

**REPORT ON SEXUAL OFFENCES
AGAINST CHILDREN
Does the Criminal Justice System Protect Children?
South African Human Rights Commission
April 2002**

Table of Contents

Preface	3
Chapter 1	5
1. Introduction	5
1.1 The Mandate, Powers and Functions of the Commission	5
1.2 Terms of Reference	5
1.3 Methodology and rules of process	6
1.4 Scope of the Report	7
Chapter 2	8
2. Situational Analysis	8
2.1 The Prevalence of Sexual Violence against Children in Gauteng	8
2.2 Availability of Support Services	9
Chapter 3	10
3. International Human Rights Instruments, Constitutional Statutory Framework for Protection of Children	10
3.1 The United Nations Convention on the Rights of the Child	10
3.2 The African Charter on the Rights and Welfare of the Child	11
3.3 The United Nations Convention on the Elimination of all Forms of Violence against Women	11
3.4 The Constitution of the Republic of South Africa	12
3.5 Domestic Legislation and Policies	12
Chapter 4	14
4. Review of Literature, Policies and Legislation	14
4.1 Pre-Trial Procedures	14
4.1.1 Disclosure	14
4.1.2 The Duty to Report Child Abuse	16
4.1.3 The Role of the Police	18
4.1.4 Forensic Examination and Medical Treatment	21
4.1.5 The Role of the Prosecutor	23
4.1.6 Support for the Child	24
4.1.7 Specialised Sexual Offences Courts	25
4.2 Trial Procedures	27
4.2.1 Special Measures for Children	27
4.2.2 Cautionary Rules	29
4.3 Post-Trial Procedures	31
4.3.1 Treatment	32
4.3.2 Placements	33

Chapter 5	35
5. Submissions Received by the Commission	35
5.1 Preliminary Issues Raised at the Hearings	35
5.2 Pre-Trial Procedures	36
5.2.1 Disclosure	36
5.2.2 The Duty to Report Child Abuse	37
5.2.3 Issues Relating to Police Procedures	37
5.2.4 Issues Relating to the Forensic Examination and Medical Treatment of the Sexually Abused Child	41
5.2.5 Services Offered by the Prosecutor	43
5.3 Trial Procedures	44
5.4 Post-Trial Procedures	48
Chapter 6	49
6. Responses to Submissions	49
6.1 The Gauteng Government's Response	49
6.2 Response by other Role Players	52
Chapter 7	57
7. Findings	57
7.1 Key Findings	57
7.2 Specific Findings	57
7.3 Site Visits	62
Chapter 8	64
8. Recommendations	64
8.1 Key Recommendations	64
8.2 Specific Recommendations	65
References	69

PREFACE

“The children of the world are innocent, vulnerable and dependent. They are also curious, active and full of hope. Their childhood should be one of joy and peace, of playing, learning and growing. Their future should be shaped in harmony and cooperation. Their lives should mature, as they broaden their perspective and gain new experiences.”

World Declaration on the Survival, Protection and Development of Children:

World Summit for Children 30 September 2001.

These commitments notwithstanding, in reality children across the globe continue to experience a multiplicity of human rights violations, often at the hands of the very people who are supposed to nurture and protect them. Our country is no exception. In recent months, reports of incidents of sexual abuse against children have been on the increase. These reports indicate that places where children feel safe are becoming fewer. There is little guarantee, if any, that they will find safety at home, at school or even at church!!! We have read reports of children being sexually violated by parents and other family members. These reports are a sad indictment on us all and should put any society that values its children to shame.

It is against this background that the South African Human Rights Commission (Commission) decided to hold public hearings into sexual offences against children. The purpose of these hearings, as reflected in the published terms of reference, was not to investigate individual cases of sexual offences against children, but rather to determine the efficacy or otherwise of mechanisms and systems that have been put in place to deal with such cases. The hearings were held in Gauteng in the townships of Bronkhorstspuit, Thokoza and Soweto. We have to mention at the outset that we chose Gauteng for no other reason than financial constraints. A large number of individuals, organisations and institutions appeared before a panel of Commissioners and experts to make submissions and we wish to express our gratitude to each one of them. It was indeed a harrowing and humbling experience for some of us to sit through the hearings and listen to stories that simply defied logic.

Special mention has to be made of the Chairperson of the Commission, Ms. Shirley Mabusela for her dedication in championing the rights of children. Without her passion and commitment to children’s rights, these hearings would probably not have taken place. A special word of thanks should also go to Ms. Lebo Malepe, for preparing a preliminary report on sexual violence against children for the purpose of briefing the panel. Her report provided the panel with valuable background material on child sexual offences. Special mention also has to be made of the Legal Services Department of the Commission, in particular, the head of the department, Mr. M C Moodliar and all his colleagues in the department who made these hearings possible, in particular, Mr. M. Shabangu, Ms. D Dube and Mr. L Rabotapi. I should also mention Ms. T Rankoe, for managing this project. I also wish to thank all the colleagues in the Commission whom I have not mentioned by name who tirelessly worked behind the scenes to make this project a success. We are also grateful to those who provided us with facilities in which we held the hearings. Finally, I wish to thank my fellow panellists Ms C V McClain (Human Rights Commissioner), Mr J Nkeli (Human Rights Commissioner), Ms Matshidiso Maseko (Psychologist), and Ms

Margaret Sithole (Social Worker) for sitting through the hearings and going through voluminous transcripts in order to produce this report.

This report is a small contribution of the Commission to the work that has already been done by children's rights activists in the field of child sexual abuse. It is our hope that it will contribute towards making our country a safer place for our children so that they can grow in joy and peace- we owe it to them.

Adv. F Pansy Tlakula
Commissioner and Chairperson of the Panel
Johannesburg

CHAPTER ONE

1. Introduction

1.1 The Mandate, Powers and Functions of the South African Human Rights Commission

The South African Human Rights Commission (hereafter referred to as “the Commission”) is one of the independent Constitutional bodies established in terms of chapter 9 of the Constitution of the Republic of South Africa.¹ It derives its mandate from the Constitution and from the Human Rights Commission Act.² The Commission is mandated by section 184 of the Constitution to (a) promote respect for human rights and a culture of human rights, (b) promote the protection, development and attainment of human rights and (c) monitor and assess the observance of human rights in the Republic. In working towards its mandate, the Commission is empowered by section 184(2) of the Constitution to (a) investigate and report on the observance of human rights and to (b) take steps to secure appropriate redress where human rights have been violated.

The Human Rights Commission Act confers further powers, duties and functions on the Commission. These include the power to (a) conduct an investigation into any alleged violation of human rights, (b) require any person to appear before it and produce to it all articles or documents in his or her possession or under his or her control and which may be necessary in connection with such investigation and (c) require any person who appears before it to give evidence under oath or affirmation.

1.2 Terms of Reference for the Inquiry

In response to recommendations made by children during child participation workshops organised by the Commission and increasing reports of atrocious incidents of sexual violence against children received by the Commission and published in the media, and a poor response by the criminal justice system to these incidents, the Commission resolved to hold an inquiry into sexual violence against children. The terms of reference for the inquiry are set out in the Government Gazette,³ as follows:

- (a) to investigate the incidence of sexual offences against children relating to sexual abuse, rape, prostitution of children and any other sexual offences committed by any person;
- (b) to investigate cases of child victims in these situations which have either not been reported to the relevant authorities, or not investigated or not properly investigated, or where prosecution has been declined;
- (c) to ascertain whether Gauteng based criminal justice agencies, the Department of Social Development, schools and any other non-governmental organisations (NGOs) and community based organisations (CBOs) that work with the children provide appropriate relief to children who have been subjected to sexual crime;
- (d) to investigate whether the prosecutorial system is adequate and efficient in dealing with complaints relating to sexual offences against children;

- (e) to assess whether the rights enshrined in the Constitution, domestic legislation, and in many international human rights instruments ratified by South Africa are observed in respect of children who have been subjected to sexual crime;
- (f) to determine whether the said rights are adequately implemented and if so, in what manner;
- (g) to determine whether any rights enshrined in the Bill of Rights are violated in the handling of such cases;
- (h) to establish, if possible, the underlying causes of any shortcomings in the various institutions, structures and persons not providing appropriate relief for children who are victims of sexual crimes;
- (i) to identify appropriate and effective steps if any to be taken by the relevant persons to address such shortcomings; and
- (j) to make findings and recommendations.

1.3 Methodology and Rules of Process

In preparation for this inquiry, the Commission embarked on an information-gathering mission to appraise the status of sexual violence against children in Gauteng, the criminal justice's response to this phenomenon and challenges facing various role players dealing with sexual violence cases in the Gauteng Province. Site inspections were conducted by the Commission's investigators⁴ in Soweto on the West Rand, Kathorus on the East Rand, Bronkhortspruit north of Gauteng and in Johannesburg. During these inspections, dockets were perused to determine how sexual offences against children are being investigated and to identify bottlenecks if any, in the movement of cases through the criminal justice system. Interviews were also conducted with the police including members of the Child Protection Units ("CPUs", now known as the Child Protection, Family Violence and Sexual Offences Units)⁵, prosecutors and magistrates to establish each role player's perspective of problems encountered when dealing with sexual offences against children. Meetings were held with NGOs and CBOs to obtain their perspective on issues emerging from meetings with criminal justice agents. A literature review on sexual violence was also conducted to ascertain minimum standards for the management of sexual violence against children as established in various policies and legislation and in research.

The rules of procedure normally followed by the Commission in proceedings of this nature are promulgated in terms of section 9 (6) of the Human Rights Commission Act. In terms of these rules of procedure, the Commission called for submissions from individuals, institutions or organisations on any matter referred to in the terms of reference. The Commission then invited individuals, institutions, organisations and other interested parties to attend the hearings and to make oral submissions. Submissions were received from interested parties and role players. A number of parties and role players also made oral submissions at the hearings.⁶ The hearings were presided over by a panel.⁷

1.4 Scope of the Report

This report is published in terms of section 9(6) of the Human Rights Commission Act. It covers the aspect of the criminal justice system that a sexually abused child interfaces with when seeking recourse from the law.

The preface of the report sets out the context for the inquiry into sexual violence against children. Although this report is comprehensive, the detailed table of contents will enable the reader to find a particular item fairly easily.

The introduction (Chapter one) sets out the Commission's mandate, powers and functions, the methodology employed in this inquiry and rules of process for the inquiry. Chapter two is an analysis of the extent to which child sexual abuse occurs in Gauteng. The following chapter is a review of policies, legislation and research that establishes minimum standards for the management of child sexual abuse. Subsequent chapters present a review of literature, detail submissions received by the Commission and responses to those submissions. Chapters seven and eight detail the findings and recommendations of the Commission.

CHAPTER TWO

2. Situational Analysis

Covering 17 101 km², Gauteng is the smallest of South Africa's nine provinces. Conversely, more people live in Gauteng than in the other provinces. Currently, the Gauteng population is estimated at eight million people. This makes Gauteng the most densely populated province in the country. Most of the country's economic activity takes place in Gauteng, earning the province the title, 'the economic hub of South Africa'. It is also the most urbanised province in South Africa, reported to be 90% urban. The province has a literacy rate of 75.6%. Eighty percent of Gauteng children are reported to be in school with 60.5% entering school at primary school age.

