium Development Goals (MDGs). Unless governments and institutions rapidly expand programmes to achieve these goals, they will not be realised. Agency is therefore a critical ingredient in driving the expansion and implementation of programmes necessary to achieve the MDGs.

In examining the structural, institutional and socio-political factors that led to the emergence of the Working Group, researchers analysed relevant parliamentary submissions between 1998 (when the need for rape law reform was first acknowledged by parliament) and 2007 (when the Sexual Offences Act was passed). Research was conducted on previous South African legislation to identify legislative gaps and judicial processes that 'triggered' the emergence of the Working Group and the need to for rape law reform more broadly. Secondary research was conducted on South African civil society within the socio-political context of the post-apartheid state, and in relation to the broader, international movement for women's rights that came to the fore around the Fourth World Conference on Women in Beijing, 1995.

In researching the functioning and impact of the Working Group, twenty semi-structured, in-depth interviews were conducted with members of the Working Group and key government officials who were involved in the drafting of the Sexual Offences Act. Their purpose was to assess the roles of leadership and agency in the creation and impact of the coalition. These interviews formed the bulk of primary research for this case study. Purposive sampling was used to source informants for these interviews, who represented the Working Group on Sexual Offences, its 'predecessor' coalition, the Western Cape Consortium on Violence against Women, and government officials who had worked on the Sexual Offences Act at executive, parliamentary and provincial levels. As it was not possible to interview all members of the Working Group, or all the government officials who were involved in the Act, researchers focussed on key actors whose names arose frequently in primary and secondary sources on the Working Group and the reform of South Africa's rape laws (Hassim, 2003; Fuller, 2007; Artz and Smythe, 2008).

Based on the research hypotheses established through prior research for the Developmental Leadership Programme, researchers developed a semi-structured questionnaire in order to gather data about the emergence, organisation and impact of the Working Group. Questions were open-ended, and, providing scope for detailed responses from informants (Du Plooy, 2002:138). The interview questionnaire is attached below as Appendix B.

As part of the larger research project on developmental leadership, a database has been established which records the empirical characteristics of leaders drawn from a variety of case studies on elites and coalitions which constitute the larger research project. Researchers developed a mapping tool based on the forms and fields of the leadership database, which recorded information about the demography, educational history, career history and political background of consenting informants. Informants were requested to fill out the mapping form, and their responses have been used to populate the online Leadership Database. The Leadership Database compiles the empirical characteristics of leaders for each of the case studies within the larger research programme so that the empirical characteristics of these leaders may be better understood and compared.

## **6. The socio-political context for law reform**

The National Working Group on Sexual Offences emerged at a time of profound change in South Africa's political settlement, and the coalition's emergence was a product of the new political processes that unfolded in the early years of the democratic transition. Changes in the structural and institutional context during this time opened a space for civil society organisations to exercise a greater degree of agency in re-defining national policy and legislation. Because of the constituency of the anti-apartheid movement, encompassing as it did a broad-base of political and human rights activists, the leaders of the new democratic government strived for inclusivity, openness and public participation in crucial matters

of state policy-making. An example of this was the drafting of the democratic Constitution, which entailed sourcing and incorporating submissions from thousands of 'ordinary' members of the public.

Furthermore, because the anti-apartheid movement was heavily populated by civil society organisations, numerous ties and connections existed between leading members of civil society (who remained working within this sphere after the democratic elections) and political and human rights activists who entered government at local, provincial, national or executive levels after the democratic elections. After its landslide electoral triumph of 1994, the ruling African National Congress (ANC), instituted a quota to increase women's representation in parliament. National government committed itself to the promotion and protection of women's rights, and powerful state actors negotiated a series of mechanisms to initiate gender equality within government norms and procedures (Hassim, 2003).

The Bill of Rights imposed positive duties on the state with regard to the protection of the rights to dignity, privacy and freedom from all forms of violence. The constitution directed the state to 'respect, promote, protect and fulfil the rights' contained within the Bill of Rights. Parliamentary structures were created to monitor the impact of legislation on women and to promote gender equality through the law, the Joint Monitoring Committee on the Improvement of the Quality of Life and Status of Women foremost among them. The Committee's purpose was to monitor and evaluate parliament's progress in improving the quality of life and status of women, and in fulfilling government's commitments to international declarations including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

South Africa is a deeply patriarchal society characterised by high levels of violent crime. In 1994, the Interpol ratios comparing the crime rates for 89 member states found that South Africa had the highest number of reported rapes (Pithey, Artz and Combrinck, 1999: 3). In 1999, 8.8 per 100 000 of the female population aged 14 years were killed by their partners, the highest rate of national female homicide on record (Mathews et al., 2004). During the early years of the democratic transition, high rates of sexual violence drew the attention of key parliamentarians and cabinet ministers, the judiciary and the public to the need for reform South Africa's rape laws (interview, JC 1, 05.08.2010). Apartheid laws on sexual offences and violence against women were archaic, with rape being defined in extremely narrow terms (interview, JC 2, 10.08.2010). Other laws pertaining to sexual offences in South Africa, made after 1994 but before the passing of the Sexual Offences Act in 2007, were also deficient. Instead of a single, comprehensive law with an affiliated policy, laws were piecemeal and related policies were ambiguous.

There was a growing awareness on behalf of civil society leaders in the women's sector, together with key government officials, that parliament needed to instigate legislative reforms to promote gender equality nation-wide. However, in the early years of the democratic transition, reforming rape laws reforms was not prioritised by the legislature. The inadequate and outdated content of the apartheid rape laws, in combination with parliament's delays in drafting new legislation, spurred women's rights and legal advocacy groups to explore other channels to instigate legislative reform.

They employed the strategy of legal activism, bringing test cases before the court to challenge aspects of inadequate laws. This form of activism has been used with success in numerous other instances in South Africa, such as the 2001 case brought by the Treatment Action Campaign (an HIV treatment rights group) against the Department of Health. In this case, the Treatment Action Campaign argued that government's failure to provide public access to antiretroviral treatment violated the rights of people living with HIV. Government lost the case, and was compelled by a judicial ruling to initiate a public roll-out of antiretroviral treatment. However, while civil society groups in South Africa has used legal activism in order to force the state to account for inadequate laws and policies that violate the rights

of citizens, it is notable that this form of advocacy may only be used in democratic polities in which the rule of law is sound and the judiciary independent. Moreover, while legal activism may result in legislative reform, this will not necessarily translate into the practical implementation of changes by government officials. In the case of the Treatment Action Campaign's campaign for public access to anti-retrovirals, a further charge was later laid against the Minister of Health for failing to adhere to the court order and to initiate a tender procedure for the purchase of anti-retrovirals.

In the case of legal activism by women's rights groups during the early years of South Africa's democratic transition, when their cases succeeded, judges were compelled to write new jurisprudence pertaining to rape laws that better reflected the legislative tenets of South Africa's new democracy. This was problematic in terms of the separation of powers, and judges themselves argued that this should be the purview of the legislature rather than the judiciary (Fuller, 2007: 7). Judicial reform around rape laws therefore exerted pressure on the other tiers of government, creating the institutional context for legislative reform. The term 'legislative advocacy' is used here to denote the activist strategies used by the women's rights coalitions in this study to influence the content and expedite the passing of new legislation in South Africa (in this case, pertaining to new rape laws).

## 6.1 External pressures for structural change

Research has shown that leaders who are attuned to international demands for good governance may be more likely to initiate reform-supportive behaviours within their own spheres of influence (Von Doepp, 2009: 14). In this case, the South African government's impetus to update its sexual offences laws was stimulated by the Beijing Conference in 1995, attended by a delegation of senior government officials with a strong commitment to promoting gender equality through new laws and policies. Over the following years, these officials pushed for the Law Reform Commission, the body mandated with investigating and proposing legislative reform to parliament, to mount its investigation into updating sexual offences legislation. This was the first step in the process of the creation of a new Sexual Offences Act. The international network on violence against women had therefore extended its influence to political elites in South Africa, and key leaders in the ANC began work to fulfil government's commitment to the Beijing Platform for Action and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Subsequent to attending the Beijing conference, members of parliament with past experience in human rights activism and extensive ties within the new democratic government, began to use their political influence to push for the reform of rape laws (interview, JC 2, 10.08.2010). Parliament tasked the Portfolio Committee on Justice, a parliamentary body, with the drafting and finalisation of the Sexual Offences Bill. Johnny de Lange, the chairperson of the Justice Committee, explained that the democratic government made gender equality a 'pillar' of the South African Constitution, and that government 'therefore had to address the issue seriously' (interview, JC 2, 10.08.2010).

Parliament's initiation of this process of reform was therefore the result of a convergence of local and international opportunities for legal and policy reform in the sphere of women's rights. Co-operation between civil society and government officials working for the Justice Department characterized the state's early investigation into legislative reform, as discussed in the following section.

## 7. The emergence of a developmental coalition

1999 was an election year in South Africa, and the women's lobby begun to organize in order to mount pressure for the reform of rape laws (interview, NWG 4, 11.06.10). In 1999, the Deputy Minister of Justice, Johnny de Lange, tasked the Law Reform Commission with investigating how to reform laws

pertaining to rape.<sup>3</sup>

The coalescence of activist lobbying for legal reform and the motivation of government officials to strengthen laws and policies to promote gender equality therefore initiated the inclusion of adults in the South African Law Reform Commission Sexual Offence Project in 1999, which until then had only dealt with sexual offences in relation to children. Dellene Clark, speaking on behalf of the Commission, explained that lobbying by civil society had contributed to the Law Reform Commission's investigation into the need to reform rape laws in South Africa (Interview, Law Reform Commission, 01.06.10). In order to address the extended ambit of the Sexual Offence Project, the Law Reform Commission's Project Committee on Sexual Offences was extended to include representatives from the National Network on Violence against Women, some of whom later founded the National Working Group on Sexual Offences.

In December 2002, the Law Reform Commission completed its investigation and published its report. The report contained a proposed Sexual Offences Bill, as well as non-legislative recommendations, which leant heavily on the recommendations of the Western Cape Consortium on Violence Against Women, the Working Groups 'predecessor coalition'. While the Law Reform Commission's Bill on Sexual Offences was written by a project committee with no official representation from women's organisations, the Bill was written after extensive consultation with civil society groups, legal experts and academics who had built up a body of research and experience on rape and the law (Pithey, Artz and Combrinck, 1999). This Sexual Offences Bill, B50-2003, was published in the *Government Gazette* No. 25283 on 20 July 2003.

Many women who were active in the anti-apartheid struggle joined government after the democratic elections of 1994 (interview, NWG 5, 17.06.10). Networks which had been established in the anti-apartheid resistance movement meant that leaders of the women's rights sector were 'linked with each other in various networking ways (interview, NWG 5, 17.06.10). Women's and children's rights organisations knew that, subsequent to 1994, parliament would pursue a long process of legislative reform (interview, NWG 5, 17.06.10). As one Working Group member explained: 'The new constitutional democracy had brought a change of law and a change in politics and women's organisations were ideally poised to be involved' (interview, NWG 5, 17.06.10.) The post-apartheid state created the opportunities for civil society to engage directly with the process of law making. This left the women's sector to establish new platforms of legitimacy and to pursue new objectives through the creation of broad-based alliances. The tabling of sexual offences legislation provided an opportunity for the formation and strengthening of these new objectives and alliances.

The onset of formalized, collective advocacy work around sexual law reform began in 1998 (Pithey, Artz and Combrinck). At this time, a coalition of women's rights and legal reform groups emerged to generate concrete policy and legal recommendations to ensure that the content of future sexual offences legislation protected the rights of women and children, and was responsive to the South African specific context of endemic gender based violence (GBV). The coalition named itself the Western Cape Consortium on Violence against Women (the 'Consortium'), and it was founded with support from the Open Society Foundation.<sup>4</sup> Its members were organisations with a strong legal advocacy and research focus, including the Women's Legal Centre and the Gender, Health and Justice Research Unit (University of Cape Town). Many had worked together previously on campaigns relating to violence against women,

<sup>3</sup> De Lange played a central and complex role in the making of the Sexual Offences Act as he headed parliament's Justice Committee for most of the time in which the Committee was finalising the Act's contents.

<sup>4</sup> The Open Society Foundation for South Africa is a grant-making organisations and a member of the International Soros Foundations Network. The Open Society Foundation was founded in April 1993 to promote the ideal of an open society in South Africa; including democracy, a market economy, a strong civil society presence, respect for minorities and tolerance for divergent opinions. The Consortium received funding from the Open Society Foundation for its advocacy work on the Sexual Offences Act, the specific amount of which is not available for public disclosure.

principally around drafting the Domestic Violence Act (1998) (interview, NWG 2, 08.06.10). Past networks established through joint advocacy and research initiatives therefore facilitated the Consortium's emergence, as did financial support from a 'staple' donor with a well-established profile in the development sphere.