Given the extent of economic activity in Gauteng, the province was most hit by migration during apartheid years. This phenomenon gave rise to informal settlements that have developed at a rapid pace in the province. The southern part of the province is reported to have 42 informal settlements harbouring more than 1/6th, of the province's population.⁸ A substantial number of members of the population including children, are reported to live in streets, walkways, buses, shelters and parks.⁹

Respondents to the Ciet Africa study identified safety as a major concern in the province.¹⁰ Crime generally, and violent crime specifically, is a major developmental challenge facing the province.

2.1 The Prevalence of Sexual Violence Against Children in Gauteng

'No one knows quite how common sexual violence is. Typical claims prior to the present initiative were that one woman in three in Johannesburg has been raped. Increased policing, health and social services have been unable to offer a solution, or even quantify the incidence of sexual violence.'¹¹

It is impossible to know exactly how prevalent sexual violence is in Gauteng. In 1995, the Human Rights Watch reported on sexual and domestic violence as follows:

'Although lack of police statistics on the issue makes it impossible to estimate the prevalence of gender violence in South Africa... what is clear is that South African women, living in one of the most violent countries in the world, are disproportionately likely to be victims of that violence.'¹²

In 2001, the Human Rights Watch, reporting on sexual violence in South African schools, reported that 'on a daily basis in schools across the nation, South African girls of every race and economic class encounter sexual violence and harassment at school that impedes the realisation of the right to education.'¹³

When asked about the prevalence of sexual violence in the south of Gauteng in the Ciet Africa study, 77% of the submitters reported that sexual violence is common or

very common. The proportion of youth who reported suffering sexual violence increased with age. By 18 years of age, 20% females and 13% males reported having suffered some form of sexual violence. In a survey conducted in 1998 as part of the study, 76% of the submitters reported being raped in the previous year.¹⁴ Of these submitters, others reported having been raped several times.¹⁵ The victim in 60% of the cases knew the perpetrator, while family members perpetrated no less than 54% of the incidents.¹⁶ Strangers accounted for 44% of the single rapes and 19% of the repeated rapes.¹⁷

Lack of a central official database on sexual violence generally and against children specifically, makes it impossible to know exactly how prevalent sexual violence is. Until a moratorium was declared on police statistics in 1999, the police Crime Information Management Centre provided data on reported sexual violence cases. Although the data was not absolutely reliable (it was not children specific, the data capturing system was weak and all people who have suffered sexual violence do not report the incident to the police),¹⁸ it provided a sense of the prevalence of the problem. The moratorium has since been lifted in 2002.

2.2 Availability of support services

People who have suffered sexual violence are reported to resort to some form of help.¹⁹ Victims of sexual violence normally resort to the police, clinics and hospitals, family and friends, schools, civic organizations, street committees, social welfare organisations, help lines and private doctors. Information on the availability of support services for children who have been sexually abused in Gauteng and the location of such services could not be found during the literature review in this report.

CHAPTER THREE

3. International Human Rights, Constitutional and Statutory Framework for the Protection of Children

South Africa has a comprehensive child protection policy and statutory framework. The framework is set out primarily in the South African Constitution, in a number of international instruments to which the country is party and in domestic legislation aimed at facilitating the implementation of principles espoused in the Constitution and in international instruments. To provide a context to the inquiry, some of the policies and statutes that guide the protection of children's rights in South Africa are discussed in this chapter.

3.1 *The UN Convention on the Rights of the Child, 1979*

South Africa acceded to this Convention in 1995, thereby incurring the following obligations:

To take all appropriate legislative, administrative, social and educational measures to protect the child from forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of the parent(s), legal guardian(s) or any other person who has the care of the child.²⁰ Such protective measures should as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for other forms of identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described in the convention;

To protect children from all forms of sexual exploitation and sexual abuse by taking all appropriate national, bilateral and multinational measures to prevent:

The inducement or coercion of a child to engage in any unlawful sexual activity;

The exploitative use of children in prostitution or other unlawful sexual practice;

The exploitative use of children in pornographic performances and materials.²¹

To take all appropriate national, bilateral, and multinational measures to prevent the abduction of or the sale of or traffic in children for any purpose or in any form;²²

To take all appropriate measures to promote physical and psychological recovery and social integration of a child victim of: any form of neglect, exploitation, or abuse, torture or any form of cruel, inhuman or degrading treatment or punishment; or armed conflict. Such recovery and reintegration

shall take place in an environment which fosters the health, self-respect and dignity of the child.

3.2 African Charter on the Rights and Welfare of the Child

By acceding to the African Charter on the Right of the Child, South Africa assumed an obligation to:

Take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse. Such protective measures include effective procedures for the establishment of special monitoring units to provide necessary support for the child and for those who care for the child, as well as other forms of prevention and for identification, referral, investigation and follow-up of instances of child abuse and neglect.

Protect the child from all forms of sexual exploitation and sexual abuse and in particular take measures to prevent:

The inducement, coercion or encouragement of a child to engage in any sexual activity;

The use of children in prostitution or other sexual practices;

The use of children in pornographic activities, performances and materials.²³

Take appropriate measures to prevent:

The abduction, sale of, or trafficking of children for any purpose or in any form, by any person including parents and other care-givers or legal guardians of the child;

The use of children in all forms of begging.²⁴

It is against the backdrop of the above rights and obligations that the State's performance in protecting children from sexual abuse will be measured.

3.3 The United Nations Convention on the Elimination of all forms of Discrimination against Women

The centrepiece of the international legal framework for the protection and promotion of women's rights is the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). CEDAW is often described as the international bill of rights for women, entered into force in 1981. While its universal ratification has not yet been achieved, 168 states from all regions of the world have ratified it.

3.4 The Constitution of the Republic of South Africa Act, No 108 of 1996

The Bill of Rights entrenched in the South African Constitution enumerates a number of provisions aimed at ensuring the protection, promotion and respect of human rights of South African people.²⁵

These provisions are founded on values of equality, freedom and human dignity and are applicable to everyone, including children. Section 9 of the Bill of Rights guarantees everyone the right to equality before the law and to equal protection of the law. It also outlaws unfair discrimination on a number of grounds including race, class, gender, origin and status. Section 10 provides that ‘everyone has inherent dignity and the right to have their dignity respected and protected’. Section 12(1) (c) guarantees the right ‘to be free of all forms of violence from either public or private sources’. Subsection (1) (e) goes further to guarantee the right ‘not to be treated or punished in a cruel, inhuman or degrading way’.

Rights specific to children are set out in section 28 of the Bill of Rights. The section guarantees every child’s²⁶ right to:

A name and nationality from birth;²⁷

Family or parental care or to appropriate alternative care where the child is removed from his/her family environment;²⁸

To basic nutrition, shelter, basic health care and social services;²⁹

To be protected from maltreatment, neglect, abuse or degradation;³⁰

To be protected from exploitative labour practices;³¹

To have a legal representative assigned to the child by the state and at state expense, in civil proceedings affecting the child, if substantial injustice would otherwise result.³²

In terms of section 28(2), the child’s best interests are paramount in every matter concerning the child.

The relevant section with regard to abuse is *section 28(1) (d)*, which provides that ‘*every child has the right to be protected from maltreatment, neglect, abuse or degradation.*’

The above sections do not specifically provide for protection against sexual abuse, however “abuse” means all forms of abuse, including sexual abuse. According to section 10 of the Constitution “everyone has the right to have their dignity respected and protected”. Sexual abuse violates this “inherent dignity and is also a form of violence in contravention of section 12(1) (c). It further contravenes sections 12(1) (e) and 28(1) (d) in that it constitutes inhuman and degrading treatment.

3.5 Domestic Legislation and Policies

A number of domestic legislation and policies facilitate the practical implementation of children’s rights and government obligations as set out in the Constitution and in international instruments. While some of these were enacted prior to the Constitution

coming into effect and to South Africa acceding to the above international instruments, most of them where enacted after these events to specifically ensure the practical realization of promises espoused in the Constitution and in international instruments.³³ National legislation aimed at protecting children from sexual abuse includes:

The Child Care Act, No 74 of 1983 (as amended).

Sexual Offences Act, No 23 of 1957 (as amended). Other sexual offences against children operate in terms of common law e.g., rape, incest and indecent assault.

Domestic Violence Act, No 116 of 1998.

The Criminal Procedure Act 51 of 1977.

The National Policy Guidelines for Sexual Offences (“National Policy Guidelines”).

The Multi-Disciplinary Child Protection and Treatment Protocol.

(Most of these are reviewed in the next chapter.)

CHAPTER FOUR

4. Review of Relevant Literature, Policies and Legislation

This section of the report reviews the literature, policies and legislation relevant to child sexual abuse. It is against these documents that submissions and evidence were received by the Commission. Legislation discussed in this section is the Criminal Procedure Act and the Child Care Act, the Prevention of Family Violence Act and the Domestic Violence Act. Policies reviewed are the Gauteng Multi-Disciplinary Child Protection and Treatment Protocol³⁴ and the National Policy Guidelines³⁵. This chapter is divided into the pre-trial, trial and post-trial sections, thus following the path followed by an abused child when seeking recourse from the criminal justice system.

4.1 *Pre-Trial Procedures*

4.1.1 Disclosure

Disclosure is the revelation of an incident of abuse by a child to a third party. Disclosure can be made to a parent, guardian, teacher, friend, medical doctor, psychologist, relative, neighbour, the police, social worker, priest, community care worker or any other person who has some kind of relationship with the child or assumes a position of authority in relation to the child.

Disclosure can either be purposeful or incidental³⁶. Purposeful disclosure occurs where the child has made a conscious decision to reveal the incident of abuse while incidental disclosure, as implied in the term, occurs incidentally and not as a result of the child willingly revealing the incident of sexual abuse e.g., where a child, while being examined by a medical doctor, displays behaviour indicating trauma or where a parent sees or notices strange behaviour or marks on the child.

Sexual abuse of children often occurs in private and has far reaching implications for the child. Inevitably it results in an experience of intrusion and in feelings of helplessness, confusion, anger, aggression, guilt and betrayal. Since disclosure is the initial step in the child's healing process and often precipitates intervention, the circumstances and manner in which disclosure occurs and is handled is critical. The nature and manner of disclosure and the response to it has a bearing on the trauma to the child, the child's response to counselling and the conduct of subsequent legal proceedings.

Given the importance of disclosure to the child's healing process and in legal proceedings, it is pivotal to understand how and under what circumstances children disclose incidents of abuse and to develop an appropriate response to such disclosure. Inappropriate responses to disclosure retard the child's healing process, jeopardise subsequent legal proceedings and expose the child to secondary victimisation.

Literature indicates that disclosure of a sexual offence is a slow and painful process and that full disclosure is seldom made when a child makes the first report³⁷.