The founding of the Consortium formalized the working relationship between numerous women's rights organisations in the Western Cape, with the primary objective of promoting reform around sexual offences legislation. This coalition established a precedent for activist lobbying and co-ordination around the Sexual Offences Bill, and was the predecessor to the Working Group (the primary focus of this study). Elites from a range of political parties were aware of the advocacy work of women's rights organisations. High-ranking political officials who sympathised with the aims of the women's sector 'created a platform' for leading figures in civil society to meet with political elites, and thus established an early alliance between influential women in government and leading figures in the women's sector. These women's rights organisations, in turn, were using 'any sort of political space they could find', to push for legal reform of rape laws (interview, ACDP 1, 16.08.2010). They also capitalised on the fluidity of the political processes during the democratic transition and on their old connections with former colleagues who had assumed positions within various tiers of government.

### **7.1 From elite networks to structured coalitions**

While the passing of the Sexual Offences Bill generated greater public interest in the processes of rape law reform in South Africa, once the Bill was passed it 'dropped off the radar' of parliament (interview, NWG 2, 08.06.10; interview, NWG 3, 10.06.10). From 2004 onwards, as the Bill appeared to be in stasis, the Consortium employed 'soft advocacy' strategies to revive government's stated commitment to its passage. Consortium leaders wrote letters to key officials, including Deputy Minister of Justice de Lange (who presided over the Justice Committee tasked with drafting the Sexual Offences Act) to request that the Committee resume the process. This lobbying was partly successful, as parliament resumed work on the Bill from 2006 (interview, NWG 2, 08.06.10). The Working Group's connections with key state actors and the soft advocacy its leaders used to bring the Bill back onto the parliamentary agenda point to the centrality of a coalition's connections with elite government officials. In this respect, it is notable that, after the Working Group's members with connections with De Lange had left the coalition, its relationship with the Justice Committee deteriorated, its ability to influence the content of the Bill through 'backstage' work with key political actors was curtailed, and the coalition changed strategies to target the media and the public in order to mobilise support for its work. Once key figures within the women's sector discovered that parliament had resumed work on the Sexual Offences Bill, a group of Johannesburg-based women's rights and legal advocacy organisations began to plan the formation of a broad-based women's rights coalition. Most of these actors were not initially members of the Consortium. They foresaw the new coalition functioning as a pressure group to influence the content of the Sexual Offences Bill, and to expedite its passage. They believed that the formation of a national coalition would have a stronger chance of influencing the content of the Act, and would pressure parliament to expedite its passage (interview, NWG 2, 08.06.10). Some of these figures believed that the Consortium was overly 'academic', and that the national coalition should be 'more advocacy and activist-oriented' (interview, NWG 9, 30.06.10). At this early stage, conflict emerged between the leaders in Consortium on Violence against Women. There was a fundamental difference of opinion between key members within both coalitions over the strategies the Working Group should pursue. Those with more legal expertise were intent on a tightly focussed movement around the specific details of the legislation. However, others were impatient with butting heads with government and wanted to pursue more broad-based, adversarial strategies. This led to a rift between key members, some of whom left the coalition.

The Justice Committee's curtailment of public participation in the law-making process, and continual delays in the passing of the Sexual Offences Act, resulted directly in the creation of the Working Group. Teleconferences were held between leaders of founding organisations of the Working Group, the 'core instigators' of the coalition (interview, NWG 9, 30.06.10), at which they vented their frustrations over the obstructive actions of key government officials, including members of parliament's Justice Committee, regarding the Sexual Offences Bill. Two organisations (Childline South Africa and the Centre for the Study of Violence and Reconciliation) called a national meeting to plan advocacy around the Bill and the foreclosing of public engagement. In this respect, the opening of a space for civil society's participation in rape law reform triggered the initial foundation of the Western Cape Consortium on Violence against Women, the Working Group's predecessor coalition. As this space for civil society's participation in the law reform process narrow, this triggered the establishment of the National Working Group, a coalition that formed as a pressure group in order to galvanise greater civil society engagement with the drafting of the new laws and to pressure parliament to speed up their passage. Shifting terms of political engagement thus provided triggers for the establishment and evolution of these women's rights coalitions.

On 6 May 2004, representatives from nine organisations met and formed the National Working Group on Sexual Offences (the Working Group) with the collective aim of promoting 'the development and implementation of legislation and policy that ensures that women and child survivors of sexual offences receive the optimal legal, medical and psycho-social support, treatment and care' (The Working Group on Sexual Offences, 2009). Between 2004 and 2007, these civil society organisations collaborated under the aegis of the Working Group to influence the content of the Act and to speed up its passage.<sup>5</sup> By the time that the Sexual Offences Act was passed, the Working Group was constituted by eighteen member organisations, each with a focus on women's rights.<sup>6</sup>

Numerous informants explained the crucial role of prior relationships and networks in the emergence of the Working Group. Members from the constituent organisations operated within overlapping but different spheres. This ensured a relatively wide reach for the Working Group's membership drive (interview, NWG 5, 17.06.10).

In the first phase of research conducted for the Developmental Leadership Programme (DLP), patterns emerged which indicated the centrality of quality secondary and higher education in strengthening a society's capacity for effective leadership. Case studies found that tertiary education – particularly in the fields of social science and law – 'conscientised' participants about challenges to development and the necessity of resolving these (Leftwich and Hogg, 2007: 21–22). It is notable that the majority of the Working Group's members were women of a similar age (late thirties/early forties) who were 'conscientised' about human rights through their involvement in the anti-apartheid resistance movement and their work on issues relating to gender equality and justice during the years of the democratic transition. Most of the Working Group's members were from urban backgrounds and middle to upper middle class families, with business and professional backgrounds. They were generally well educated, and many had Master's qualifications often in legal studies. At the time of interview, most of the members still worked for NGOs.

Informants believed that prior relationships within other coalitions or collaborative projects had a positive effect on the establishment of the Working Group. As mentioned above, many members had

<sup>5</sup> The civil society movement for HIV treatment, for example, ultimately had recourse to the courts to force government to fulfil its constitutional obligation of public access to life-saving medicines. Similar power struggles were playing out during this time between civil society and the politically dominant ANC.

<sup>6</sup> The eighteen organisations that constituted the National Working Group were: the Aids Law Project; the Centre for Applied Legal Studies; Childline South Africa; Concerned People Against Abuse; the Centre for the Study of Violence and Reconciliation; Lawyers for Human Rights; Ngata Safety and Health Promotion; Nisaa Institute for Women's Development; Port Elizabeth Rape Crisis; People Opposing Women Abuse; Rape Crisis Cape Town Trust; Save the Children Sweden; the Sex Workers Education and Advocacy Taskforce; Thohoyandou Survivor Empowerment Project; Tshwaranang Legal Advocacy Centre to End Violence Against Women; the Western Cape Network on Violence Against Women; and the Women's Legal Centre.

prior experience working together in the anti-apartheid struggle, as well as the gay and lesbian equality movement. They therefore shared a passion for the same issues, had a common understanding of the complex socio-economic and political problems that confronted South African civil society, and had a working knowledge of each other's organizational and professional backgrounds (interview, NWG 14, 12.08.2010; Interview, NWG 10, 29.07.10). Informants explained that the founders of the Working Group had established previous communication channels which eased 'co-ordinating and connection' (interview, NWG 11, 04.08.2010). For those organisations that were new, or had not yet established national ties within the women's sector, the Working Group presented an opportunity to be part of a coalition run by leading organisations in the field and to contribute to its collective aims and achievements.

## **8. The Working Group's membership and objectives**

The Working Group's objectives included uniting civil society on the issue of rape law reform, increasing the accountability of the state (and the Justice Department in particular), and influencing the content of the Sexual Offences Bill to ensure that it reflected practical realities and honoured international and national agreements.

### **8.1 The objective of uniting civil society on the issue of rape law reform**

The Working Group was established to 'co-ordinate efforts around the Bill and to pull civil society together' (interview, NWG 9, 30.06.10). There was a 'shared understanding' that, in order to achieve a 'comprehensive, workable piece of legislation', women's rights activists needed to co-ordinate efforts around the Bill (interview, NWG 11, 04.08.2010). Numerous informants explained that their organizations became involved in the Working Group because they were affected directly by the poor laws and policies pertaining to rape, and were therefore committed to making progressive changes (interview, NWG 6, 21.06.10). The motivation of individual members to join the Working Group was therefore to maximise their collective ability to ensure that the Sexual Offences Act responded to the particular realities of violence against women in South Africa. Collective action was understood as a means of mobilising a stronger support base among the women's sector, and leveraging further resources to achieve the Working Group's aims. Numerous informants believed that the Working Group's strength lay in its alliance of academics and lobbyists and people with 'on the ground experience' and direct knowledge of their communities (interview, NWG 5, 17.06.10; interview, NWG 9, 30.06.10).

### **8.2 Increasing the state's accountability**

The law-making process presented an opportunity to women's rights organisations to hold the Department of Justice accountable to its mandates (interview, NWG 7, 23.06.10). While some organisations, primarily those that constituted the Consortium, had played a research or advisory role in the spheres of policy and law reform, many had no prior experience of lobbying for legal reform. The Working Group therefore held the prospects of new form of engagement with the state through parliamentary monitoring, the development of a new set of advocacy tools and expertise, and a new knowledge of the political processes around law reform. In order to expand its support base, the Working Group's leaders emphasised how participation would capacitate members through the valuable experience gained in the coalition's collective efforts.

### **8.3 Influencing the content of the Sexual Offences Bill**

The Working Group aimed to influence the ultimate content of the Bill to ensure that it protected the rights of women. There was concern that the legislation would be too broad and impractical for

women's rights activists. As the Bill was going through its various stages, organisations realized that there were 'many loopholes' in the draft law (interview, NWG 7, 23.06.10). Concern was raised that the Justice Committee was taking out crucial provisions concerning medical services and protection against secondary victimisation (interview, NWG 12, 05.08.2010).

The coalition's work was therefore motivated by a sense of 'urgency' to make sure that the new rape legislation was 'workable' as it related to service provision and support for rape survivors (interview, NWG 11, 04.08.2010; interview, NWG 10, 29.07.10).

## 9. Structure and functioning of the coalition

The structure and functioning of the Working Group reflected the context of its emergence during the restructuring and repositioning of South Africa's post-apartheid civil society. Its successes and failures stemmed from its interplay with broader social structures and institutions, including the state, the media, civil society beyond the women's sector, and the general population. An understanding of the Working Group's structure and functioning therefore elucidates its leadership processes, how these evolved in relation to its context, and how these may have enabled or thwarted its developmental objectives.

The leadership of the Working Group was centralized because, according to one of the Group's leaders, little would have been accomplished unless key actors assumed a leadership role (interview, NWG 4, 11.06.10). Informants attributed the leadership role assumed by key members to their experience in women's advocacy, and, in some cases, to their understanding of the law. A steering committee was formed by the 'core instigators' of the Working Group, whose members hailed from the best resourced and most established organisations, and who were regarded as key players in the women's rights sector (interview, NWG 5, 17.06.10). The steering committee co-ordinated the functioning of the Working Group, from arranging meetings and circulating important documents, to forging consensus through chairing debates, and drafting and editing materials with inputs from member organisations. It did the bulk of the work which was then ratified by the rest of the Group (interview, NWG 9, 30.06.10). Decisions were generally made through consensus, with key leaders directing the process and then generating support for these from constituent organisations (interview, NWG 5, 17.06.10). Due to funding constraints, meetings were held via teleconference every one or two months between 'key groups of people' (interview, NWG 2, 08.06.10). Member organisations were dispersed across South Africa, so emails and teleconferences were used as the primary means of communication (interview, NWG 5, 17.06.10). The entire Working Group met face to face about twice a year (interview, NWG 4, 11.06.10). These meetings were held to evaluate the Working Group's successes or failures and to plan future strategies.

A member of the steering committee explained that the Committee needed the power to make quick decisions because of the speed of some parts of the law reform process, and the attempts by the Justice Committee to exclude civil society by hurrying through new drafts of the Bill (interview, NWG 9, 30.06.10). One informant explained that there was a 'flurry of activity just before [Justice Committee] hearings', during which the Working Group would arrange seminar sessions and workshops (interview, NWG 13, 05.08.2010). The aim of these was to build consensus between members of the Group, as well as to elicit support from other powerful coalitions, including 'from HIV, health, the unions and churches' (interview, NWG 13, 05.08.2010). This would showcase the Working Group's popular recognition and support. This strategy was partly successful, as organisations would sometimes sign onto Working Group submissions, help to circulate and publicise press statements, and support the Working Group by signing onto submissions or joining direct actions such as marches and pickets (interview, NWG 13, 05.08.2010).