Disclosure is instead a fragmented process that occurs over a period of time. A study conducted by Teena Sorensen and Barbara Snow in Utah between 1985 and 1989 seems to support these assertions³⁸. Sorensen and Snow analysed a sample of 600 cases in which they were involved as therapists/evaluators. These cases involved victims of sexual abuse aged between 3 and 17 years. Confirming the above assertion that disclosure is a slow process, the study found that disclosure occurs in the following progressive stages:

denial: this normally happens when a child is questioned about the abuse or he/she is identified as a potential victim and put under pressure to tell;
tentative disclosure: when the child partially acknowledges the abuse and gives vague information about it;
active disclosure: when the child makes a personal admission of having experienced sexual abuse;
second denial: the second denial may be prompted by the child's personal need to protect his/her loved ones from trauma; and
reaffirmation: full account of the abuse.

In the study, of all children who denied the abuse, only 7% moved to full reaffirmation, making tentative disclosure a common progression from denial (78% of submitters). Only 11% of submitters were able to make full disclosure without showing characteristics of denial or tentativeness. Ninety-six percent (96 %) of the subjects ultimately moved to the reaffirmation stage. The study also revealed that the progression to reaffirmation varied and was unique to each case. Some children move from denial to tentative disclosure to reaffirmation in a single session while others took several months to reach the reaffirmation phase.

The study further revealed that incidental disclosure is the most common type of disclosure (74%). Although disclosure by age grouping revealed no propensity to disclose purposefully or incidentally, preschool children are more likely to disclose incidentally and adolescents are more likely to disclose purposefully. Factors precipitating incidental disclosure range from exposure to the perpetrator (where the child was known to have spent a considerable time with the perpetrator), display of inappropriate sexual behaviour by the child, a child uttering an inappropriate statement (e.g., 'suck on my pee pee mommy'), breached confidence (where a child disclosed to someone confidently), confession after a child was pressurised, physical signs e.g., identified through medical examination.

Factors precipitating purposeful disclosure include education awareness through school programmes, influence of peers (where a child victim follows the trait of a friend who related an experience of sexual abuse), proximity to the offender (it is sometimes when the offender leaves that the child feels safe enough to disclose), where the atmosphere is conducive to disclosure (a child being bathed may be reminded of the touching that occurred during the sexual encounter) and disclosure by adolescents in an expression of anger at the perpetrator.

4.1.2 The Duty to Report Child Abuse

Disclosure by a child, whether incidental or purposive, often leads to a report being lodged with appropriate authorities. Universally there are two approaches to reporting child abuse which includes sexual abuse, namely, mandatory and voluntary reporting. Mandatory reporting occurs where a designated person is under an obligation to report a case of child abuse that comes to his/her attention under certain specified circumstances. Voluntary reporting is where there is no obligation on a person to report abuse, even where he/she acquires knowledge of abuse in the context of his/her profession.

South Africa has a statutory framework for the mandatory reporting of abuse against children. The statutory duty to report incidents of abuse against children is set out in section 4 of the Prevention of Family Violence Act³⁹ and section 42 of the Child Care Act⁴⁰, as amended.

Section 4 of the Prevention of Family Violence Act provides for mandatory reporting to a police official, Commissioner of Child Welfare or to a social worker by any person who examines, attends to, advises or cares for any child in circumstances which ought to give rise to a reasonable suspicion that such child has been ill-treated, or suffers from any injury, the probable cause of which was deliberate.

The Child Care Act makes it mandatory for every dentist, medical practitioner or nurse who examines or attends to any child in circumstances which gives rise to a suspicion that the child has been ill-treated or suffers from any injury, single or multiple, the cause of which probably might have been deliberate, or is undernourished, to immediately, in the prescribed manner⁴¹, notify the regional director of Health and Welfare of the district in which the child is in.

Mandatory reporting is not without its weaknesses. Save for the Western Cape, the reporting system is not functional in other provinces.⁴² Divergent views regarding the purpose of reporting exists⁴³. There is no consensus on whether reporting serves as a catalyst for child protection or whether it is used for policy formulation purposes. Where a reporting system is not accompanied by adequate infrastructure to ensure an appropriate response, the child's vulnerability is inevitably increased. Mandatory reporting is further criticised for its potential to reduce child abuse to a social phenomenon exclusive to indigent communities, further distorting the already distorted public opinion on the causes of child abuse.⁴⁴ Van Dokkum⁴⁵ argues that there is greater visibility of child abuse incidents in public hospitals where authorities are most likely to report the abuse as opposed to private hospitals where only the middle class go for medical treatment.

Despite the existence of a statutory framework for reporting of child abuse in South Africa, reporting of child abuse cases remains low. The table below indicates a significant increase in the number of sexual offences against children reported to the South African Police Services (SAPS) nationally between 1994 and 1998⁴⁶.

Sexual offences against children Under 18	1994	1995	1996	1997	1998
Rape	7559	10037	13859	14723	15732
Sodomy	491	660	893	841	739
Incest	156	221	253	224	185
Indecent assault	3904	4044	4168	3902	3744
Various offences in terms of the Sexual Offences Act ⁴⁷	1094	1121	1160	904	804

Although an increase in cases reported to the police is estimated, the possibility of a significant amount of cases going unreported still exists. Research has shown that a number of victims of sexual offences opt not to vindicate their experiences of sexual abuse through the criminal justice system⁴⁸. Reasons advanced for failure to report cases to the police hinge on fear of secondary victimisation at the hands of the legal system. Other reasons include:

- the child's feelings of shame, guilt, humiliation and embarrassment towards him/herself, the child's feelings of shame and pity towards the perpetrator (this often happens where the perpetrator is known to the victim);
- the child's need to protect others e.g., parents/caregivers, peers, boyfriend or teacher;
- fear of not being believed especially where he/she displays no physical signs of violence;
- the child's fear of reliving the experience and anxiety to move on with his/her life; and
- the child's fear of upsetting the stability of his/her family especially where the offender is the breadwinner. The child may even be pressurized not to report the incident of abuse to his/her mother where the father is the perpetrator.

The Human Rights Watch Report (2001)⁴⁹ further reports a persistent response pattern whereby schools devalue children's reports of sexual violence and harassment. Reports by students are often accompanied by inappropriate or complete failure by the school authorities to confront the violence, discouraging the children to seek help or where complaints were lodged, from pursuing them.

Reasons advanced by submitters to the Human Rights Watch study for reluctance to report incidents of sexual violence to the school authorities include:

- hostile or indifferent response by the school authorities;
- fear of being disbelieved;
- a victim being shy to speak up;
- turning a blind eye to or underplaying the sexual violence incident,
- fear of violent backlash by both the child and the teacher to whom the report is made;

inappropriate response to the sexual violence by the authorities e.g., by reinforcing violence as a mechanism of dealing with the problem or by imposing punishment disproportionate to the sexual violence; child's fear of marginalisation, ostracism and ridicule by peers; and abusive teachers using status and authority to discourage children from disclosing sexual violence.

According to the report, teachers are ignorant of the procedure on how to deal with sexual violence. Fear of violent backlash by the teacher to whom the report is made also prevents them from reporting the abuse. Other reasons for poor response to sexual violence by schools include the need to protect the school's reputation, the school prioritising other social problems i.e., lack of food and teaching facilities.

Where the school failed to, or responded inappropriately to sexual violence, submitters in the Human Rights Watch Report reported feelings of helplessness, disempowerment and invalidation of their experiences of sexual abuse. Where the school responded appropriately e.g., by confronting the violence, respecting the wishes and confidentiality of the children and giving children regular feedback on how their complaints were being handled, submitters reported feeling believed, empowered and assured of their safety.

4.1.3 The Role of the Police

Research singles out the SAPS as the first line of support for most persons who have suffered sexual abuse⁵⁰. A good police response to a victim of sexual abuse is likely to vindicate the victim's experience of abuse, thereby increasing his/her confidence in the criminal justice system. Conversely, a poor response is likely to invalidate the victim's experience of abuse, thwart his/her confidence in the criminal justice system, discourage him/her from resorting to the criminal justice system for assistance in the future, thereby increasing the victims' vulnerability to further abuse. It is therefore critical that the police respond to reports of sexual abuse with empathy, patience, professionalism and sensitivity.

The role of the police in sexual abuse cases is set out in the Criminal Procedure Act⁵¹, National Policy Guidelines and the Gauteng Multi-disciplinary Child Protection and Treatment Protocol. In terms of the framework set out in these documents, the role of the police in sexual offence cases includes accepting criminal complaints, arresting the perpetrator, opposing bail, investigating the criminal complaint and gathering evidence, forwarding the case to the prosecution for a decision on whether to prosecute or not and keeping the victim apprised of the progress in the case.

Receiving Criminal Complaints

It is the role of the police to receive criminal complaints. The child, his/her parents/caregivers or any other person who has the duty to report child abuse may lodge a criminal complaint with the police. Sexual abuse cases may also come to the attention of the police by way of referral by the Director-General of Welfare, acting in terms of section 42 of the Child Care Act and regulations promulgated in terms of the Act. Lodging a complaint with the police sets the criminal process in motion. Despite

the existence of policy guidelines and the Multi-Disciplinary Protocol, the exact procedure followed when reporting a child sexual abuse case differs from area to area. What is set out below is standard practice as set out in the Multi-Disciplinary Protocol and National Guidelines.

A complaint of sexual abuse may be lodged at any police station or with 10111 (the police toll-free emergency number), regardless of where the child or perpetrator lives or where the incident of sexual abuse occurred. The child does not have to report personally to the police station to lodge a complaint. The police may be called to where the child is, to take the complaint from him/her. When the report is made, only a skeleton statement need be taken. The child is not required to lay out all details of the sexual incident at the first interview with the police. A detailed statement is taken by the investigating officer once one is appointed, and *only when the child has sufficiently recovered*⁵² to be able to give a detailed account of the abuse. The police have *no discretion*⁵³ whether to accept or decline a complaint.

Once reported, a case will be referred to the CPU⁵⁴ where one exists in the locality or to a specialist member where a CPU does not exist. The Multi-Disciplinary Protocol provides for careful cooperation between the police and the Welfare Department, as the criminal process may not always be in the best interest of the child. In all instances, children should be treated with care, patience, respect and empathy. A child should not be made to make a statement in public at the Community Service Centre (Charge Office). He/she should be allowed the opportunity to relate the incident in private.

The child's statement must be taken with professionalism, care and accuracy. The statement should be read back to the child and/or his/her parent/caregiver whereupon the child or his/her parent/caregiver will sign it. The officer taking the statement must relate to the child and his/her parents/caregivers the criminal process, his/her rights as the complainant, including the right to information on the investigation and court process, the right to know when the perpetrator is arrested or released on bail, any bail conditions imposed by the court, when the perpetrator will appear in court and when the child and other witnesses will be expected to testify. The child also has the right to be given the case number, name and contact details of the investigating officer who will handle his/her case. Once a report is lodged, and a skeleton statement taken, a docket will be opened, recorded in the Crime Administration System (CAS) and a case number allocated.

Investigation and collection of evidence

After a docket is opened, an investigating officer is allocated to the case. His/her duties include tracing the perpetrator if no arrest has been made, obtaining evidence and any other information necessary to secure a conviction, oppose bail if it is in the interest of justice that the perpetrator be detained in custody, keeping the complainant apprised of progress in the case, informing the child and his/her parents/caregivers if the perpetrator is released on bail, liaising with the prosecutor regarding the direction of the investigation and presenting the docket with all the necessary evidence to the prosecutor and preparing the child for court.