Tattersall (2010) argues that the success of coalitions in enacting social change is premised on how the coalition builds organisational strength among participating organisations, the relationships they create amongst the organisations, and how organizational members are involved in the coalitions. Some informants emphasized how consultative the Working Group was, describing how organisations had collaborated on relatively equal footing. Others believed that certain key individuals had dominated the group, and that smaller organisations had played a tokenistic role through bolstering the notion that the Working Group represented a broad base of women's rights groups. These members believed that the Working Group represented the views and efforts of a small number of highly motivated and organized women leaders, who constituted an elite within the coalition and the women's sector more broadly (interview, NWG 1, 17.05.10).

Most informants understood the Working Group's functioning as streamlined and effective, but many also believed that the Group's leadership had become controversial. Certain members felt isolated and excluded by the ways in which the Group's campaign work was co-ordinated. The members of organisations with less capacity and fewer resources in terms of staff, time and budget for travel, felt that their issues were subsumed by the focal issues of the coalition's leaders and the organisations that they represented. This impacted negatively on the Group's effectiveness, as members who felt excluded were among the Group's key 'boundary spanners' who had drawn on their external ties, including with influential government officials, to generate support for rape law reform during the early years of the process (Katz et al., 2004: 322).

These members withdrew from the Group as a result of dissatisfaction with its leadership and strategizing, resulting in the loss of important political connections, research capacity, and knowledge and experience (particularly of the legal aspects of women's rights advocacy in South Africa). When members of the Working Group perceived the self-interest of individuals within the Group to be eclipsing the Group's collective interest, the result was dissatisfaction with the Group's functioning and the withdrawal of members.

## 10. The use of prior networks

One of the first strategies of the Working Groups was to expand its support base (interview, NWG 15, 18.08.2010). Many informants emphasized the importance of the Working Group's involvement of an array of women's rights organisations, with a particular emphasis on community-based organisations. These were regarded as being of particular importance in winning the support of government officials, who it was believed would pay greater consideration to the Group's recommendations if it was seen as broadly inclusive of a range of organisations beyond the metropolitan centres of Cape Town, Durban and Johannesburg.

Founding members of the Working Group had their own networks and databases of organisations from which to garner support. The leaders of key organisations working within women's rights were approached directly by its core instigators and asked to join (interview, NWG 9, 30.06.10). According to one of the Working Group's leaders, as the group grew, it gained momentum and more organisations became interested and involved (interview, NWG 9, 30.06.10).

Working Group members attending meetings for other national, provincial or district coalitions and initiatives used these forums as opportunities to invite other organisations to join the Working Group and to expand its support base. Membership was canvassed on the basis of benefits that would accrue as a result of joining the Working Group. For instance, potential members were told that their organisations would gain valuable resources, in the form of 'educational opportunities' such as training and

capacity building (interview, NWG 4, 11.06.10; interview, NWG 9, 30.06.10).

## 11. Learning from the experience of former coalitions

The primary means by which civil society may engage with the drafting of legislation in South Africa is through submitting comments on drafts of a Bill to the relevant Portfolio Committee, and through making oral submissions at public hearings. Two coalitions that preceded the Working Group had pioneered various advocacy strategies to engage with, and influence, the parliamentary submissions process. The first of these was the Children's Justice Coalition, an alliance of organisations working within the Children's sector that had been established to influence the content of the Children's Act. The Working Group learnt many lessons from the Children's Justice Coalition, including the importance of unity in 'striving to bring about fundamental change' (interview, NWG 4, 11.06.10; interview, NWG 2, 08.06.10). Numerous members of the Working Group, including some of its leaders, had participated in the Children's Justice Coalition (interview, NWG 3, 10.06.10, interview, NWG 4, 11.06.10). The second influential predecessor coalition was Gun Free South Africa, a gun control coalition. Gun Free South Africa pioneered the parliamentary submissions format that the Group replicated as its primary strategy for influencing the content of the Sexual Offences Act. The leader of Gun Free South Africa was described by one informant as the 'quintessential lobbyist', who had developed some of the best strategies for enacting legal reform in South Africa (interview, NWG 9, 30.06.10).<sup>7</sup>

Numerous other coalitions, which had lobbied for legal reform in the first years of South African democracy, were cited as influences by Working Group members. These included the Reproductive Health Alliance, the coalition of health and human rights organisations that constituted the HIV treatment access movement, and the gay and lesbian equality alliances. Members had also worked together in regional organisations, such as the Western Cape Anti-Rape Forum (interview, NWG 5, 17.06.10), or played an active role in other collaborative initiatives (interview, NWG 11, 04.08.2010). Preceding coalitions therefore provided valuable frameworks for engagement with the state, the media, the public and civil society which were emulated by the Working Group. They inspired the Working Group's advocacy and lobbying strategies.

## 12. Expanding the rural support base

One of the Working Group's principal objectives was to include community-based organisations and rural organisations in its advocacy work, particularly when those organisations could provide direct experiences of the effects of inadequate or discriminatory laws and policies (interview, NWG 12, 05.08.2010). Working Group leaders realized that the Group's membership was limited largely to the urban centres of the Western Cape, Gauteng and KwaZulu. A concerted effort was therefore made to expand the Group's membership into other provinces and rural areas. Working Group leaders used regional contacts to inform organisations about the objectives of the coalition and to invite other groups to join. Their focus was not solely on organisations that dealt with women's rights advocacy or legal issues, but on a broader scope of NGOs and CBOs. This strategy for expanding membership was based on the belief that, even if other organisations did not join the coalition, they would be informed about its work, and would perhaps make their own submissions to the Justice Committee in cases concerning their own organisational interests. But the success of this strategy was limited, and membership of the Working Group remained consigned primarily to well-resourced and established women's rights and legal advocacy organisations situated within South Africa's three largest cities. Despite their interest in joining the Working Group, smaller organisations situated in rural areas mostly

<sup>7</sup> This was Margie Keegan.

lacked the resources to do so. The participation was curtailed by numerous factors, including their distance from urban centres, their lack of staff and time, and their limited access to telecommunications (interview, NWG 10, 29.07.10). In some instances, organisations within the Working Group elicited the support of smaller organisations which were unable to participate directly in the Working Group (interview, NWG 7, 23.06.10). These organisations came to an agreement that the smaller groups would be represented by their better resourced partners who would feed back information in more localized forums in order to keep smaller organisations informed and to continue to solicit their suggestions and support. In this way, members of the Working Group played a mentoring role for smaller CBOs and were described as organizational 'role models' for these organisations (interview, NWG 7, 23.06.10). This support strategy also served the interests of the Working Group as representation of rural and community based organisations strengthened its political leverage.

However, the Working Group's strategies for inclusion did not succeed in all provinces. Numerous informants believed that the Working Group's success in establishing a broad-base of membership and support was limited, and that there was a lack of representation by CBOs within rural areas. Numerous informants believed that more time and efforts should have been invested in a membership drive and in maintaining the support of smaller community-based organisations. There was considerable debate about the inclusivity of the coalition, with some informants believing that it was open to a broad array of members. At the other end of the spectrum, informants believed that the coalition had failed to elicit the support of rural organisations and to develop a popular support base within civil society. Numerous informants believed that this had curtailed the coalition's influence among elite state actors, who did not believe that the Working Group represented a broad-base of women's rights activists but rather an elite professional group of middle-class women. Historically, the strength of South African civil society has been based in its 'mass' character, its ability to mobilise thousands of activists who engage in large demonstrations such as strikes, popular protests and marches. However, the Working Group failed to realise this mobilisation potential. This is discussed further below in the section 14 on the Working Group's strategies, and section 21 on funding.

### **13. The benefits and drawbacks of coalition-building**

Numerous informants spoke of the positive and enabling impacts of functioning as a coalition. Benefits of working within the coalition included 'co-ordination', 'solidarity' and the broadening of the group's knowledge base, which enabled the group to take decisions that were informed by the experiences of a range of organisations (interview, NWG 7, 23.06.10, Interview, NWG 12, 05.08.2010). Functioning as a coalition '[A]llowed specialists in various areas to [pool their knowledge and expertise]' (interview, NWG 3, 10.06.10), and provided a forum for ideas to be shared (interview, NWG 5, 17.06.10).

The size of the Working Group and the extent of its support base were understood as 'valuable' characteristics of the coalition (interview, NWG 8, 28.06.10). Members believed that the Working Group's messages carried more weight with government, because, as one explained: 'It's like being bitten by a dozen mosquitoes instead of just one' (interview, NWG 6, 21.06.10). Another explained that the Working Group was 'the biggest grouping to come together on a single piece of legislation in South Africa. People had to notice that' (interview, NWG 8, 28.06.10). Numerous members explained that functioning in a coalition gave the Working Group's members 'a louder voice' (interview, NWG 5, 17.06.10).

However, informants also acknowledged the negative effects of functioning as a coalition, especially in instances in which conflicts between individual members of the coalition impacted negatively on the group as a whole. 'Clashes' between certain key members over funding, tactics and the strategic

direction of the coalition derailed its co-ordination and interrupted communication between leading organisations in sector (interview, NWG 12, 05.08.2010). Key figures in the movement were excluded or absented themselves from the Group, resulting in the loss of their skills and expertise, and leading to further 'gaps' in the Working Group's representation (interview, NWG 6, 21.06.10).

## 14. The Working Group's strategies

There are two primary means by which civil society may engage formally with the drafting of legislation in South Africa. The first is through submitting comments on drafts of a Bill to the relevant Portfolio Committee, and the second is through making oral submissions at public hearings. The Working Group pursued these formal strategies in addition to a host of informal and indirect strategies in its attempts to influence the law reform process.

### 14.1 Strategy development

The Justice Committee released the latest drafts of the Bill usually at the same time as it released notification about the next public hearings to discuss the Bill. This left the Working Group little time to co-ordinate its response, to draft submissions on the latest contents of the Bill, and to arrange attendance at the next meetings. Consequently, the nature of the Working Group's emergence and its relationship with the Justice Committee meant that strategies were reactive, generated retrospectively in response to problems rather than proactively or preventatively. As one informant explained: 'Initially there was a lot of "fire-fighting". There was little time to think strategies through because it kept on being "last call"' (interview, NWG 12, 05.08.2010). Tattersall's comparative study of coalitions found that 'combative strategies' were less effective than long-term planning (2010). In this light, the late release of drafts of the Sexual Offences Bill by the Justice Committee constrained the Working Group's functioning, forcing it to react defensively against government, and in particular the ruling ANC.

### 14.2 Building consensus by sharing information

One of the first initiatives of the Working Group was to develop a series of fact-sheets to educate members about the Sexual Offences Bill and its implications for women's rights groups. Throughout the Working Group's functioning, disseminating information in the form of memoranda was a crucial strategy for the maintenance of consensus and the co-ordination of the Group's strategies. Hefty email correspondence strengthened communication ties between constituent members, with one informant describing the Group's email traffic as 'constant... sometimes ten [emails] a day' (interview, NWG 8, 28.06.10). However, this volume of correspondence may also have foreclosed the participation of poorer resourced organisations with less time to engage with lengthy email conversation chains.

The Group's focus on maintaining consensus was, at least partly, a political strategy. In order to convey to officials on the Justice Committee and to the public at large that the Working Group represented a powerful and united women's sector, consensus between members had to be maintained. For the most part, members of the Working Group shared a common vision for the Sexual Offences Act. Issues that elicited broad consensus included the extension and expansion of the definition of rape, which all of the Working Group's members supported unreservedly (interview, NWG 5, 17.06.10).

However, around other issues, there were 'lots of divisions and different philosophies and approaches' (interview, NWG 13, 05.08.2010). Constituent organisations brought their individual needs, ideologies and intentions to bear, and the Working Group was divided over numerous issues.<sup>8</sup> This led to those

<sup>8</sup> These issues included issues such as the age of sexual consent, the compulsory HIV testing of alleged rapists, the de-criminalization of adult sex work, and the creation of a sexual offenders' register.

organisations who both supported and opposed certain controversial clauses to begin 'jockeying' for support through establishing alliances within the coalition, pledging future support in return for current support (i.e. 'I'll support your submission if you support mine') (interview, NWG 5, 17.06.10). When pushing for certain clauses to be included in submissions, organisations would contact allies and invite them to a workshop to discuss the issue (interview, NWG 7, 23.06.10). However, because this strategy was only available to better-resourced organisations, it may have fuelled perceptions of smaller member organisations that their own focal issues were of lesser importance.

### 14.3 Managing dissent

Numerous informants recounted how differences between Working Group members were exacerbated as the Justice Committee came closer to finalizing the content of the Bill. One informant explained that 'the smaller issues became more relevant and the differences of opinion were more noticeable' (interview, NWG 5, 17.06.10). Controversial issues were debated by the Working Group, and on numerous occasions the Group failed to establish consensus which led to refusal of some organisations to sign onto letters or submissions.