Investigation is a critical stage in the criminal process. The manner in which an investigation is conducted will determine whether a prosecution will ensue and if it does, the standard of evidence presented in court.

It is the role of the investigating officer to take a statement from the child with sufficient detail to cover all the elements of the alleged offence. The investigating officer also takes statements from other witnesses to the extent that they support evidence made in the child's statement or prove any element of the alleged offence. He/she also ensures that the child attends forensic medical examination if the child has not been so referred by the Community Service Centre officer. If the child has already presented for the forensic medical examination, the investigating officer ensures that the forensic medical report is collected from the examining medical officer and safely kept in the docket.

Once all the statements are taken, and necessary evidence to secure a conviction is collected, the investigating officer will place the docket before the prosecutor for a decision whether or not to prosecute.

Arrest and Bail

If no arrest has been made, the investigating officer will trace the perpetrator following all possible leads. In terms of section 40 of the Criminal Procedure Act, the police have the power to arrest a suspect without a warrant in *inter alia*, the following circumstances: where an offence (or attempted offence) is committed in the presence of a police officer concerned or where the police officer reasonably suspects a perpetrator to have committed a schedule 1 offence.⁵⁵

The police officer's duty to arrest as set out in section 40 is discretionary. Once an arrest is made, he/she will ensure that the perpetrator appears in court within 48 hours and oppose bail if the perpetrator's release on bail is contrary to the interest of justice. If the perpetrator is released on bail, it is the investigating officer's duty to inform the complainant.

In terms of section 60(1) of the Criminal Procedure Act, an accused who is in custody in respect of an offence shall be entitled to be released on bail pending disposal of the case. However, section 60(11) states that where an accused is charged with an offence referred to in either schedule 5 or 6 of the Act, the court shall order that the accused be detained in custody until he/she is dealt with in accordance with the law, unless the accused, having been given a reasonable opportunity to do so, adduces evidence which satisfies the court that the interests of justice permit his or her release. Rape is the only sexual offence that falls within the scope of section 60(11).

Withdrawal of Cases

Since the prosecution of criminal cases vests in the Prosecution Authority, once a case is lodged with the police, it becomes the State's case. The role of the complainant and his/her parents/caregiver becomes limited to that of a State witness. They do not have the capacity to make any decision regarding the case, including a decision to withdraw the case. Such a decision may only be made by the Prosecution Authority. It is a decision not lightly reached. In terms of Policy Directives issued by the National

Prosecuting Authority, a case may only be withdrawn on compelling grounds e.g., if it appears after thorough investigation that there is no reasonable prospect of a successful prosecution.⁵⁶ Where the National Director of Public Prosecutions (NDPP) or a Director of Public Prosecutions (DPP) ordered the prosecution, their prior authorisation is required before a case is withdrawn. Their advice should also be sought where a case is of a contentious or sensitive nature, where the case is a high profile case or where the case involves a matter in which a policy decision is required. A withdrawn case may be reinstated at a later stage e.g., where further evidence comes to light.

Once the accused has been arraigned and has pleaded to charges preferred against him/her, a case may not be withdrawn.⁵⁷ If for any reason, the prosecutor decides not to proceed with a prosecution, it will amount to stopping a prosecution as referred to in section 6(b) of the Criminal Procedure Act. A decision to stop a prosecution is also not taken lightly, more so because it will result in the acquittal of the accused. The case may not be reinstated even where further evidence is found at a later stage. A criminal case may only be stopped where if during the proceedings, it becomes clear that it would be impossible to obtain a conviction, or where the continuation of a case become undesirable due to exceptional circumstances.⁵⁸

4.1.4 Forensic Examination and Medical Treatment **Taking the child for a medical/ forensic examination**

Every sexually abused child has to undergo a medical examination. The purpose of the examination is to gather forensic evidence. It is very important that the child presents for the forensic examination as soon as possible after the sexual abuse incident, and within a maximum of 72 hours after the incident. He/she should not wash or change clothes prior to the examination, as doing so may obliterate the evidence. However, in terms of the National Instructions, a forensic examination must still be conducted, even where the child presents after 72 hours of the sexual abuse incident.

The National Policy Guidelines recognises that a child may present for a forensic examination prior to lodging a criminal complaint. This could happen where the child does not want to lay a charge but requires medical treatment before laying a charge or is simply unaware of the process to follow. Whatever the reason, the child should not be turned away without the examination being performed and treatment given.

It is not only the child who is required to undergo a forensic examination. Perpetrators may also be subjected to such an examination as part of the evidence gathering process. Such examinations are conducted in terms of sections 37(2), 222(2) and 225 of the Criminal Procedure Act⁵⁹ in cases where the perpetrator is arrested early enough to obtain meaningful forensic evidence.

Until very recently, a district surgeon or a doctor in private practice performed forensic examinations. District surgeons were employed by the Department of Health either on a full or part-time basis. Their duties included examining complainants who have suffered violent crimes, termination of pregnancy where a child or woman fell pregnant as a result of rape, treatment of prisoners, conducting autopsies, executing

drunk driving tests and performing any other medical duty arising in the context of state function. In 1999, in a surprise announcement, the Minister of Health replaced district surgeons with a new system of Accredited Health Care Professional (AHCPs)⁶⁰. Henceforth, AHCPs were to conduct forensic examinations and provide other services previously rendered by district surgeons.

Although all persons who have suffered sexual violence are required to undergo a forensic examination, such an examination can only be performed with the consent of the child's parents/caregivers. Consent to a forensic examination is given by completing the SAP 308 form. The investigating officer will normally complete the form for the child or his/her parent or guardian to sign. Any other form of written consent is also acceptable. A child of 16 years of age can complete the form without the authority of his/her parents/caregivers. Where the parents/caregivers unreasonably withhold consent to an examination, the parents/caregivers cannot be traced or for any other reason, they are unable to give their consent, a magistrate can be approached for consent⁶¹.

The AHCP conducting the forensic examination will record his detailed findings in the J88 form. He/she will also take samples using the crime kit provided by the investigating officer. Samples must be sealed, clearly marked for identification purposes and referred to the Police Forensic Science Laboratory for testing. Where a sexually active child engaged in sexual intercourse with other persons 72 hours prior to the sexual abuse incident, samples must also be taken from such persons for testing.

It is the responsibility of the investigating officer to collect both the completed J88 form and the sealed crime kits from the AHCP.

Medical Treatment for the Child

Both the National Policy Guidelines and the Multi-Disciplinary Protocol provide for the treatment of the child by the AHCP. Treatment to be administered includes post exposure prophylaxis (PEP) for sexually transmitted diseases (STDs), (there is no provision for the supply of PEP for HIV/AIDS as it is not government policy to provide free PEP for HIV to children who have suffered sexual abuse), the morning after pill where the child has reached puberty, termination of pregnancy where the child fell pregnant as a result of sexual abuse and treatment for any injuries suffered by the child during the sexual abuse incident.

The AHCP must also:

- give the child information on follow up services;
- refer the child for counselling to the local welfare or NGO service;
- refer the child to the local Primary Health Centre (PHC) for treatment if he/she cannot treat the child;
- refer the child to the local Family Planning Centre for contraception if she is in puberty and give the child information about HIV/AIDS; and
- refer him/her for counselling for HIV and for HIV testing if the child or his/her parents/caregivers want the child to test for HIV.

4.1.5 The Role of the Prosecutor

The prosecution function vests in the National Prosecution Authority (NPA) by virtue of powers vested in it by the National Prosecuting Authority Act 32 of 1998. Prosecutors in the lower courts and State advocates in the High Courts represent the Prosecuting Authority.⁶² The role of the prosecutor is primarily to ensure justice where there has been transgression of the law. The prosecutor is described in the NPA Policy Directives⁶³ as “the people’s attorney” who represents the administration of justice in the prosecution of criminal offences. He/she is tasked with assisting the court to arrive at a just verdict by guiding the police through the investigation process, making the decision to prosecute, addressing the court on bail, presenting evidence in court, arguing cases and helping the court arrive at a just sentence in the event of a conviction.

In prosecuting sexual abuse cases, the prosecutor is bound by the Criminal Procedure Act. He/she also derives guidance from the National Policy Guidelines and the NPA Policy Directives. The Multi-Disciplinary Protocol does not set any standards for prosecutors. The NPA Policy Directives sets general minimum standards for prosecutors in the execution of their duties while the National Policy Guidelines set specific guidelines for the management of sexual offences.

The decision to prosecute

On receiving the docket from the investigating officer, the prosecutor has to decide whether or not to proceed with a prosecution. He/she can only so decide if after assessing all available facts, information and circumstances, there are prospects of a successful prosecution.⁶⁴

In making such an assessment, he/she is required to consider the possibility of successfully diverting the perpetrator from the criminal process,⁶⁵ the seriousness or lack thereof of the matter;⁶⁶ and discretionary grounds, i.e., compassion. Overall, a decision to prosecute consists of weighing demands of fairness and consistency, the need to protect the victim and the community from crime and to respect the offender’s presumed innocence.

If the prosecutor is of the opinion that the docket does not have sufficient information to enable him/her to decide whether or not to prosecute, he/she may refer the docket with clear instructions back to the investigating officer for further investigation. In the event of the prosecutor declining to prosecute, his/her decision marks the end of the matter unless further information is obtained in which case the investigation will be reopened and the docket referred back to the prosecutor for his/her decision. In the event of the prosecutor deciding to prosecute he/she will place the matter on the roll for the perpetrator’s first appearance in court, assist the court in arriving at an appropriate bail amount and/ or oppose bail if it is in the interest of justice that the perpetrator be kept in custody, guide the investigation officer through the investigation if any further investigation needs to be conducted, once the investigation is complete, decide in which court the matter is going to proceed and enrol the matter for trial in that court and start making preparations for trial.

Preparing for court

Since it is the prosecutor who will present the victim's case in court, he/she is responsible for all the court preparation that needs to be done. After enrolling the matter for trial, the prosecutor will issue a subpoena to the child and all other State witnesses, specifying the date, time and court in which they are required to report in order to testify. In terms of the National Policy Guidelines, the prosecutor is required to thoroughly consult with the child, all witnesses who will testify on behalf of the State, the investigating officer, social worker (if any is involved in the case) and the AHCP. He/she is also required to keep the child and or his/her parents/caregivers apprised of developments in the case.

During consultation with the child, the prosecutor is required to go through the statement made to the police with the child to refresh his/her memory and clear out any inconsistencies. He/she must ascertain what fears, if any, the child has, and attempt to allay these. He/she is also required to explain the court process to the child in order to equip him/her to understand the proceedings and to familiarise him/her with the courtroom. If the child will be using the services of an interpreter, the prosecutor is also required to ensure that the child has met the interpreter and/ or intermediary, as they will be working together throughout the case. The prosecutor must do the same with all other witnesses who will testify on behalf of the State.

When consulting with the AHCP, the prosecutor is required to familiarise him/herself with the medical terminology that will be employed in the trial and the implications of the AHCP's findings to enable him/herself to lead the AHCP's expert testimony coherently. He/she must furthermore confirm with the investigating officer that all the necessary documentation and exhibits to be used at the trial are available. If the investigating officer will be testifying in court, the prosecutor must consult with him/her as well.

4.1.6 Support for the child

Children who have been subjected to sexual violence require therapeutic support ranging from counselling to emergency shelter. Within government, it is the role of the Department of Welfare to provide such support. Non-governmental organizations are also instrumental in providing support to children who have suffered sexual violence.⁶⁷

Minimum standards for providing support to children who have suffered sexual violence are set out in the National Policy Guidelines and in the Multi-Disciplinary Protocol. These instruments emphasize the need for the training of providers of support services to equip them to respond sensitively and appropriately to children who have suffered sexual violence⁶⁸.

The role of the social worker, psychologist and other support groups as set out in the National Policy Guidelines and Multi-Disciplinary Protocol include making contact with a child who has suffered sexual violence, conducting risk assessments and ensuring the child's protection from vulnerability to violence, continuously collaborating with the police, AHCP and the prosecutor throughout the criminal

proceedings and providing counselling to the child and his/her family throughout the criminal justice process.

In exercising these duties, social workers, psychologists and other health care workers are required to create an environment of trust between him/herself and the child as he/she will require intimate details from the child; to accept that the incident of sexual violence as reported by the child did occur and avoid sceptical questions or questions that display a judgmental attitude; to assure the child that the sexual violence did not occur as a result of his/her fault and that help is available to him/her; to allow the child to verbalise his/her feelings, including feelings of anger; to allay the child's fears and to show sympathy for his/her plight and to safeguard the best interest of the child at all times.

Social workers and other support providers are required to link up with criminal courts or Sexual Offences Courts (where they exist), prosecutors, the police, CPUs (where these exist), Primary Health Care Clinics and the AHCP to ensure an integrated and coordinated response to sexual violence against children in all areas. The development of a directory of services available in every area to children who have suffered sexual violence is also advised.⁶⁹

Procedure to be followed in supporting a child⁷⁰ :

A social worker is required to ensure that the case is dealt with at an agency where the matter is reported, irrespective of where the child lives. If the child lives in another area, the case must then be referred to the agency in the area where the child lives for follow up.⁷¹ In compliance with section 42 of the Child Care Act, a social worker is required to report a case of sexual abuse to the police if a criminal complaint has not yet been lodged with the police. Consultations with the child should take place in private, a child should be interviewed first, and then his/her parents/caregivers. A social worker is required to strive to preserve the child's family and to remove the child only as a last resort.⁷² Where the perpetrator is the child's family member, initial effort should be made to remove the perpetrator. The support of other family members in protecting the child from further abuse should be enlisted. Social workers are required to work closely with parents/caregivers to ensure that the child is not exposed to further abuse at home and assist the abuser to seek effective treatment and to provide the child and his/her family with information to assist the child including information on the role of the police, the criminal justice process, what will be expected of the child and his/her parents/caregivers in this process and information about medical risks, i.e., STDs, HIV/Aids and available medical treatment.

4.1.7 Specialised Sexual Offences Courts

A specialised Sexual Offences Court is a court based at regional level and dedicated to sexual offence cases. The first was established in Wynberg Cape Town in 1993 in response to the increase in sexual offence cases in that region. The objectives of the court are to improve inappropriate and insensitive treatment of victims of sexual offences in the criminal justice system, create an integrated approach to the management of sexual offences by various agencies and ultimately, improve the reporting, investigation, prosecution and conviction rate in sexual offence cases⁷³ .

The Wynberg Court differs from ordinary Regional Courts in that two prosecutors (with an interest in sexual offence cases), instead of one, are assigned to each court. This enables the prosecutors to spend a sufficient amount of time preparing for cases, e.g., consulting with witnesses, guiding the investigation and conducting in loco inspections without wasting court hours. Prosecutors take turns in presenting their cases in court thus allowing each other sufficient preparation time.⁷⁴ Unlike in other courts where dockets change hands each time the perpetrator appears in court, Sexual Offences Court prosecutors are allocated a docket from the time a decision to prosecute is made. Once allocated, the prosecutor handles a case to the end;⁷⁵ There is a waiting room where a victim waits in private away from accused ravaging corridors until he/she is called on to testify.⁷⁶ An AHCP and a Victim Support Services Coordinator⁷⁷ are also located at the court for the convenience of victims⁷⁸.

The court was evaluated by Rape Crisis, Africa Gender Institute, the South African Human Rights Commission and the University of Cape Town's Institute for Criminology in 1997. An extensive evaluation report published after the evaluation rated the court partially successful in eliminating victim trauma, establishing collaboration between various agencies dealing with sexual offences and in improving reporting, prosecution and conviction rates in the Cape Town area. The report called on the Department of Justice to effect a number of improvements to the court to ensure full realisation of the court's objectives.⁷⁹ These include:

- the initiation of an integrated and coordinated multi-agency project on sexual offences to secure the commitment of all role players to specialised Sexual Offences Courts;
- all criminal justice officials including magistrates should receive on-going training to enhance their capacity to respond appropriately and sensitively in sexual offence cases;
- district surgeons should be available 24 hours a day to ensure prompt execution of forensic examinations; and
- mechanisms to maximise victim's access to information on the criminal process, complaints mechanism and progress made in their cases should be developed.

The report also called on the Department to develop a blue print for Sexual Offences courts based on the improved Wynberg model to form the basis for the establishment of other Sexual Offences Courts in the country.

Towards the end of 1999, with the financial support of the Canadian International Development Agency (CIDA), the Sexual Offences and Community Affairs Unit at the NDPP's office announced a plan to establish 20 further Sexual Offences Courts in various areas around the country to afford more victims of sexual offences the sensitive treatment afforded to victims in the Cape Town area by the Wynberg Court. More sexual offence courts have since been established in other parts of the country. However, there is no strategy in place for monitoring and evaluating the courts.

4.2 Trial Procedures

The trial is the culmination of the process initiated when the complainant laid a charge of sexual abuse. As mentioned earlier, it is important that the child is prepared for trial so that he/she may know at any given point in the trial where the process is and what is expected of him/her.

It is during the trial that the child's allegations of sexual violence and the accused's defence to those allegations are tested. The quality of evidence gathered during the investigation, and the cooperation of all role players throughout the case normally determines the outcome of the case. The child and his/her family normally expect conviction of the accused to vindicate the child's experience of the sexual violence. It is in this regard that the diligence with which the prosecution is carried out becomes important. The child's preparedness for trial or lack thereof will also determine the child's performance when called upon to testify.

On the day of trial, the child and his/her parents/caregivers are expected to arrive at court very early, normally around 9.00 a.m., and to alert the prosecutor to their presence. If the prosecutor has not had the opportunity to consult with the child and other witnesses and to prepare the child for trial, he/she will do so as soon as the child and or his/her family arrives in court. The child and his family (together with other State witnesses if there are any) will be made to wait in a private waiting room (if one is available) to avoid contact with the accused and or his family and friends.

If the accused, complainant and other witnesses are present in court, the trial will proceed on that day.

4.2.1 Special measures for children

The Criminal Procedure Act makes provision for measures aimed at accommodating special needs of a child witness. These include in-camera proceedings, prohibition against publication of a child's identity and the use of intermediaries.

In-camera proceedings

Generally, criminal proceedings take place in open court.⁸⁰ Section 153 of the Criminal Procedure Act provides an exception to this general rule. In terms of the section, the public may be excluded from trial where it appears to the court that there is likelihood that harm may result to any person if such person testifies in open court.

The constitutionality of section 153 has been questioned. This issue was settled in *Nel v Le Roux NO*⁸¹ where the constitutional court held that although the section violates the accused's right to a public trial guaranteed in section 35(3)(c), such violation is justified in terms of the limitation clause.

In cases where section 153 applies, the court should mero muto order the courtroom to be cleared. Notwithstanding a section 153 order, judgement and sentence will be given in open court if the court is satisfied that the identity of the complainant or witness as the case may be, will not be revealed.

There is no doubt that section 153 is instrumental in protecting children who have suffered sexual violence when they testify in court. It also guarantees children protection during the criminal justice process thereby encouraging children to come forward.

Prohibition against publication of a child's identity

To alleviate the vulnerability of persons who have suffered violent crime from further violence, section 154 of the Criminal Procedure Act prohibits the publication of certain information relating to criminal proceedings. The prohibition relates to publication of an identity of any complainant where the court has made an order in terms of section 153(3) or publication of information relating to a charge referred to in section 153(3) where the accused has not appeared in court or where he/she has appeared, but has not pleaded to the charge.

Use of intermediaries, close circuit television and one-way mirrors

The Criminal Procedure Act contains provisions that make it possible for the child witness to testify outside court, namely, section 170A and section 158(3). In terms of section 170(A), where in criminal proceedings, the court is satisfied that testifying in open court will expose a child under 18 to undue mental stress or suffering, the court may appoint a competent person as an intermediary to enable the child to give evidence through the intermediary. An intermediary is a person appointed by a court pursuant to section 170(A) to enable a child to testify outside court by assisting the court in relaying questions from the prosecutor, court and defence to the child and the child's response back to the court. This is normally done through close circuit television (CCTV) where a court is equipped with such a device. A child and the intermediary sit in a room adjacent to the court from where the child will answer questions posed to him/her. The court is able to see the intermediary and the child through the CCTV. Where a court is not equipped with CCTV, a one-way mirror is used. The use of these devices is authorised in terms of section 158(3) of the Criminal Procedure Act.

A number of people have been identified competent⁸² to act as intermediaries. They include psychologists, paediatricians,⁸³ psychiatrists,⁸⁴ family counsellors (appointed in terms of the Mediation in Certain Divorce Matters Act),⁸⁵ childcare workers;⁸⁶ lay counsellors, educators (including retired educators);⁸⁷ and social workers.⁸⁸

The constitutionality of section 170(A) was attacked in *K v The Regional Magistrate NO and others*⁸⁹ where it was argued that (a) the use of intermediaries impairs proper cross-examination thereby infringing on the accused's right to a fair trial, (b) the physical separation of the child from the accused violates the accused's right to a public trial. After examining the purpose of section 170(A), the court found that ordinary procedures in the criminal justice system are inadequate to meet the child's special needs and that the section was designed to address these special needs. The court equated the role of the intermediary to that of an interpreter and found that the use of an intermediary does not exclude the accused's right to cross-examine the

child. The court further found that the accused's right to a public trial is not violated by the separation of the child from the court.

4.2.2 Cautionary Rules

Cautionary rules are evidentiary rules of practice that require presiding officers to exercise caution prior to accepting the evidence of certain category of witnesses.⁹⁰ Such rules are based on the assumption that the witness adducing the evidence, for some reason, has diminished credibility⁹¹.