Informants reported that the Working Group encountered difficulties in managing dissent regarding the focus and strategic direction of the coalition. This is a frequent result of attempts at consensus building by civil society coalitions (Nazneed and Sultan, 2010, p. 25). One informant described how dissent was a 'healthy' aspect of the Working Group's functioning, as it allowed members to hear different voices and perspectives on issues, and ultimately resulted in a more nuanced understanding of the complex legal issues at stake (interview, NWG 9, 30.06.10). For instance, the opinions of research-oriented organisations could be heard by more service-orientated organisations, which could in turn explain the implications of these issues 'on the ground'.

Key figures within the coalition tried to 'mediate between extremes to keep people on board' (interview, NWG 4, 11.06.10). This mediation was premised on the leaders' belief that there was 'power in numbers', and that the Working Group's strength lay in its broad base of support. Leaders therefore strived to maintain the support and participation of organisations that they knew parliament would view as important, including rural women's groups and groups with diverse racial and demographic bases (interview, NWG 4, 11.06.10).

Differences in approach were dealt with generally by discussion and compromise. Divisive issues were debated openly among the Group (interview, NWG 9, 30.06.10). An informant explained how the Working Group:

'[A]nalyse the advantages and the disadvantages and then would sort of vote. Each organization had to have their say. When the group disagreed each organization tackled the issue in the way they wanted to as an individual organization.' (interview, NWG 9, 30.06.10)

Another informant explained that the Group would try to avoid making decisions or statements 'that upset or went against the mission and vision of the member organisations' (interview, NWG 7, 23.06.10).

In cases in which there were fundamental divisions between organisations, one Working Group leader explained that the decisions of the majority ruled, 'and if you were not comfortable with it, you still supported it' (interview, NWG 4, 11.06.10). However, other informants disagreed with this contention. They explained that, when individual organisations failed to achieve consensual support for suggested changes to the Bill's content, they could make a separate submission to the Justice Committee or refuse to give organizational support to that particular initiative or submission.

Disagreement may have weakened the Working Group. Some informants believed that separate submissions made by individual Working Group members 'diluted the effect of the submissions' on the Justice Committee (interview, NWG 13, 05.08.2010). Some informants also believed that the push to reach consensus on behalf of the whole Working Group resulted in 'watered down submissions', because the Group had to 'go for the lowest common denominator of what they all agreed on', rather than making strong arguments from the different standpoints of individual organisations (interview, NWG 8, 28.06.10). The Group therefore identified minimum bottom lines to maintain the consensus of the whole coalition and to prevent its fragmentation over contentious clauses. This is an established strategy by civil society coalitions to foster solidarity and trust, and to prevent contentious issues from dividing constituent members (Nazneen and Sultan, 2010, p. 7) However, it is also the result of managing a large coalition of organisations, in which an expansive membership base is regarded as more important than a smaller coalition with stronger ideological congruence (Tattersall, 2010, p. 143).

#### **14.4 Engaging parliament**

The Working Group pursued a range of strategies to influence parliament's actions on the Sexual Offences Bill.

First, the Working Group tried to ensure that at least one member was present at each relevant Parliamentary hearing, who would then provide feedback on the proceedings to the rest of the group. The presence of a Working Group member was regarded as an important mechanism for monitoring parliament's progress on the Sexual Offences Act, for engaging with key parliamentarians, and for proving the Working Group's commitment to rape law reform and parliamentary oversight. For instance, the Justice Committee would talk about an issue in parliament in the morning, and in the afternoon the Working Group representative would write a brief explaining the Group's response, elicit consensus from other members via the email list, and send the finalised brief to the relevant parliamentarians the next day. In respect of this strategy, the coalition's members with legal training and the capacity to spare staff members in order for them to attend parliamentary sessions was an intrinsic factor to the early successes of the Working Group's parliamentary monitoring and writing of submissions to influence the content of earlier drafts of the Sexual Offences Act. Because of their professional experience, these women were able to understand and to use the language of parliament in their briefs.

The presence of a member of the Working Group in parliament allowed the Group to capitalize on discussions held by the Justice Committee that were open to the public. However, this was difficult to sustain due to the time and staff necessary to maintain a constant presence in parliament. It became increasingly challenging in the later years of the Working Group's functioning, particularly after it lost the support of the Western Cape Consortium, whose members were situated closer to parliament and thus more easily able to attend sessions.

#### **14.5 Oral and written submissions to the Justice Committee**

Second, the Working Group tendered oral submissions on drafts of the Bill at Justice Committee Hearings. This also required the presence of a Group member at parliament, preceded by thorough consultation with other members. Because of these hefty requirements it was more common for members of the Working Group to make oral presentations to the Justice Committee as representatives of their individual organisations rather than of the Group as a whole. Written submissions detailed the Group's opposition to, or support of, proposed tenets of the Act, and made recommendations regarding the inclusion of others.

The submissions process was described by one of the Working Group's leaders as 'a unified group process' (interview, NWG 4, 11.06.10). From within the coalition, the Working Group developed a protocol for analyzing a relevant draft of the Bill and for writing a consensual response. The steering committee would divide the Bill into sections and apportion these among different members of the Working Group, according to their areas of expertise.<sup>9</sup>

Among informants, there were conflicting beliefs about the importance and effectiveness of written submissions, with some members describing how they were crucial to the final content of the Act, and others arguing that they were largely irrelevant. The measurable impact of the Working Group on the content of the final Act is examined further below in the section 23 on the Group's successes.

Between 2004 and 2007, members of the Working Group ran numerous advocacy campaigns to solicit support from two spheres: people working within the sphere of civil society for NGOs and CBOs, and the 'general public'. Because the Justice Committee created numerous drafts of the Sexual Offences Bill, the Working Group concentrated on informing its partners and the public about the Bill's changing content and its implications. It conducted workshops and training for civil society organisations within the women's sector; wrote letters and memoranda, and issued press statements. It also developed a range of other fact sheets around the Bill to facilitate greater public awareness and to generate solidarity among other civil society organisations.

## 14.6 Grassroots advocacy

The Working Group concentrated on informing communities about amendments to the Bill through conducting a series of training on the various drafts of the Bill. Its target audience was not just members of the Working Group, but a much wider cohort of activists and community leaders. The aim was to educate communities about the Bill so that they could tender their own submissions to parliament. Because community voices are often absent from parliament, the Working Group believed that the involvement of community-based organisations and rural community leaders in the submissions process would encourage government to pay more attention to the Sexual Offences Bill and regard the issue of violence against women as having greater political currency (interview, NWG 7, 23.06.10).

## 14.7 Using the media

The Working Group capitalised on the role of South Africa's free press as a government watchdog. It actively courted the media to gain a greater public forum for its demands and to increase pressure on the Justice Committee to finalise the Bill. Working Group leaders helped journalists to source the information they needed. These journalists came to rely on key figures in the Working Group for information, resulting in wider coverage (interview, NWG 8, 28.06.10; interview, NWG 4, 11.06.10). Informants believed that the issue of sexual violence legislation was 'not very sexy' to the media (interview, NWG 12, 05.08.2010). Therefore, key Working Group members who were media representatives tried to clarify issues around the Sexual Offences Bill for journalists and to help them find pegs on which to hang their stories. Particularly after the Group's members felt that their engagement with the Bill was being curtailed by the Justice Committee, its spokeswomen used the media as recourse to power and influence over parliament. It is notable that, in this case study, the media provided an important recourse for the Working Group to publicise its grievances, particularly over the Justice Committee's altering of the Sexual Offences Bill's content and its exclusion of civil society in the legal reform process. This strategy is only available to civil society coalitions based in democratic societies where the media is

<sup>9</sup> After individuals had submitted their respective reports, these were compiled by the Steering Committee into a single submission, and then re-circulated to the whole Group for comment. Once comments had been incorporated, the submission would be sent to the Justice Committee.

largely free, and moreover has a stake and interest in representing the demands of the coalition.

However, numerous informants were frustrated with the ways in which the Working Group represented itself to the media. A small number of leaders were selected to be the Group's spokeswomen, and they became the 'media sweethearts', which frustrated other members of the Group (interview, NWG 8, 28.06.10). However, informants also acknowledged that the selection of media representatives ensured consistency in the Working Group's media persona, and that broadening the circle of media spokeswomen may have resulted in mixed messages being given to the public (interview, NWG 8, 28.06.10). The choice of media representatives also would have influenced the perceptions of the Working Group by parliament and the Executive, civil society and the public due to the fact that they were white, middle-class women. This may have fuelled perceptions that the Working Group was not truly representative of the broad-based constituency of women it aimed to serve. One informant explained:

'Despite the fact that the organisations had a broader group that they represented, the people sitting at the table were all white women. This gave the Working Group an image that did not play to the politics of the country' (interview, NWG 5, 17.06.10).

### 14.8 National outreach

From 2005 onwards, the Working Group expanded its advocacy efforts. In March 2006, the Working Group launched an advocacy campaign called 'Get on the Bus and Stop Violence against Women and Children'. Although the campaign was co-ordinated by the Centre for Study of Violence and Reconciliation, it was supported by many other organisations as it travelled to every province in South Africa, educating the public about the Sexual Offences Bill and gathering signatures on a petition calling for the public release of the Bill's most recent draft. The bus aimed to generate 'lots of press engagement' and to get as many people as possible to speak out about the issues (interview, NWG 9, 30.06.10). Activists working on the bus encouraged people to speak at public hearings in parliament, and to write letters to newspapers and phone in to radio talkshows. The 'Get on the Bus' campaign 'went right within the communities' (interview, NWG 7, 23.06.10). It was also used to generate 'buy-in' for the Working Group's demands from community leaders, including chiefs. (interview, NWG 7, 23.06.10).



Bulelwa Mtuli and Nombulelwa Mkhuma on the Bus to Stop Violence Against Women, March 2006 (Malaudzi, 2006).

The bus's final stop was parliament in Cape Town, where protesting Working Group members issued a memorandum demanding the dates for the release of the next draft of the Sexual Offences Bill.

## 15. The influence of advocacy and outreach

Within days of the bus protest outside parliament, the Portfolio Committee on Justice issued a statement which said that the Bill was still being redrafted, but that organisations could make written submissions. The National Working Group complied, with numerous members making submissions on various drafts of the Bill both under the aegis of the Working Group, or as individual organisations. A flood of submissions were made,<sup>10</sup> assisted by the Working Group's circulation of a fact sheet which explained to civil society groups precisely how to make a parliamentary submission.

However, in June 2006 the chair of the Justice Committee stated that the only submissions which would be considered were ones dealing with the most recent draft of the Bill. This limited consultation around the Bill and was understood by the Working Group as a violation of the Justice Committee's constitutional obligation to involve the public in the law-making process. The Working Group's leaders sought legal advice with the intent of bringing an application against government. However, senior counsel advised that a case was unlikely to succeed and the idea was dropped.

### 15.1 Triggers for continued advocacy

The frustration of the Working Group, which led it to consider taking government to court, was engendered partly by the events around the high profile rape allegations laid against then Deputy President, Jacob Zuma, in 2005 (interview, NWG 12, 05.08.2010). This was a 'rolling trigger' for the Working Group, reimbuing its advocacy efforts and resulting in increased militancy among its members. Numerous members of the Working Group became involved in the establishment of the 'I in 9 Campaign', a feminist coalition founded specifically to monitor the Zuma rape trial. Constituted by the more ideologically radical members in the Working Group, I in 9 activists organized a number of visual advocacy stunts outside the courthouse where Zuma's trial was conducted, aimed at capturing the media's attention. For instance, 'short skirt marches' were held in which representatives from a range of organisations gathered in the centre of Cape Town, banged on drums and made a ruckus to 'create awareness' (interview, NWG 5, 17.06.10). Activists also handed out leaflets and held other protests and pickets outside the court.

The Zuma rape trial was a 'galvanising movement' (interview, NWG 5, 17.06.10), energizing the Working Group to continue with its work to influence the content of the Sexual Offences Act, to ensure that the Act protected the right of women, and that its passage was expedited. The marches and other media-savvy actions held around the Zuma trial were regarded by members as among the 'main public support generators' for the Working Group and its advocacy campaigns (interview, NWG 5, 17.06.10). As one member explained: 'The National Working Group capitalized on the Zuma rape trial very effectively, by getting rape into the public domain and dealing with the issue of rape stereotypes' (interview, NWG 12, 05.08.2010).

Despite the advocacy of the Working Group and its reinvigoration through participation in the I in 9 campaign, parliament's recess for the municipal elections in 2006 again delayed finalisation of the Sexual Offences Act. One member of the Working Group explained that the Bill 'dropped down the priority list' because the issue was not seen as a political draw card (interview, NWG 9, 30.06.10). The ANC's electoral campaigning has focused traditionally on poverty alleviation, housing and employment. The issues of gender equality and the protection of women have never been major electoral issues in South Africa. Due to the lack of widespread public interest and investment in the rights of women, combined with its inability to establish a broad base of popular support, the women's sector was unable to generate the kind of popular or political leverage necessary to force the issue onto the electoral agenda.