Until very recently, three types of cautionary rules found application in sexual offence cases against children namely, caution against the evidence of women and girl children in rape cases, caution against the evidence of a child witness and caution against the evidence of a single witness. These rules evolved because the collective wisdom and experience of judges have found that certain kinds of evidence cannot be safely relied on unless accompanied by some satisfactory indication of trustworthiness, e.g., corroboration.⁹²

Cautionary rule in rape cases

The rationale behind the application of caution in accepting evidence from women and girl children in rape cases is explained as follows in the South African Law Commission's 1985 Report on Women and Sexual Offences where the Commission refused to scrap this rule:

'Rape usually takes place in secret and it is easy to lay a false charge and difficult to refute it. Furthermore, a complainant could be motivated by an emotional reaction or an innocent man may be falsely accused because of his wealth and the complainant may be forced by circumstances to admit that she had intercourse and then willingly represent intercourse as rape'

Since then, the rule became the subject of legal scrutiny⁹³ until repealed by the Supreme Court of Appeal in a landmark ruling in the case of *S v Jackson*.⁹⁴ Upholding the State's argument that the notion that women (and girl children) are habitually inclined to lie about being raped was without any basis. The court found that the rule is based on an irrational and outdated stereotypical perception about women being unreliable. Since the majority of complainants in rape cases are women, the court found the rule to discriminate against women.

Although the Jackson judgment is hailed for scrapping the discriminatory cautionary rule in rape cases, it has been criticised for leaving latitude for the continued application of the cautionary rule in rape cases by citing with approval an English judgment where the court held that in order for the rule to find application in rape cases, there needs to be an evidential basis for suggesting that a complainant is unreliable.⁹⁵ Statutory intervention may therefore be necessary to ensure the total exclusion of the cautionary rule in rape cases.

Cautionary rule against the evidence of a child witness

Like the evidence of women and girl children in sexual offence cases, the evidence of children (in all cases) is treated with caution. It has been argued that the evidence of a child witness is objectionable because children's memories are unreliable, children are egocentric, highly suggestible, have difficulty distinguishing fact from fantasy, often make false allegations (particularly of sexual assault) and that children do not understand the duty to tell the truth.⁹⁶

This rule has been steadfastly applied in South Africa and in other countries without interrogation and without regard for its lack of a sound legal basis.⁹⁷

It was not until 1989 that the British Home Office Committee under the leadership of a Court Judge, Mr. Justice Piggott, questioned the blanket application of the cautionary rule against children. He called on courts to open up to what other disciplines can teach them about the features of children's evidence and the circumstances under which a child is likely to adduce false evidence⁹⁸. The Judge advocated a new and more targeted approach to the admissibility of evidence of children. He argued that there is nothing wrong in the current approach of seeking corroboration of children's evidence, the only problem occurs when courts start losing sight of why corroboration is sought. Age and immaturity are simply not sufficient grounds for seeking corroboration.

In *The State v S* (Regional Court Judgment) the court acquitted a father on charges of sodomising his two children after finding that given the applicability of the cautionary rule against a complainant in sexual offence cases, the evidence of a child witness and the evidence of a single witness in that case, the State's evidence had to be of extremely high quality to be admissible. Inevitably, the compounded effect of three cautionary rules, when applied in one case, makes a conviction virtually impossible.⁹⁹ On appeal the court overturned the acquittals arguing with reference to the Jackson judgment, the rationale for doing away with the discriminatory nature of the compulsory application of cautionary rules in sexual offence cases. As argued by Judge Fagan, there is no justification for treating children as less reliable than adult witnesses¹⁰⁰. Such differential treatment is not only warranted, it violates the child's right to equal treatment before the law and equal protection of the law.

In order to be responsive to the reality of children, the courts need to take into account the cognitive and emotional developmental reality of children when assessing a child's evidence. The fact that a child is less developed than an adult and hence less able to withstand vigorous cross-examination, less equipped to deal with equivocal statements and with less developed communication skills, should instead dictate in the child's favour rather than a sweeping unfounded assumption that a child is inherently unreliable as a witness. Statutory intervention may be necessary to settle the existing uncertainty regarding the judicial approach to the admissibility of a child's evidence.

Cautionary rule against the evidence of a single witnesses

As with the other cautionary rules, the cautionary rule against a single witness developed out of judicial practice.¹⁰¹ Over the years, courts have warned against too much reliance being placed on the evidence of a single witness.¹⁰² Despite a clear statutory provision in section 208 of the Criminal Procedure Act that an accused may be convicted of any offence on the single evidence of any competent witness, courts continue to apply caution when assessing the guilt of an accused person based on the evidence of a single witness.

De Villiers JP is often blamed for creating a leeway for the continued and unabated application of the cautionary rule against the evidence of single witnesses. In the *Mokoena* case, the judge warned that section 208 should only be relied on where the evidence of a single witness is clear, and satisfactory in every material respect. The section should not be invoked where the witness has an interest or bias adverse to the accused, where he/she has made a previous inconsistent statement or where he/she contradicts him/herself in the witness box. Hoffman and Zeffertt have expressed regret at the application of the De Villiers dictum as a salutary guide to the interpretation of section 208.¹⁰³ They warn against blanketly following the approach followed by De Villiers in *Mokoena* lest too much focus on the witness's interest or bias distracts from assessing the possibility of the witness's testimony being substantially true.

The cautionary rule against a single witness finds application in most sexual offences cases as incidents of sexual violence often take place outside the public domain. If courts follow the approach in the *Mokoena* judgment, that children's memories are unreliable, that children are egocentric, highly suggestible, have difficulty distinguishing fact from fantasy, often make false allegations and that children do not understand the duty to tell the truth, the likelihood of the admissibility of the evidence of a single child witness becomes too remote when assessing the evidence of a single witness in a sexual offence cases. This accounts for low conviction rates in sexual offence cases against children. As argued by Hoffman and Zeffertt, an approach that puts the court in a position to assess the truthfulness of a child's witness in the light of all the other circumstances of the case is a sensible one¹⁰⁴.

4.3 Post-Trial Procedures

In therapy, children who have been subjected to sexual violence commonly express their feelings in the following words: 'I am damaged, I am powerless, why me? I feel confused, I often feel sad, people think I am ugly, sometimes I wonder why I am alive.'¹⁰⁵ These expressions are indicative of the profound and devastating effects of sexual violence on children. Experiences of sexual violence negatively affect a child's internalisation of the 'self' and adversely affect the child's interaction with other people¹⁰⁶.

Sexual violence is even more devastating on a child when perpetrated by someone close to the child. What aggravates the child's devastation in such cases is the nature of the relationship with the perpetrator. Abuse is the last thing the child expects from

the perpetrator as often the child looks up to the perpetrator for protection. Where the perpetrator has a close relationship with the child, the child normally first experiences the sexual act as love, and as intrusion fear and hate intensifies, the child has feelings of confusion.¹⁰⁷

The child's experience of abuse is further compounded during the criminal process, as this process does not take into account the child's cognitive development. During this process, children re-experience intrusion, helplessness, aggression, threats, feelings of guilt, being bad and lack of faith in what they have told the court.¹⁰⁸ Often these feelings are further aggravated by a negative court outcome. Discharge of the accused is likely to cast doubt on the child's truthfulness and self-esteem, and contribute to the child's feelings of guilt and self blame.¹⁰⁹

From the above it is clear that post-trial arrangements are critical to the child's healing process. More often than not, if a child was privileged to receive therapeutic interventions when the case of sexual violence was reported to the police, such intervention is unlikely to proceed after the trial has been finalised. The National Policy Guidelines do not recognise the role of the social worker in the child's healing process after disposal of the criminal matter. On the other hand, the Multi-Disciplinary Protocol provides that a child who has been abused is entitled to treatment for the trauma suffered¹¹⁰. The trauma can occur before, during and after the statutory process.¹¹¹ It further provides for the termination of specialised child protection and treatment services when (a) the involvement of Child Protection and Treatment Services Professionals is no longer necessary and (b) only when a treatment plan for all parties involved has been completed.¹¹² Therefore treatment of the child should continue even after disposal of the criminal matter.

4.3.1 Treatment

It is pivotal for a child who has suffered sexual violence to undergo treatment. Although the Multi-Disciplinary Protocol emphasises that treatment for the child should be kept separate from the criminal process and that ideally, treatment should not be offered by a statutory social worker, the Protocol also recognises that this is not always possible in the South African context of scarce resources. The Protocol therefore encourages statutory social workers to incorporate therapy in all areas of their work.

The Multi-Disciplinary Protocol provides for the following forms of treatment for the child: trauma debriefing, crisis intervention counselling, supportive counselling, specialised therapy, psychological assessments, group therapy and support groups.

Although a child is an individual, he/she is part of one large family system. Because families live together, they develop reciprocal patterns of behaviour. It is for this reason that the Multi-Disciplinary Protocol advocates that a child not be treated in isolation from the rest of his/her family. Therefore, not only does a child who has suffered sexual violence need therapy, the rest of his/her family do as well.

The Protocol provides for the following forms of intervention for the family: conjoint family therapy, parental education, individual work with children, couple counselling, parent-child enrichment and sibling enrichment.

During the literature review no research outlining shortcomings in the provision of treatment to children who have suffered sexual violence was encountered. This points to the need for research in this area.

4.3.2 Placements

The family preservation model underpins the treatment and placement provisions of the Multi-Disciplinary Protocol. The model is based on the philosophy that although children are individuals, they need and thrive within permanent families, whether biological or foster. Family preservation and the need to protect children need not be in conflict. Even when faced with a crisis, parents/caregivers love their children and with help and support, they may be able to acquire skills to care for and protect their children.

After any form of abuse, the safety of the child has to be guaranteed as part of the child's healing process. Although in certain instances removal of a child may be seen as an easy route to a child's safety, it is not always the best option. The Multi-Disciplinary Protocol emphasises that children yearn to stay where they belong, with their families. It is extremely difficult to convince a child of his/her worth after removing him/her from a family which is perceived unworthy, but with whom the child identifies. The Protocol encourages welfare workers to, in recognition of this reality, focus their efforts on assisting families to build safe relationships and caring interactions.

Where the need for family preservation and the child's safety do not balance, arrangements for the alternative placement of the child should be made. The child and his/her family should be supported throughout this process. The child and his/her alternative family also require support throughout this process. A permanent plan must be formulated to ensure observation of the child's best interest.

The Child Care Act makes provision for the removal of a child considered to be a child in need of care. A child in need of care is a child who *inter alia* lives in or is exposed to circumstances which may seriously harm his/her physical, mental or social welfare, is in a state of physical or mental neglect or has been physically, emotionally or sexually abused by his/her parents/caregivers or a person in whose care or custody the child is.¹¹³ Any child who has been sexually violated (whether by a family member, neighbour or stranger) may, depending on the circumstances of each case, qualify as a child in need of care in terms of section 14(4).

A children's court may, pending an inquiry into whether a child is a child in need of care, authorise the removal of a child to a place of safety if during any proceedings before the court it appears to the court that it is in the interests of the welfare and safety of the child to be removed to a place of safety. The court may also ratify the removal of a child to a place of safety by a social worker, a police or other authorised officer if the child was removed in circumstances where the delay in obtaining authority would have been prejudicial to the child. During the inquiry, the court may

request a social worker to furnish it with a report into the circumstances of the child and his/her parents/caregivers and/ or guardian.¹¹⁴ At the end of the inquiry the court may order¹¹⁵ that a child be returned to the parent or guardian in whose custody the child was before the inquiry, subject to supervision by a social worker and or compliance with any conditions that the court may determine; that a child be placed with a suitable foster parent designated by the court subject to supervision by a social worker; that a child be sent to a children's home or a school of industries designated by the Director-General of Welfare.

Once granted, an order for the removal of a child is subject to revision by the children's court every two years.¹¹⁶ The order may be extended for a further two years at a time until the child turns 18.¹¹⁷

CHAPTER FIVE

5. Submission received by the Commission

During the hearings, various individuals made written and oral submissions to the Commission. Most submitters work with sexually abused children on a daily basis. A few parents whose children had been abused also made submissions. After the hearings, meetings were held with magistrates, prosecutors, representatives of the Law Society of South Africa and Social Workers Associations and other bodies to elicit their response to the issues raised at the hearings. On the whole the submissions and other information received by the Commission indicate that minimum standards for the management of cases involving sexually abused children as set out in legislation, the Multi-disciplinary Protocol and the National Policy Guidelines for Victims of Sexual Offences, are rarely adhered to. Issues raised in the submissions and other information received by the Commission are summarised below.

5.1 Preliminary Issues raised at the Hearings

The Legal Services Department of the Commission had invited a number of magistrates and prosecutors to make written submissions to the Commission and to make oral submissions at the hearings. The Commission did not receive written submissions from any of them. At the hearings, magistrates and prosecutors attended but refused to make submissions under oath or to discuss any issues relating to the management of sexual abuse cases in their respective courts.¹¹⁸ They were not even prepared to address the panel on reasons for their refusal to make submissions under oath or affirmations¹¹⁹. Reasons advanced for their refusal to testify are that (a) they misunderstood the letters written to them by the Commission inviting them to attend the hearings, (b) that they did not know that they were expected to testify at the hearings and (c) that they are ignorant of the terms of reference for the inquiry. Mr. Moodliar argued before the panel that whilst he accepted that there might be a fair amount of merit in their objection, the terms of reference, although not sent to the magistrates and prosecutors prior to the hearings, had been published in the Government Gazette, and that the magistrates and prosecutors therefore ought to have been aware of them. Mr Moodliar requested the panel to make a ruling on the following alternate positions: (a) to accede to the request of the magistrates and prosecutors not to make their submission under oath or affirmation but rather to have a general discussion on the subject matter of the hearing; (b) that the hearing should be conducted according to the terms of reference and rules of procedure that were published in the Government Gazette; or (c) that the panel invokes section 9 (2) (d) of the Human Rights Commission Act which empowers the Commission to call any person who attends or is present at a hearing to testify under oath or affirmation.

The panel carefully considered the reasons presented by magistrates and prosecutors and options outlined by Mr. Moodliar. The panel further considered the terms of reference and rules of procedure of the inquiry, in particular paragraph C (3) and D (1); (10) and (11) thereof and came to the conclusion that (a) deviation from the published terms of reference and rules of procedure published in the government gazette would defeat the objective of the inquiry (b) allowing the magistrates and

prosecutors to engage in a discussion with the panel and participants without speaking under oath will undermine the terms of reference and rules of procedure for the inquiry and would not enable the panel to come up with appropriate findings and recommendations as envisaged in the rules of procedure. The panel accepted that while the Government Gazette is a public document, the Commission's Legal Department erred by not bringing the specific terms of reference to the attention of the magistrates and prosecutors. This may have led them to believe that the hearing was not an administrative procedure but merely a public meeting. The panel's resolve was (a) not to accede to the request for an informal discussion; (b) to excuse the magistrates and prosecutors from testifying on 24 April 2001; (c) that subpoenas be duly served on them in compliance with the provisions of the Human Rights Commission Act and published terms of reference and rules of procedure and (d) that the Commission's Legal Service Department furnish magistrates and prosecutors with a copy of the terms of reference and all other relevant documents to enable them to prepare themselves adequately for the hearing.

Similar preliminary issues were raised by magistrates and prosecutors who were invited to make submissions at the hearings held on 25 and 26 April 2001 in Thokoza. Reasons advanced this time were that the submitters do not have the mandate from the Magistrates Commission and the National Prosecuting Authority respectively, and that such a mandate had to be sought before they could participate in the hearings. Expressing the need to observe and respect Constitutional provisions relating to the independence of the judiciary and the Prosecuting Authority, the panel reiterated the ruling it made in Bronkhorstspuit.

Subsequently, the Commission met with the Magistrates Commission to clarify the magistrate's position on the issues raised by the magistrates.¹²⁰ The Magistrates Commission confirmed that by law, magistrates are not obliged to take an oath. The Magistrates Commission left it to individual magistrates to decide whether they are willing to take an oath or not and developed parameters regarding issues they may be questioned on during the hearings, should they decide to take part.¹²¹ The issues were limited to legislative, policy and systemic shortcomings magistrates have encountered when dealing with child sexual offences. They were not to be questioned over specific cases they had presided over.¹²² In the end only one magistrate addressed the panel without taking an oath or affirmation.

5.2 Pre-Trial Procedures

5.2.1 Disclosure

A number of submitters reported on the process of disclosing sexual abuse by children. According to the submitters, a child may disclose sexual abuse to an adult at home, school or other setting. Disclosure may happen immediately after the incident of abuse, days, months or even years later. Evidence was received by the panel that adults are not always responsive to the disclosure of sexual abuse by a child. Adults are reported to sometimes not pursue a report of sexual abuse by a child owing to social or cultural reasons e.g., where the parties opt to resolve the matter between themselves.

Mothers often give false/ wrong addresses when they do not want the perpetrators to be arrested. This often happens where the perpetrator is willing to pay some kind of compensation to the victim's family. Such compensation may include slaughtering a goat to cleanse the family of the misfortune that has befallen them.¹²³ The panel also received reports of children retracting the report of sexual abuse when an adult reacts negatively to the report, or when the child feels that he/she is not believed.

Owing to systemic abuse suffered by children who have been sexually abused, some role players do not encourage children and their parents/caregivers to seek recourse from the criminal justice system.¹²⁴

Inspector Ratsupa testified that a typical police docket only contains one statement given by the child when the case was first reported. A further statement is taken from the child should she (the inspector) be notified that the child has given more information on the abuse, failing which, the social worker will incorporate the information in her report to court should the child give her further information. When a child is ready to disclose or remembers further information about the abuse subsequent to making the first statement to the police, the information is often not captured.

5.2.2 The Duty to Report Child Abuse

The Commission received evidence of professionals not complying with their duty to report child abuse in terms of the Child Care Act and the Prevention of Family Violence Act. Teachers and principals were reported not to want to get involved with sexual abuse cases and ignoring incidents reported to them or simply referring the abused child to the police station without reporting the matter themselves. According to Sgt Mazibuko, the Kathorus CPU seldom receives child abuse or even sexual abuse referrals from doctors, dentists and teachers.

The Commission also heard that it is unclear whether the child abuse register is still in operation and if so, if it meets its intended objectives.¹²⁵ It was also submitted that it is pointless to urge professionals to comply with the duty to report child abuse when the Child Abuse Register is not effectively managed.

5.2.3 Issues relating to police procedures

Reporting a case to the police

Most of the submitters gave evidence relating to the reporting of sexual abuse cases to the police. The reporting process is found to traumatise the child by most submitters.¹²⁶ The panel heard from Thokoza and Katlehong Police stations that they do not have private rooms. Furthermore Ms Kirsner testified that the Thokoza and Katlehong Police Stations are "sordid and victim hostile". In such police stations, consultations occur in the Community Service Centre (charge office) in the presence of other people who have come to report cases.

This exposes the child to secondary trauma. The trauma is often not alleviated by the availability of private consulting facilities, as most police officers do not have the appropriate skills to interview the child victim.¹²⁷

Inappropriate interrogation techniques are used when interviewing child victims:

We waited for the policeman. He came back but then when he wanted to interview the child, she was afraid to talk until he then started to harass her. He then threatened her up to a point that he sent us back to go and get the other kids who were playing with my child.

And

When we got to the station, the policeman said he's not going to take it now because we have already told the child what to say.

This brings terror, confusion and fear to the child, leading the child to doubt the facts as they occurred or to blame him or herself for the abuse. Inappropriate interviewing techniques therefore affect the quality of the child's statement and ultimately, the thoroughness of the police investigation and the conduct of the trial. According to Dr. Renee Potgieter,¹²⁸ inappropriate interviewing techniques by the police are indicative of police ignorance of the child's development process and the psychological impact of the abuse on the child. Female officers are not found to be different.¹²⁹ They are also reported to display lack of skills and empathy towards child victims, as their male counterparts. Given that the police have to conduct criminal investigations, gather evidence and bring cases before criminal courts, Dr Loffel asserts that it is essential that the officers who work with sexually abused children be specially trained. But provision for training has not been adequate to meet the need. She further submitted that the lack of trained CPU officers relative to the number of children needing their services creates a situation in which it is often very difficult to access the officers when they are needed. CPUs are also reported to be inaccessible to most township areas.¹³⁰

According to Mrs Ntuli:

In most cases we find that some parents, because of poverty and they don't have money, they accept bribes from the parents of the perpetrator who was actually responsible for raping that minor child. Some come to us and WACA to tell us that they want to withdraw cases. Then we, as WACA, will advise them and tell them that if they accept the bribe and withdraw the matter it means that that person will continue raping children.

One of the submitters informed the panel that in her three years with the organisation dealing with sexually abused children, there have been many incidents of police making jokes of reports of child sexual abuse by parents/caregivers and refusing to open cases. To alleviate this, she often accompanies parents/caregivers and their children to the police station and pleads with the police to accept the parents or children's sexual abuse complaints. An example of this is one young girl being asked if she was aware that her grandmother had had an affair with the suspect. Other children were asked to point to their genital areas. A little girl of eight testifies, "They

asked me why I had waited so long to tell my mother. They said my mother was spoon feeding me”.

Police discretion in accepting cases

Many submitters reported on police refusal to accept sexual abuse complaints from children aged between 12 and 16 years of age. Ms Kirsner reported that girls who attend former Model C schools who report abuse cases are told that they are sexually active anyway. Where such complaints are accepted, the police treat them ‘with caution’.¹³¹ Ms Ntuli reports that in one instance when a police officer came to take a statement from a child and heard that the child was 17 years old, his response was: “This lady’s old enough, they are lovers. She was not raped”.

Captain Visagie, Head of the Child Protection Unit at Pretoria North,¹³² confirmed these allegations and justified police attitude towards teenage victims on the basis that most teenagers report cases when they have stayed away from home overnight without their parents/caregivers’ permission. He however, could not outline to the panel, the basis on which members of his unit evaluate the validity of such cases. When the panel prompted him further on this issue, he responded that “more caution needs to go into investigating by officers. Many cases are withdrawn where the inspector is a boyfriend.”

Inspector Mazibuko informed the panel that despite similar problems being experienced by the police in Kathorus, they continue to treat every sexual abuse case with the seriousness that it deserves. The panel heard evidence of child sexual offenders and problems related to facilities for them.