<sup>10</sup> Fifty-nine in total.

After further deliberations between parliament and the executive, in May 2007 the Bill was passed by the National Assembly and sent to the National Council of Provinces. In 2007 the Sexual Offences Act was eventually passed into law (Fuller, 2007).

## 16. Mobilizing support from government

The first years of South Africa's democratic transition saw a radical reconfiguration of the relations between various tiers of government and civil society. Civil society actors and political officials working at provincial and national levels, many of whom had established working relationships prior to the onset of democratic rule, began the tenuous process of re-negotiating their rules of engagement with cabinet, nation and provincial parliaments, and the spectrum of civil service institutions. Civil society repositioned itself in a monitoring role, exercising oversight in relation to previous comrades, colleagues and mentors. In turn, government officials who were part of civil society during apartheid repositioned themselves as government officials and state agents, and presided over the processes of legal reform.

The Working Group used various strategies to build alliances with influential political officials working on the reform of rape laws at various levels of government and the civil service. Through its attempts to establish synergistic working relationships with actors on the Justice Committee and the police service, for example, Working Group members demonstrated their understanding of institutional spaces and the opportunities that existed to use these to further the objectives of the coalition. In order to pursue these opportunities, the Working Group's leaders engaged in a 'constant scanning of the environment and the best angle to take, the person to address, and the type of message to put out' (interview, NWG 9, 30.06.10). Key members were highly aware of, and responsive to, changing political contexts and how to best exploit these to the Working Group's advantage. As detailed in the above sections 12 and 14.2 on establishing a broad support base and building consensus, the Group aimed to develop a web of influence through establishing a presence in parliament and through civil society networks, and through publicising the Working Group's progress as widely as possible.

There was disagreement between Working Group members about the other strategies it should pursue to exert greater influence on political officials, with some members arguing for closer co-operation with government, and others more intent on oppositional strategies such as monitoring and exposing government's lack of progress on rape law reform. The Working Group's strategies for political mobilization in relation to the state, and parliament's Justice Committee in particular, therefore fell into two categories: co-operative strategies and oppositional strategies.

### 16.1 Co-operative strategies

Members who believed that the Group would be more effective through co-operating with key government officials involved in the drafting of the Act developed a variety of strategies to establish closer relations with these actors. One of the Working Group's leaders explained that they had employed co-operative strategies because they did not want to alienate the Justice Committee. Some members believed that, had they pursued 'more conflictual' strategies, they would have lost the little influence they had in relation to key government agents working at national and executive levels (interview, NWG 4, 11.06.10). Therefore, most of the Working Group's strategies were co-operative as these were deemed to be more effective. As one informant explained: '[T]hey tried not to fight – even though they were angry' (interview, NWG 4, 11.06.10). Co-operative strategies included 'soft advocacy', information sharing with, and conducting research for, members of parliament's Justice Committee. The Working Group's leaders also used their existing relationships with key state actors outside of parliament, such

as the head of the South Africa Police Services and managers of family and sexual violence units, to generate awareness about the Group's objectives.

In the early years of its functioning, the Working Group's strived to co-operate with, and support government through constant 'information sharing' with political officials involved directly or indirectly with rape law reform. The Group identified parliamentarians, mostly women, who it hoped would be sympathetic to its objectives. It 'strategically targeted' these officials through correspondence (interview, NWG 4, 11.06.10) that was written in order to align the political sympathies of these officials with the objectives of the Working Group.

The Group also pursued a more general communication strategy with political officials, which entailed 'mass mail drop-offs' into the pigeon holes of parliamentarians. It shared information with political officials from the ANC as well as opposition parties, including the largest opposition party, the Democratic Alliance (DA). However, it established that, due to inter-party politics, if an issue was taken up by the DA in parliament, then 'nothing happened on that issue' (interview, NWG 5, 17.06.10). Due to the ANC's political dominance, it could afford to disdain the issues raised by opposition parties in parliament. In contexts in which one political party is dominant, efforts made by developmental coalitions to expand political influence through canvassing support from opposition political parties or organisations may alienate the ruling party and therefore be counter-productive for the coalition.

Working Group members praised MPs from various political parties for trying to expedite the passage of the Act and ensuring that its content protected the rights of women. However, only high-ranking government officials from the ANC were believed to have enough political clout to influence the Act's contents or its finalisation. These figures were understood as having played a crucial role in getting the Act back onto the parliamentary agenda after the legal reform process had stalled around 2006. For instance, Deputy President Phumzile Mlambo-Ngcuka was credited with arranging a 2006 meeting in Kopanyang to discuss sexual violence legislation and expedite the finalisation of the Sexual Offences Act. Because of Mlambo-Ngcuka's high-ranking status within government, she was able to insist on compulsory attendance at the meeting by Ministers and Directors-General of the Justice Department, as well as the members of the Justice Committee. Members of the Working Group were also invited, and were given a chance to challenge the unpopular leadership style of the Justice Committee.

Although Working Group members used informal networks to establish contact with government officials beyond the Justice Committee, they regarded this strategy largely as unsuccessful. While some members managed to establish relationships with parliamentarians serving on the Justice Committee, they failed to establish direct relationships with members of the executive or parliament beyond the Justice Committee (interview, NWG 8, 28.06.10). Moreover, changes and shifts at the levels of local and national government made it difficult for the Working Group to maintain the relationships it managed to build with influential government agents (interview, NWG 4, 11.06.10). As one of the members explained:

'In South Africa, informal friendships are relied on. In the US there is a more formal lobby. It's a problem that it is so personality-based here. This means that when those specific contacts aren't in parliament anymore, this no longer works. It's all about who knows who, and those people who don't know people are left out.' (interview, NWG 8, 28.06.10)

This raises the issue of the opportunities afforded by informality. The leaders of the Working Group spent time and energy on cultivating alliances with high-ranking government actors involved in the drafting of the Sexual Offences Bill. These alliances were politically expedient in that they helped the Working Group to exert a form of 'behind the scenes' influence, and to thereby work towards attaining

the coalition's goals. However, informal networks are often also transient. In the case of the Working Group, the loss of certain key members due to disagreements over the coalition's funding and strategic direction also resulted in the loss of the informal networks that these members had established with important parliamentarians over years of cultivating alliances.

Another co-operative strategy that the Group pursued was to provide research support to the Justice Committee. In its briefs, memoranda and submissions to the Justice Committee, the Working Group aimed to unite academic and advocacy approaches to gain credibility and legitimacy with the political officials who were the gatekeepers of the Bill. Informants believed that the expertise of the Working Group members, both in terms of their research experience and their practical experience, conferred legitimacy on their demands. In correspondence with the Justice Committee, the Working Group's letters would begin by stating its collective organisational credentials in delivering services to survivors of sexual violence (see for example, National Working Group 2005). The emphasis on lengthy and in-depth practical experience was partly a response to the hyper-racialised political rhetoric that pervaded public discourse under the leadership of President Mbeki. This determined which actors were regarded by influential government agents, such as parliamentarians and cabinet ministers, as legitimate or significant representatives in debates concerning policy making and legislative change.

## 16.2 Oppositional strategies

From 2006 onwards, the Justice Committee limited public engagement with the rape law reform process by giving only one day's notice prior to the final public hearing on the Bill. Because such little notice would prevent the Working Group from drafting a considered response to this draft of the Bill, this action was regarded by the Working Group as a premeditated attempt to exclude them from participating in the law reform process, as was their constitutional right. The result was that the relationship between the Working Group and the Justice Committee evolved from being generally co-operative to 'adversarial' (interview, NWG 9, 30.06.10). In response, the Working Group began to employ more oppositional strategies, such as organising direct actions against the national government. The Working Group picketed outside parliament in order to get the Bill back onto parliament's agenda, and used the media to shame government publicly for not living up to its Constitutional obligations to protect the rights of women and children.

Informants believed that their lack of political power limited the effectiveness of the Working Group. They also believed that the 'dismissive attitude' of key political officials had 'rubbed off on other people in parliament', curtailing the Group's influence further (interview, NWG 4, 11.06.10). Because the Justice Committee was tasked with determining the content of the Act, its head, Johnny de Lange, was the most powerful political official in the process of finalizing the Act.

In the years of co-operation between the Working Group and the Justice Committee, the coalition's members regarded de Lange as an ally, an influential political figure who deferred to the expertise of the Working Group's leaders and who honoured civil society's participatory role in law-making (in keeping with the ideals of the 'New South Africa'). However, in the final two years in which the Act was drafted, De Lange came to be seen by the Working Group's leaders as an obstructive figure who tried to exclude the Working Group from the ostensibly public process of legislative reform. De Lange's exclusion of the Working Group and his disregard for the expert submissions of its members in the drafting of the final contents of the Sexual Offences Act was regarded by the leaders of the Working Group as the primary reason for the inadequacies and weaknesses of the ultimate Act, and for the Working Group's loss of power to influence the Act's contents. Members of the Working Group perceived de Lange as their primary opponent, and his leadership style was viewed as antagonistic, condescending and autocratic. The Kopanyang meeting had provided Working Group members with the opportunity to criticize de

Lange's leadership, but he retained his place as the head of the Justice Committee.

Therefore, while high-ranking political officials could exert their influence to ensure that rape law reform was put back onto the parliamentary agenda, the different approaches of other political officials leading the process ultimately determined its content. For instance, de Lange opposed the inclusion of any tenets in the Act, requested by the formal submissions made by the coalition, which had cost implications for Justice or Health Departments. The result was that the final Act excluded clauses that required government to provide certain psycho-social services to rape survivors. The Working Group members regard this as among the Act's greatest shortcomings.

## 17. Framing

One of the Working Group's key strategies was to 'name and frame' its message, or to package them for its target audiences in ways that aimed to instil a common understanding of the coalition's objectives, and solidarity among its participants and the broader public (Gamson, 1975; Tarrow, 1998). The Working Group framed its messages according to its various target audiences: the media, elected government officials, civil servants working within the courts and welfare systems, civil society and the public. One of its primary rhetorical strategies was to frame the issue of rape law reform as having broad social implications and being of grave concern to a wide spectrum of community based organisations. Because community voices are often absent from parliament, it was hoped that the Working Group's focus on community based organisations and rural community leaders would encourage provincial and national parliaments to pay further attention to its demands (interview, NWG 7, 23.06.10).

When its target audience was the Justice Committee, the Working Group consciously used legalistic language to frame its advocacy messages within parliament's own rhetoric. The ability to communicate with parliament in legalistic language was perceived by numerous informants as a crucial determinant in its success. As one member explained, 'Engaging with a piece of legislation is hectic. If you don't speak the language, they ignore you, no matter how good your argument is' (interview, NWG 11, 04.08.2010). Members of the Working Group with legal backgrounds mentored other leaders in order to strengthen their knowledge and understanding of South Africa's legal framework (interview, NWG 9, 30.06.10).

Not all informants believed that using academic research to establish connections with the Justice Committee served the purposes of the Working Group. One informant explained: 'Parliamentarians are not rocket scientists. Being too legalistic or academic can put them off' (interview, NWG 8, 28.06.10). However, because the research-based organisations targeted members of the Justice Committee who were sympathetic to a more legalistic approach, they cultivated the trust and respect of leading political officials by framing their submissions as well-researched, evidence-based guidance to the Committee, rather than as advocacy briefs. The Working Group also strived to merge academic arguments with an 'experiential approach' in which the Group's policy and legal recommendations were framed by its extensive practical knowledge.

Another of the Working Group's strategies was to draw rhetorical comparisons between the time it had taken to pass legislation that furthered the aims of the ruling party, such as the floor crossing legislation, and the time it was taking to reform rape laws. As its relationship with the Justice Committee deteriorated, the language of the Group's materials became more angry and emotive. A pamphlet written in 2005 framed the government's lack of prioritisation of rape laws by juxtaposing the inadequate services available to rape survivors with those of alleged perpetrators, who received comparably better legal services. The pamphlet stated:

Government seems prepared to overlook their responsibilities when it comes to survivors of sexual crimes, yet are readily meeting the needs of offenders (National Working Group, 2005).

### 17.1 Invoking the human rights framework

When targeting the public and other NGOs, the Working Group invoked a human rights framework in its advocacy work around the Sexual Offences Act.<sup>11</sup> Situating the issue of rape law reform within the broader framework of human rights and South Africa's constitutional imperatives to protect the rights to freedom and dignity allowed the Working Group to 'broaden the scope of the argument beyond just a piece of legislation', and to link rape law reform symbolically with democracy, constitutionalism and modernity (interview, NWG 11, 04.08.2010).

When targeting the public, the Working Group framed its publications in ways that were hard-hitting and personal. The Working Group used various examples from its members' experiences of working and providing services directly to survivors of sexual violence, to try and give a human face to the issues. Materials gave examples of children who had been raped and who had been failed by the justice system, to illustrate the direct, human impacts of inadequate rape laws. The experiences of the Working Group's clients were brought into its materials to ensure that the legal discussion remained 'grounded in life experiences' (interview, NWG 9, 30.06.10).

The Working Group also framed its messages in response to current affairs. It would purposefully 'package the message' in relation to issues currently in the public eye (interview, NWG 5, 17.06.10). It would also piggyback on other commemorative events or national holidays, framing its advocacy within the semantic or historical mould of these days, in order to garner greater public attention and to establish a link between South African national identity and the protection of women's rights.

## 18. The Working Group's weaknesses

Informants agreed about some of the Working Group's weaknesses and failed strategies, but disagreed about others. These are discussed below as 'consensual' and 'non-consensual weaknesses'.

### 18.1 Representation

The first consensual weakness was the Working Group's lack of representation from other provinces. Because most members hailed from the Western Cape, Gauteng and KwaZulu Natal, the Working Group remained fairly 'regional' and failed to mobilize members dispersed across different provinces as key actors had envisioned (interview, NWG 5, 17.06.10; Interview, NWG 9, 30.06.10). The racial profile of the group was another weakness highlighted by a number of informants (interview, NWG 9, 30.06.10). As one explained: 'The leaders of the Working Group were all white, urban women from the big NGOs'. This was due to the historical privileges that apartheid conferred on the 'white race', with educational opportunities that allowed white women to enter professions and gain the expertise necessary to become professional women's rights advocates. In the post-apartheid context from which this coalition emerged, the middle class status of these women was as much as a factor in their leadership of the coalition. Middle class women were able to mobilise the resources necessary for the establishment and functioning of the coalition.

However, the homophily of the Working Group leaders was described as a 'great challenge in our sector from both a gender and children's rights perspective' (interview, NWG 9, 30.06.10). Members suggested

<sup>11</sup> For instance, the compulsory testing of alleged rapists, proposed in one of the Justice Committee's drafts of the Act, was framed as a human rights violation.

that an expansion and diversification of the Group's leadership may have improved its reception among key government officials working at parliamentary at executive levels, and broadened its popularity in civil society. One informant explained that, because the Working Group's leaders were not able to develop a broad-based, cross-regional and grassroots support base, they were viewed as 'a bunch of white, middle-class women academics' (interview, NWG 5, 17.06.10). Members believed that the Working Group should have strategically composed its leadership to better reflect South Africa's demographic diversity.

Members emphasised the lack of rural representation as another issue. The three dominant organisations in the Working Group were all urban (interview, NWG 9, 30.06.10), and some informants believed that the Group had not offered sufficient support to rural organisations. However, informants recognized that there were failures of communication from both the Working Group and from constituent member organisations (interview, NWG 10, 29.07.10).

## 18.2 Capacity and influence

Another consensual weakness was the Working Group's lack of capacity. Discrepancies in resources available to members for their participation in the Group led to feelings of unfairness which exacerbated conflicts over funding. Numerous informants explained that more personnel dedicated solely to the work of the Working Group, and more money for travel, would have improved the Group's functioning (interview, NWG 4, 11.06.10). This is examined further below in section 21 on funding.

In contrast to consensus about the weaknesses of the Group's racial profile and lack of a regional and rural base, there was considerable disagreement about the extent of the Working Group's influence, the achievement of its objectives, and its general efficacy and impact. Organisations which had invested more resources in terms of time, staff and material resources believed that the Working Group was more effective than those who had withdrawn from the Group or who had played relatively minor roles due to their organisation's capacity constraints.

## 18.3 Leadership and consensus

Some informants believed that the Working Group lacked strong leadership that could establish consensus between different members of the group (interview, NWG 8, 28.06.10; Interview, NWG 5, 17.06.10). The disagreements between members of the Western Cape Consortium and the Working Group were understood as having a negative impact on the Group's success. The Working Group's functioning became mired by 'in-fighting, petty politicking [and] turf fighting' (interview, NWG 13, 05.08.2010). The conflict between the two factions of the coalition emerged as a result of the alleged duplication of efforts by the Working Group's leaders and of their disregard for the work done by the Consortium. As one informant stated:

'There was a core group of women from the Western Cape Consortium that had been working on the Bill for a few years. Suddenly there were all these new people involved in the Working Group, and these people were new to the process. This meant that these people, who knew nothing about it, had to keep on being brought up to speed. This took much time. These people were all set on getting the Bill passed in a certain form. This ignored all of the work that had been done previously. The Consortium therefore had to keep revisiting old issues, which they knew were non-starters, or had already worked through. The National Working Group was therefore involved in many-non-starters and this was a waste of time (interview, NWG 2, 08.06.10).

Due to disagreements over the strategic direction and tactics of the Working Group, some leaders

of the Consortium became dismissive of the Working Group, and withdrew their membership and support of the coalition. Communication between the two groups became 'strained' and there was simmering disagreement between members of the Working Group and the Consortium about whether or not the Group was duplicating the efforts of the Consortium or whether it was using new strategies and covering new issues (interview, NWG 9, 30.06.10). There was also more generalised resentment towards leaders who had established the Working Group and taken up the reigns of leadership, garnering the public attention that went with that.

Conflicts were arguably exacerbated by the leadership style of the Working Group. Leaders were alleged to have leveraged their positions on the Working Group to get work for their own organisations, and to bolster their personal credibility (interview, NWG 2, 08.06.10). Prior connections between individuals were the basis for the establishment of the National Working Group. However, prior relationships that had turned sour impacted negatively on the functioning of the Working Group.

## **18.4 Communication strategies**

Numerous informants regarded the Working Group's communication strategies as inadequate, and there was a perception that 'buy-in' was not always elicited sufficiently (interview, NWG 8, 28.06.10). Informants recounted how there were 'difficulties in bringing together divergent issues and views... and in making sure that everyone's interests were represented and that there wasn't one dominant organization' (interview, NWG 11, 04.08.2010). Some informants criticised the Working Group for becoming too large and 'unwieldy'.

Some informants also believed that the Working Group's focus on the technical aspects of the Act meant that it may have lost its 'voice on the ground', its popular support from a broad base of civil society organisations (interview, NWG 5, 17.06.10). However, the fact that members had legal expertise and a strong research background was believed generally to have also contributed to the Working Group's successes. It ensured that members were able to analyse the various drafts of the law and to explain its shortcomings and strengths to other members.

## **19. Strategies in need of reform**

The short time frames for action, together with size of the coalition, meant that co-ordinating the coalition's work was often difficult. This resulted in the Group's strategies being largely reactive or responsive. Members believed that a strong focus on strategizing from the onset, and gaining an early consensus about the Working Group's directives and objectives, may have strengthened its functioning. Informants cited numerous other strategies that could have been employed or improved on by the Working Group. This included greater regional and grassroots engagement, but this would have depended upon the availability of a greatly expanded budget, and funds allocated specifically to the expansion of the coalition and the inclusion and continued support of resource-constrained organisations working outside of the metropolitan activist 'hubs'.

### **19.1 Regional rather than national focus**

Numerous informants explained that the Working Group would have been more effective had it established a constant, regionally representative presence at parliamentary hearings (interview, NWG 7, 23.06.10; interview, NWG 5, 17.06.10). At times, representatives from Western Cape organisations that constituted both the Consortium and the Working Group attended hearings, but members maintained that a more diverse and permanent presence would have strengthened the Working Group's influence

and efficacy. A regional focus would have provided more diverse Working Group members with further opportunities to interact with government officials at a provincial level, and distance and funding would have been less constraining (Interview, NWG 15, 18.08.2010). However, because the Working Group focused its attention at national level, members strived to establish connections with members of the Executive and other high-ranking government officials, who were less accessible than their regional counterparts working in provincial government structures.

## 19.2 Eliciting support from national government

Informants were cognisant that the various members of the Working Group had tried to elicit the support of government officials particularly members of the Executive, without success. The resignation of Pregs Govender, one of the initial champions of sexual violence law reform, from parliament, confirmed the idea that the ANC's political culture was antithetical to gender equality and the protection and empowerment of women. Govender had resigned in protest against the AIDS denialist policies of President Mbeki and the closing down of democratic participation between civil society and different spheres of government.

Subsequent to Govender's resignation, members believed that the coalition lacked a decisive 'political champion' working within government. Evidence from the DLP case study on women's coalitions in Egypt and Jordan has corroborated the importance of a coalition's alliances with a 'political champion' with considerable influence within state structures. However, this research illustrates that the role of a 'political champion' may be equally important within very different political contexts. Because many of the earlier leaders from the women's movement 'went into politics', there was no longer a strong women's movement in politics. Women leaders were subsumed by the ANC (interview, NWG 8, 28.06.10). There were a small number of influential women politicians who pushed for the prioritization of rape law reform, but they were ultimately constrained by their affiliation with government, particularly the ruling ANC. Strategies were suggested for eliciting political support while circumventing government officials. For instance, one member suggested that the Group should have tried to procure patronage from 'a strong, well-respected person, a Desmond Tutu-like figure' (interview, NWG 5, 17.06.10). It is unclear why this strategy was not pursued, but likely explanations include a lack of time and capacity for the Working Group, none of whose members were employed fulltime to work for the coalition. This detracted from the Working Group's ability to lobby political figures, and to channel human and time resources into establishing productive and long-lasting alliances with these figures.

## 20. Opposition to the Working Group

There were two primary forms of opposition to the Working Group: Internal opposition (from its own members), and external opposition (from actors outside of the Group).

### 20.1 Internal opposition

As described above, internal conflicts between members of the Working Group affected its co-ordination adversely. Conflicts over leadership and funding led certain organisations to leave the Working Group, and some informants believed that this had a negative impact on funders' perceptions of the coalition and the willingness of these developmental partners to support its work. Certain members of the Working Group believed that its leaders were appointed unfairly, and that their decision-making was insufficiently consultative and transparent. As one member stated:

'A coalition needs a formal structure, and agreed upon leaders and systems. In this case there were

de facto leaders, and not agreed ones. This created competition' (interview, NWG 8, 28.06.10).

## 20.2 External opposition

The first form of external opposition to the Working Group was from faith-based organisations due to cultural sensitivities around the issues of rape and sexual offences. For instance, some religious groups wanted the age of consent to be raised from the age of sixteen, which the Working Group opposed (interview, ACDP 1, 16.08.2010).

The Working Group and 'offshoot coalitions' (such as the *I in 9* campaign) also faced opposition from a number of important government actors and agencies, including the Justice Committee, the ANC Women's League and key political officials such as Julius Malema (head of the ANC Youth League). This was understood by informants as manifesting in various forms of exclusion and resistance. Members perceived government opposition ranging from no resistance at all, to 'passive resistance' and to explicit undermining of the Working Group's efforts. Government's opposition limiting the interaction of the Working Group with the Justice Committee, to imposing very short periods for submissions, to ignoring the Group's oral and written submissions.

Although not all members of the Working Group believed that government had opposed their work, many informants perceived parliament's opposition as the greatest barrier to the Working Group's achievement of its objectives. The Justice Committee's role in the process was viewed as a crucial determinant at every juncture in the evolution of the Sexual Offences Act. As the process continued, the Working Group believed that the space for engagement with parliament via the Justice Committee began to narrow. As one informant explained: 'They just weren't listening to us' (interview, NWG 12, 05.08.2010). The Working Group's recommendations for the Bill that had cost implications for the state 'would be removed and would not be revisited' (interview, NWG 12, 05.08.2010). The Working Group therefore decided to change its strategies, and to focus on fighting for the passage of the legislation in a flawed state, rather than lobbying to optimise its content and thereby further delaying its passage. As one informant stated: 'In the end, they decided to just get the damn thing through – even in a flawed state' (interview, NWG 12, 05.08.2010).

The Justice Committee was constituted largely by members of the ANC. Numerous developments led the Working Group's members to believe that, while the ANC seemed intent on reforming government's policies, its commitment to their practical implementation was superficial at best. In the four years in which the Justice Committee worked on redrafting the Sexual Offences Bill, its content was changed fundamentally and victim-centered provisions and services were removed (Smythe, 2007). This meant that procedural commitments to providing survivors with adequate medical and legal care, improving criminal justice outcomes and reducing secondary victimisation of rape survivors, were excised from later drafts of the Bill. A Working Group memorandum questioning government's sincere commitment to protecting the rights of rape survivors stated:

Not only does government seem to be leaning towards creating legislation that is bound to have very little effect in addressing sexual violence, but government is also using cost implications and limited resources as justifications for opting for flimsy legislation (National Civil Society Coalition on the Sexual Offences Bill, 2004).

Government's limited spending on the Domestic Violence Act, a pioneering piece of legislation from which the Working Group had derived inspiration, was taken as evidence of government's lack of sincere commitment to advancing women's rights. In Working Group memoranda, comparisons were drawn between government expenditure on printers and photocopiers for the Ministry of Safety and Security,

while comparatively little was spent on the cost of enforcing the Domestic Violence Act (National Working Group, 2005).

Other occurrences, including the high profile rape case of Jacob Zuma, confirmed the Working Group's belief that 'women's rights' were of little genuine interest to most government officials. The ANC Women's League provided a strong support base for Zuma, and numerous Working Group members interpreted this as a betrayal of the League's feminist ideals and its potentially powerful oversight role in relation to the ANC's male leadership. The Zuma rape trial was described as having created a 'division' in the women's movement, between those who supported the alleged victim and those who supported Zuma. The result was 'disillusionment' within the sector (interview, NWG 5, 17.06.10). However, the Zuma rape trial also motivated the Working Group to 'push harder' for progressive changes to the Sexual Offences Act, galvanizing a new round of submissions and encouraging closer co-ordination between some of its members (interview, NWG 5, 17.06.10). It also resulted in the creation of a radical feminist pressure group by a cluster of the Working Group's members, the 1in9 campaign (as discussed earlier in this section).

## 21. Funding

### 21.1 Funding competition

Funding for the Working Group was described by a member as 'a grey area that caused much conflict' (interview, NWG 8, 28.06.10).<sup>12</sup> In the course of the coalition's work, disagreement over funding emerged between leaders of the Working Group and leaders of the Western Cape Consortium. Consortium leaders alleged that they were in the process of applying to donors for funding to run community information workshops about the Sexual Offences Bill when they were contacted by leaders in the Working Group and informed that the Working Group was applying to the same funder to run similar workshops. The Consortium therefore withdrew its funding application (interview, NWG 1, 17.05.10).

There was considerable uncertainty among members about how the Working Group had been funded, but numerous informants believed that the leaders of the Working Group must have received funding because accommodation and transport costs to attend some of the Working Group meetings were paid for by its leaders. The general uncertainty about how funding was raised and apportioned by the Group's leaders exacerbated other discontent about the Working Group's leadership and functioning. The funding that the Working Group procured was channelled through the few organisations run by the Group's leaders, rather than through the Working Group itself. This led to the perception that certain organisations were using the Working Group as a means of raising funds for their own organisations.

The Working Group's funding constraints meant that information was shared primarily through emails or workshops, which required constituent members to provide resources in terms of staff, telecommunications, time and transport. While the Working Group's leaders did at times arrange to cover the costs of travel and accommodation to workshops, it was unclear whether this was always the case. The lack of funding for community-based and rural NGOs meant that these were 'lost' to the Working Group, because many of them lacked the funding for transport or communications required to engage with the Working Group email list or to travel to meetings (interview, NWG 15, 18.08.2010). Funding constraints were perceived as one of the Group's greatest limitations.

Informants argued strongly that, had the Working Group been able to fund permanent staff members, it would have been more co-ordinated and effective. The members of the Working Group were all

<sup>12</sup> Unfortunately, this report is unable to provide hard data about the funding received by the Working Group leaders for the coalition as this was regarded as a private matter by the coalition's leaders.

working in other full time positions, and their membership placed additional demands on their time. One member explained:

They [donors] could have funded more rural and community-based organisations to participate in the Working Group, and they could have funded fulltime staff whose sole job it was to run or engage with the Working Group (interview, NWG 6, 21.06.10).

Informants also believed that the Working Group's leaders should have canvassed funders to support a staff member whose role it was to co-ordinate the actions of the group.

## **21.2 Policy and operational implications**

Funders could also have been more supportive of the Working Group through funding staff members to establish and integrate regional advocacy alliances, although it is not clear whether donors were requested to make funds available specifically to do this. Many organisations outside of the urban centres lacked the budget and other resources to join the Working Group. Whereas all members were able to access the Justice Committee through writing or signing onto submissions, organisations based in Cape Town were regarded as having a distinct advantage due to their proximity to parliament. Numerous informants said that one of the ways to ensure that all organisations had equal access to parliament would have been for donors to fund the transport of Working Group members to travel regularly to Cape Town in order to attend parliamentary sessions and hearings by the Justice Committee.

Numerous informants also explained that the Working Group would have been more representative of community based organisations from all of the provinces had the Working Group's establishment and growth been better funded. Its membership base could have been expanded had more money been available to build a broader coalition. Ideally, funders would have supported the establishment of provincial Working Group forums which would have fed into the national Working Group forum.

## **21.3 Funding more expansive engagement**

More funding may have allowed the Working Group to do 'more focused mobilisations' (interview, NWG 5, 17.06.10), which would have entailed more extensive negotiations and information sharing workshops with a broader range of organisations. Because of the lack of resources for this kind of advocacy, the Working Group relied on email and telephone for most of its communications.

Informants believed that more funding for publicity, workshops and communication technologies for poorly-resourced organisations would have strengthened the Working Group and bolstered its successes. Many of the Group's members were 'under-resourced', and the additional strain and workload of participating in the Group curtailed the involvement of most organisations.

Members explained that more time should have been spent on writing joint funding proposals for the Working Group, as this would have conveyed a strong message of co-operation and collaboration to the donor sector. Informants believed that funding for the South African women's sector was shrinking because 'donors are aware of the conflicts in the gender sector' (interview, NWG 8, 28.06.10). Had they been able to better co-ordinate joint funding proposals together with other rural and smaller organisations, members believed that donors may have been more willing to fund the Working Group as a coalition, rather than its individual organisations.

## **22. Recommendations to developmental partners**

International donors and aid agencies have been cast in a negative light in the development sphere in sub-Saharan Africa, particularly with reference to economic development models. However, in this case, it was clear that funders played the role of developmental partners rather than restrictive bodies, and were commended for not interfering with Working Group's direction and strategy. Nevertheless, more substantial and sustained funding would have further served the interests of the Group in carrying out its practical activities, and in covering its operational costs as discussed below.<sup>13</sup>

Various recommendations were made regarding how funders could have better supported the Working Group, ameliorated some of its organisational shortcomings and facilitated greater advocacy successes. One informant recommended that funders should be less 'project-oriented' and more 'goal-oriented', taking a broader view of social change and funding advocacy over the long-term to achieve broader goals and objectives, rather than specific projects within circumscribed time frames (interview, NWG 6, 21.06.10). Funders could also have funded the Working Group more effectively through funding the coalition itself, rather than constituent organisations, which may have promoted cohesion and eliminated some of the sources of conflict.

To ensure broad-based coalitions work for long-term social change, donors need to consider funding the operational costs of a range of organisations including staff, transport and telecommunications. Operational costs often prohibit organisations from using their project funding effectively. Funding that allows for flexibility, but requires clear reporting measures, will enable organisations to achieve their objectives while avoiding derailing their previous work or detracting from their service provision (e.g. counselling sessions or empowerment workshops). Without this kind of 'bedrock' or 'core' funding, the participation of diverse organisations, with a variety of resource bases, is attenuated.

One member argued that donors should work together to decide where and how to fund to avoid duplication or gaps in funding, and to ensure more strategic direction for sectors of civil society. This informant acknowledged that some donors were in fact beginning to do this very effectively. Donors should endeavour to fund smaller, rural community based organisations to support their participation in developmental coalitions.

## 23. Conclusion

In her study of coalitions in the field of trade unions, Tattersall (2010: 22-23) suggests four possible measures of success. We rephrase and refine them here as questions.

- Did the coalition 'win' a specific 'external outcome', in this case influencing a policy or law that has a bearing on gender equality? Was it a complete or partial victory?
- Did the coalition influence thinking and discourse in the 'broader political climate'? For example, did it break the culture of silence on gender issues, open up discussion or influence public opinion to engage with gender issues in a more positive way?
- To what extent did the collective action of the coalition improve relationships between its constituent organizations (for example, strengthening ties and building solidarity between organisations)?

<sup>13</sup> Informants believed that very few donors and developmental partners are willing to fund advocacy for women's rights. Therefore, staunch competition over funding has emerged, with organisations jockeying for support from donors. This belief has been exacerbated by the current financial crisis and the perceived trend of donors to fund civil society organisations targeting men. Initiatives to reconfigure unequal gender norms through advocacy and outreach in the 'men's sector' were regarded by seasoned women's activists as the current 'donor cause du jour'. Numerous informants believed this 'donor transience' would have a negative effect on women's organisations.

- Did the experience of working in the coalition enhance the vision, political skills and capacity of the participating organisations so as to be able to act in the future on similar or other issues?

Very few coalitions achieve positive outcomes on all of these measures. Success might be confined to one, or there may be a mix of a few. For instance, partial success in the sphere of institutional reform may be accompanied by considerable success in changing the political climate or developing advocacy and political analysis skills. In reviewing the successes and failures of the Working Group, we have adopted this framework partially to assess the Working Group's achievements – though there also were others.

The Working Group's success may be measured both in terms of both its processes and its outcomes. These include:

- **The substantive changes it effected to rape laws and attendant policies in South Africa**
- **The elevated organisation of civil society, particularly the women's sector**
- **The strengthening of the alliance between different members of civil society across the women's sector, and the strengthening of alliances with other sectors**
- **The cultivation and dissemination of knowledge of advocacy strategies for political participation in the process of legislative reform**

### **The coalition's impact on substantive changes to rape laws and attendant policies in South Africa**

Most informants attributed the passage of the Sexual Offences Act to the advocacy, lobbying and research of the women's sector. Informants believed that the sector was responsible for the genesis of the Act in its initial research, advocacy and advice to the Law Reform Commission, and the early alliances it had built with influential government actors. As one Working Group member explained:

'The decision to review the Act came about because of the advocacy of organisations of the Working Group. That's how it started in the first place. They were instrumental in this. They were more successful at the start of the process' (interview, NWG 12, 05.08.2010).

In 2007 the Sexual Offences Act was eventually passed into law (Fuller, 2007). However, most Working Group members were disappointed with its content. They believed that they had been sidelined by political elites who resisted forming strategic alliances with civil society due to a political climate that was increasingly intolerant of opposition. The Act lacked concrete, procedural commitments to providing medical and support services to rape victims. Moreover, many provisions recommended by both the Working Group and the Western Cape Consortium were excluded. These included the following.

- The Act omitted provisions allowing victims of sexual offences the status of 'vulnerable witnesses'. If these provisions had been included, courts would have been obliged to provide protective measures such as testimony via CCTV.
- The Act omitted the use of expert assessors who would advise and aid judicial officials when they lacked the necessary expertise in sexual offences cases.<sup>14</sup> The consequence of a lack of such assessors is that the court system still results in secondary victimisation of sexual offences complainants, many of whom do not report sexual offences for fear of further trauma by the police and criminal justice system.
- The Act omitted any mandatory state obligations to provide psychosocial services for rape survivors.

<sup>14</sup> In some districts, civil society organisations including Rape Crisis, RAPCAN and TVEP (all of whom were members of the Working Group), have established a cohort of 'court supporters' for the victim so that s/he does not feel alone in the courtroom. However, this intervention is limited to the small number of districts in which these organisations operate, and is dependent on the continued funding and support of these organisations. This intervention has not been adopted by the state.

Despite these and other weaknesses, the Act has resulted in numerous progressive changes to rape law in South Africa. These include the following.

- New, substantive definitions of rape and sexual offences, including the recognition of oral rape.
- New legal proscriptions for the provision of some health services, including access to post-exposure prophylaxis for rape survivors to prevent sero-conversion to HIV.<sup>15</sup>
- The abandonment of the 'cautionary rule', whereby the courts were compelled to apply caution to the evidence of complainants in sexual offences cases.
- A lack of evidence of previous consistent statements no longer leads to an inference by the court that a person is lying (as it could according to preceding laws).
- Firmer rules about the admission of a complainant's previous sexual history. 'Evidence' pertaining to previous sexual history is now inadmissible unless it can be shown that it pertains to an incident of direct relevance to the trial (Fuller, 2007).<sup>16</sup>

The Sexual Offences Act has resulted in certain progressive policy changes and the practical implementation of measures to protect victims of sexual violence. New policies that supplement the Act include:

- The Service Charter for Victims of Violence and Crime (2004)
- National policy guidelines to the Sexual Offences Act for Prosecutors, Police and Health Workers (2008)
- The National Directory of Services for the Victims of Violence and Crime in South Africa (2009)

There are numerous problems concerning the implementation of these policies. These include:

- A seeming lack of political will to direct and monitor implementation of policies
- NGOs that provide psychosocial support services to victims of sexual offences are based largely in urban areas. These services are therefore largely unavailable in rural areas dependent on provincial governments for provision.
- A lack of information for both state agencies and victims limits knowledge of new legislative and policy requirements (Combrinck, 2007).
- Conviction rates of alleged rapists remain low, and attrition rates for rape are high. Legislation does not pose a threat for perpetrators, many of whom believe they will never be imprisoned for rape (Human Rights Watch, 2010). Organisations working at the coalface of service provision for rape survivors report that 75 – 80% of survivors do not report their crimes because of a lack of faith in the criminal justice system (The One In Nine Campaign, 2010).

However, new policies have helped to alleviate the suffering of rape victims on a practical level and have improved the reporting process of sexual offences. Evidence of improved service provision and practical implementation includes the following.

- 62 Sexual offences courts have been established throughout South Africa. These courts have designated waiting rooms and also offer counselling for victims. In 35 of these courts, Child Victim and Witness Rooms have been established with one-way glass partitions (Dey, et al., 2011).
- Through the National Prosecuting Authority's Sexual Offences and Community Affairs Unit, the Department of Justice and Constitutional Development has created Thuthuzela Care Centres. These

<sup>15</sup> However, it is notable that, in order for a victim to receive PEP, she will first have to have an HIV test. This may serve as a disincentive, as victims may experience an HIV-positive diagnosis as an additional trauma to a sexual offence (Fuller, 2007; Christofides et al., 2006; Human Rights Watch, 2004).

<sup>16</sup> Although the rules pertaining to previous sexual history have been strengthened, it is still largely at the discretion of the judge or magistrate to decide whether this evidence may be admitted. Since the passage of the Sexual Offences Act there have been numerous examples in South African case law of misuses of this rule (Fuller, 2007).

are one-stop centres for survivors of sexual violence, where they receive medical and psychosocial services, and investigative/prosecutorial support. Numerous leading figures within the Working Group were instrumental in the creation of the Thuthuzela centres, advising the National Prosecuting Authority on their structure and functioning.

- Since the passing of the Sexual Offences Act, there has been a substantial increase in the number of rapes reported in South Africa. When the Act came into effect over 2007/2008, 63 818 rapes were reported. For the year 2009/2010, this number had increased to 68 332 (The South African Police Service, 2010.) While this may reflect an increased desire to report crimes and an increased faith in the criminal justice system, it may also reflect an increase in the incidence of rapes in South Africa.
- The elevated organisation of civil society and the women's sector

The Working Group initiated a network of civil society organisations to lobby government for support and service provision for women (interview, NWG 9, 30.06.10; interview, NWG 4, 11.06.10). Adapting lessons from prior coalitions which had succeeded in influencing progressive legal reforms, the Working Group established regional and national connections between women's rights and legal advocacy groups in order to pursue various lobbying strategies for rape law reform. The coalition remains the largest civil society coalition to have collaborated for legal reform in South Africa. While the coalition focused on building unity of purpose among its members in order to strengthen its political influence and achieve its objectives, more radical splinter coalitions were borne of its membership during its years of lobbying to influence the Sexual Offences Act.

### **The creation and strengthening of new alliances between the women's sector and other public spheres and institutions**

Numerous partner organisations which previously had no profile at the level of the national women's sector were able to pursue national connections and collaborations through their participation in the Working Group. Because the Working Group involved various actors in the process of rape law reform, it established new opportunities for inter-sectoral collaboration and solidarity between civil society, service providers and government officials working within parliament and the civil service more broadly. The Working Group generated awareness about changes in sexual offences legislation among provincial and national government departments, the South African Police Services and the National Prosecuting Authority. It linked up various government agencies and affiliates with the aim of improving the co-ordination of their work on women's rights and criminal justice.

Once the Sexual Offences Act was passed, the relationship between the Working Group and parliament's Justice Committee improved. Prior to the Act's passing, the Justice Committee had treated the Working Group as an adversarial body. However, after the Act was passed, these rules of engagement shifted. Informants explained that state actors working within parliament and the civil service are aware that the current implementation of the Act is failing, and are intent on using the Working Group's expertise to improve service delivery (interview, NWG 6, 21.06.10).

### **The cultivation and dissemination of knowledge and advocacy strategies for political participation in the process of legislative reform**

The Working Group fused strategies for legal reform with advocacy for women's rights and against sexual violence. The coalition's lobbying ranged from legal advocacy (making submission to the Justice

Committee regarding the contents of the Sexual Offences Act), to direct actions (such as protests outside parliament), and soft advocacy (letter writing and private conversations with key state actors). The Working Group also framed its advocacy strategies consciously in order to raise awareness about the practical implications of legislative reform, and to foster popular support for its work. Members would often foreground their extensive experience of legal and psychosocial service provision to rape survivors in order to underscore the value and relevance of the coalition's objectives. As one member explained: 'The Working Group members brought in their understanding and experience on the ground' (interview, NWG 15, 18.08.2010). This experiential understanding informed the materials, reports and parliamentary submissions of the coalition, and augmented the knowledge of various state affiliates and service providers through their collaborations with various Working Group partners.

### 23.1 The Working Group's Evolution

Weaknesses and inadequacies in the current implementation of the Sexual Offences Act and attendant policies provide future opportunities for further legal advocacy by civil society (particularly the women's sector). The Working Group is still functioning. However since the Sexual Offences Act has been passed, its focus has shifted to monitoring the implementation of the Act's clauses regarding legal protection and service provision (interview, NWG 7, 23.06.10). The Group has a new campaign called Shukumisa ('shake things up') which works to increase public awareness of the Sexual Offences Act, such as multi-media and social media campaigning. Shukumisa focuses more on public awareness and less on political advocacy (interview, NWG 4, 11.06.10). Its members generate action research about the successes and failures of the Acts, and devise strategies to address the gaps and weaknesses in the legislation (interview, NWG 4, 11.06.10). The coalition aims to engage people in communities by obtaining updates on how the Act is affecting their lives (interview, NWG 9, 30.06.10). This allows the Working Group to interpret these experiences in terms of the law, and to make policy recommendations based on this practical knowledge (interview, NWG 9, 30.06.10). According to one member:

'Now it's a coalition to promote the implementation of the Act and services in general for sexual offences, but not limited to the Act. Where [the Working Group] didn't succeed in getting something into the Act, they still see it as the work of the coalition. The Shukumisa campaign seeks to translate the law into something tangible for communities' (interview, NWG 9, 30.06.10).

Shukumisa's membership differs somewhat to that of the original Working Group, as numerous member organisations have left the coalition and others have joined. However, at the time of writing, the two coalitions had over fifty percent of their organisations in common.<sup>17</sup>

Among the twenty women's rights advocates interviewed during the course of this research, many had changed their organizational affiliations in the last few years, but remained working within the women's and legal advocacy sectors. This demonstrates the mobility of key actors within South African civil society, and the interconnectivity of different organisations working within this sphere. The individual leadership of organisations may have changed, but the elite networks within this field remain largely the same.

South Africa remains a deeply patriarchal society characterised by endemic violent crime. The issues of women's bodies and sexuality became highly contested in the years during which parliament reformed national rape laws. While the Working Group was partly successful in influencing the content of the Sexual Offences Act, parliament's curtailment of its participation in the law reform process limited its influence and efficacy. But despite certain weaknesses in the Act, most members of the Working Group perceived its passage as a victory. They believed that the Act's weaknesses provided future opportunities

<sup>17</sup> Organisations that remain part of the Working Group are the CSVR, Childline, NISAA, RAPCAN, Rape Crisis Cape Town Trust, SWEAT, TVEPTLAC, WCNVAW and the WLC.

for further judicial and legislative advocacy, and other, powerful new forms of collaboration.

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 Interview, NWG 15, 18.08.2010  
 Interview, LRC 1, 01.06.10  
 Interview, JC 1, 05.08.2010  
 Interview, JC 2, 10.08.2010

## **APPENDIX A**

### **Informal telephonic interview questionnaire with Sexual Offences Act stakeholders**

1. What role did you play in the formation of the Sexual Offences Act?
2. What key players were influential in the processes resulting in the passing of the Sexual Offences Act?
3. What were the key opportunities, events or processes that triggered government's need to update the Act?
4. What role did the leadership of (A) government and (B) civil society play in the development and passing of the Act?
5. What is your knowledge of and opinion of the work of the National Working Group On Sexual Offences?
6. Do you think their contribution was useful/pivotal to the process? In what way?
7. What do you feel civil society could have done which would have made their contribution more effective?
8. What were the strategies used by civil society which were most effective/useful in this process?
9. What were the most important factors which ensured that the Act was passed?
10. What were the impediments to the Act being passed, (or being passed in the form that civil society was campaigning for)?
11. What are the strongest points of the Act?
12. What are the weakest points of the Act?

## **APPENDIX B**

### **Questionnaire to member of the Working Group regarding the passage of the Sexual Offences Act**

### **The coalition (National Working Group)**

1. Where and when did the National Working Group start?
2. Why did it start? Were there any specific events or opportunities ('triggers') that led to its formation?
3. Who led it?
4. How did the leadership structure of the National Working Group work? (how often did they meet, what were their modes of operating, how did decision making work)?
5. How did you (and your organisation) get involved in the National Working Group?
6. Did the National Working Group share a common vision for the Sexual Offences Act?
7. If there were any differences in the vision, how were these dealt with by the National Working Group?

### **Prior networks:**

1. How did members of the National Working Group work together previously on gender or social issues?
2. Did the prior relationships between leaders in the National Working Group affect how it worked?
3. Did you learn from the experiences of other coalitions or movements (from SA, regionally or from international coalitions)?
4. If so, how and what did you learn from these experiences?

### **Wider coalitions and support for process:**

1. Did the National Working Group forge wider coalitions (formal and informal) with other groups to generate support for the campaign?
2. If yes, which groups? How was this support generated? What sort of strategies were used for this?
3. Could the National Working Group have achieved what it did without this wider support base of other networks/coalitions?
4. How did the National Working Group mobilise support from its other organisations?
5. How did the National Working Group mobilise support from the public?
6. How did the National Working Group mobilise support from the state?
7. What was the relationship between parliament, cabinet and the National Working Group? If this changed during the process, please describe the changes.

### **Strategies:**

1. What strategies were used to campaign for the content and passing of the Act?
2. What framing techniques were used? (i.e. how did you package campaign messages for the public and others?)
3. Why did the National Working Group choose to work with the strategies that it did?
4. Of these strategies, which were successful and which less so?

### **Funding and other external support:**

1. How was the National Working Group funded (not distinct member organisations, but the Working Group itself)?
2. Did funders of the National Working Group influence the direction and strategies taken by the Group? If so, how?
3. Did your organisation receive specific funding from your organisation's donors to participate in this process and/or to participate in the National Working Group? (This refers to organisation specific funding – not funding from or through the National Working Group.)
4. If not, what were the reasons?
5. If yes, how did your organisation's relationship with the funder impact on your participation in the National Working Group?

6. How could external funders have supported this process more effectively?
7. What could organisations have done differently in the way they approached funders?

**Opposition:**

1. Did the National Working Group face any opposition?
2. From whom and where?
3. How did this affect the work of the National Working Group?

**The process of formation of the Act:**

1. How did the National Working Group go about critiquing different drafts of the Bill and submitting these comments and critiques to the legislators?
2. Which political figures pushed for the Act to be finalised, and how did they do this?
3. Were all members of the National Working Group equally able to access Parliament? What determined this?

**Successes or failures of campaign:**

1. What were the successes / achievements of the National Working Group?
2. What were the limitations/weaknesses of the National Working Group?
3. What strategies would you change?
4. What concrete changes in the Sexual Offences Act do you feel were the result of civil society and the National Working Group?

**Learning and adaption**

1. Is the National Working Group still functioning? If yes, has its role changed since the implementation of the Act?

**General**

1. Is there anything else you feel we should know, or any other relevant story or information that you would like to tell us?

ADMINISTRATION OF DATA BASE FORM. This may either be given to informants to fill out themselves or may be given orally, depending on circumstances and preferences.

## DLP Publications

### Research Papers

1. Jo-Ansie van Wyk (2009) "Cadres, Capitalists and Coalitions: The ANC, Business and Development in South Africa".
2. David Sebudubudu with Patrick Molutsi (2009) "Leaders, Elites and Coalitions in the Development of Botswana".
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11. Heather Lyne de Ver & Fraser Kennedy (2011) "An analysis of Leadership Development Programmes working in the context of development."
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### Background Papers

1. Adrian Leftwich & Steve Hogg (2007) "Leaders, Elites and Coalitions: The case for leadership and the primacy of politics in building effective states, institutions and governance for sustainable growth and social development".
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8. Edward Laws (2010) "The 'Revolutionary Settlement' in 17th Century England: Deploying a Political Settlements Analysis".



The Developmental Leadership Program (DLP) addresses an important gap in international thinking and policy about the critical role played by leaders, elites and coalitions in the politics of development. This growing program brings together government, academic and civil society partners from around the world to explore the role of human agency in the processes of development. DLP will address the policy, strategic, and operational implications about 'thinking and working politically' - for example, about how to help key players solve collective action problems, negotiate effective institutions and build stable states.

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