Investigation

Most submitters reported sexual abuse cases are poorly investigated.

Some police officers are reported not to make any attempt at locating and arresting perpetrators even when their whereabouts are known. Instead, they request the child victim and his/her parent(s) to go and look for the perpetrator and inform them when they have found him. One panellist said, “I started at the police station. I waited for a long time at the hospital. Because I didn’t know them, they never arrested anybody”. Another little girl testified “they said my granny must call them if she finds them”. Ms Redivo reported that parents/caregivers were reluctant to report child sexual abuse due to fear of intimidation.¹³³ Lack of trust between investigating officers and child victims was also raised as a problem.¹³⁴ Captain Visagie stated:

It is very difficult, especially in Bronkhortspruit. Let me give you an example. Say for instance you get a complaint. The investigating officer attends to the complaint immediately. It takes two or three hours of his time and the victim at that stage does not trust the investigating officer. Then the investigating officer must come back two, three, four, it all depends how many times.

Failure by investigating officers to establish a rapport with children by holding several sessions with them beyond the first interview was given as the reason for the lack of trust.

Withdrawal of cases

The withdrawal of sexual abuse cases was reported as a huge stumbling block to the effective policing and possible prosecution of child sexual offence cases. Reasons advanced for the withdrawal of cases are the following:

- parents/caregivers and/or the child losing interest in the matter;
- false charges owing to child staying away from home overnight without parent's permission;
- perpetrator paying compensation to victim's family;
- fear of losing economic support provided by husband or father where father or his relative is the perpetrator;¹³⁵
- intimidation by the perpetrator and/or his family;
- lack of confidence in the criminal justice system due to poor conduct of case.
- very often the lack of interpreters in foreign languages leads to cases being withdrawn;
- lack of facilities for disabled children;
- many cases are withdrawn where the suspect is a boyfriend; and
- victims cannot afford the travelling costs to distant courts.

According to Ms Fihle, a social worker from Alberton, victims find it better to withdraw cases than to receive death threats.

Cases filed as undetected

The panel also heard that a number of reported cases do not reach court as they are closed as undetected. Reasons for closure of such files range from insufficient evidence being found, the child victim and his/her parents/caregivers changing residence (particularly in informal settlements) without informing the police and the police being unable to trace them, forensic evidence being lost and the police being unable to find and arrest the perpetrator. According to Captain Visagie:

It's very difficult. Complainants move from one side to another side within a days time and they never contact us. When they open a case we give them a letter asking them to inform the investigating officer of any change of address. If they don't comply with that, it's almost impossible to trace them.

Poor police statements

Most submitters highlighted the poor quality of police statements as a major problem. As the whole criminal case is based on the statement made by the child to the police, poor police statements are reported to jeopardise the case as they often lead to the perpetrator being acquitted.¹³⁶ Where the sexually abused child is an infant, a statement is not taken from the child and forensic evidence is heavily relied on instead.¹³⁷

Police report immense difficulty when interviewing children. Ms Redivo highlighted the process as extremely difficult with children who are mentally disabled. She gave an example where the investigating officer had difficulty in taking a statement of the alleged rape of a 16-year old girl who is mentally disabled and the case was dismissed. She further testified that the very perpetrator was later found masturbating children.

Senior Superintendent Pienaar testified that children are sometimes very difficult to deal with, as they are taught not to talk to strangers. An expectation on a sexually abused child to reveal intimate details about the abuse to strange police officers is unreasonable. However, it takes a long time for police officers to develop a rapport with the child resulting in further delays. She impressed on the importance of the development of trust between the child and a police officer. Several sessions are required to achieve this. She furthermore confirmed that the quality of statements taken by CPU officials far outclass those taken by ordinary police officers.

Lucky Rabotapi, a Legal Intern at the Human Rights Commission, stated that the prosecutors that he interviewed in Soweto raised the quality of statements taken by the police as a matter of grave concern. Mr Rabotapi also testified that prosecutors reported a remarkable difference in the quality of statements taken by the ordinary police officers and those taken by members of the CPU. Often statements are taken but not read back to the victims. Ms Kirsner reported that the victim did not know what went into the report.

The Commission also heard evidence relating to shortage of police transport.¹³⁸ CPUs are reported to have limited transport relative to the areas they serve. According to Superintendent Mellow, Soweto has less than 10 vehicles to service all of Soweto.

5.2.4 Issues relating to the Forensic Examination and Medical Treatment of the Sexually Abused Child

Police often do not accompany victims

The Kathorus police are reported not to accompany child victims and their parents/caregivers to the doctor for a forensic examination and medical treatment. This sometimes happens at night with no protection afforded to them. In such cases, the victim and his/her parent are given the J88 form and crime kit and referred to the doctor. They are sometimes also given the completed J88 form and crime kit to take back to the police station. There have been instances where these got lost in the process.

No feedback from doctor

A parent whose child was sexually abused informed the panel that after reporting the incident to the police, the child was referred to a medical doctor. No explanation was given to her for the referral. After the child was examined, she received no feedback from the doctor. She does not know what findings the doctor made, or whether the child was medically treated and or tested for HIV¹³⁹.

Doctors reluctant to attend court

Doctors (especially those in private practice), as well as those in public hospitals are reported to be reluctant to go to court. The main reason given for their reluctance is their unwillingness to get involved in the criminal justice system and testifying in court. They resent attending court as they are made to wait for long hours and lose business as a result. It is therefore difficult to find doctors who are willing and available to examine sexually abused children. Children either have to wait long hours before being examined or travel long distances to get to doctors' consulting rooms. This compounds the child's trauma. Doctors are reported to be even more unavailable after hours. It was reported that because of the lack of doctors in Kathorus, children had to travel all the way to Vosloorus.

The new system of AHCPs

The Commission heard that the new AHCP system has not addressed problems experienced with district surgeons. There also seems to be confusion over the replacement of district surgeons with AHCPs.¹⁴⁰ The new system of AHCP incorrectly assumes that all doctors are adequately skilled to examine and treat sexually abused children.¹⁴¹ It is unclear who an AHCP is and whether district surgeons still exist and if so, how their roles have been affected by the introduction of the new system. The panel asked the MEC of Health, Dr Ramagopa, to clarify this confusion around the term district surgeon and AHCP and her response was that she does not know where this new term originated. When making his submission, Dr. Bellingham introduced himself as a district surgeon, despite the fact that district surgeons were phased out two years ago. Some submitters pointed out that AHCPs' are not trained to examine sexually abused children and that the new system is far worse than the district surgeon system.

SWASSIP pointed out that the use of forensic nurses to conduct forensic examinations requires further investigation, debate and clarification. They argued that forensic nurses would be instrumental in addressing the current shortage of doctors dealing with child sexual abuse.

Doctors lack specialised skills

The forensic examination of sexually abused children is a highly specialised field.¹⁴² Most doctors who conduct these examinations are reported not to have the appropriate skills to do so. The quality of forensic examinations was reported to be poor by a number of submitters. Lack of specialised training in the examination of sexually abused children was given as a reason. According to evidence received by the panel, only three doctors in the whole country have received specialised training on the examination of sexually abused children. This training is currently not offered in the country, either at graduate or postgraduate level. There are also no academics in the field. Doctors not only require training in the forensic examination of the sexually abused child but in the psychological aspects of child development as well.¹⁴³ Nurses also require similar training, as they are often the first professionals to handle the child before he/she sees the doctor.¹⁴⁴

According to Dr Potgieter:

Yes, I think what is important is to know that all social workers and psychologists, for example, in my field are generically trained in the field of sexual abuse. In other words, they've got about one hour – and also unfortunately, medical doctors – they have about one hour pre-graduation to teach them about sexual abuse.

Contrary to this, we heard from the MEC for Health that every doctor is trained and qualified to handle such cases.

Children seldom offered treatment

The panel heard that the doctor who conducts the forensic examination seldom treats the sexually abused child. Children often have to consult another doctor at their own expense for that purpose. Sexually abused children are also not given information about sexually transmitted infections, HIV/Aids, available treatment for these diseases and the option to terminate pregnancy where a teenage girl fell pregnant as a result of the sexual abuse. Where an HIV test is conducted, the child victim and his/her parents/caregivers are not offered pre and post-test counselling.¹⁴⁵

No systematic approach for dealing with children after the examination

Doctors who deal with sexually abused children are also reported not to have a systematic approach to following up with child victims after the forensic examination. Feedback is seldom given to the child and his/her parents/caregivers, and if it is given, this is done insensitively and inappropriately. Ms Kirsner reported on a victim who was only informed that 'you (the victim) are HIV positive now; you must eat healthy and refrain from smoking and drinking'. In a few instances where the facilities are available, there is not follow-through by the parents. Dr Jacklin reported "standard treatment which is available is (to give the child) a whole lot of antibiotics and that stops her from acquiring syphilis, gonococcus and all the other venereal diseases." She went on to say that treatment for HIV was not offered.

5.2.5 Services offered by the Prosecutor

Lack of appropriate skills

Like the police and medical doctors, prosecutors are also reported not to have the appropriate skills, patience and empathy to deal with child witnesses. They also lack an understanding of the cognitive psychological development of the child and the impact of sexual abuse on the child. There is therefore a need to train prosecutors on how to deal with children. Although there are a number of initiatives aimed at building the capacity of prosecutors to deal appropriately with child sexual abuse cases e.g., by Justice College and several non-governmental organisations, there does not seem to be a coherent training strategy in the National Prosecuting Authority .

Prosecutors are also reported not to generally safeguard the interests of the child during the trial process e.g., opposing bail, where bail is granted, ensuring that bail conditions suit the needs and circumstances of the child¹⁴⁶ , ensuring that the special

needs of children are accommodated in the trial process. It was also reported that children are often not fully prepared for trial.

The mother of a 9-year-old girl in Thokoza testified that a neighbour raped her daughter. The prosecutor found inconsistencies in the statement taken by the CPU officer and as a result concluded that there was not enough evidence to convict the perpetrator. The prosecutor and the judge called the mother of the victim to a separate room and told her that they were releasing the perpetrator as his children were suffering and he made ends meet from selling brooms.

Dr du Plessis alleges that most prosecutors do not have the necessary background in child psychology to understand the thinking of the child and to interpret the child's answers.

Inexperienced prosecutors

There is a high turnover rate in the prosecutors' profession. This means that the profession is constantly losing experienced prosecutors to other professions and has to train prosecutors all the time¹⁴⁷. It also impacts on the quality of prosecutions because often inexperienced prosecutors have to stand in court against experienced defence attorneys. The State's case is prejudiced as a result.

Children are inadequately prepared for court

Most prosecutors are reported not to adequately prepare the sexually abused child for court. In most instances, prosecutors only see the child for the first time on the day of trial and conduct the case without having developed a rapport with the child. This results in poor performance by the child in court and in the perpetrator's acquittal.

Insensitivity to the special needs of children with special needs

Generally there is insensitivity towards the special needs of disabled children.¹⁴⁸ Prosecutors do not always properly motivate for the use of child friendly facilities, i.e., close-circuit television, one-way mirrors. As a result the child is made to testify in court in the presence of the perpetrator. This further compounds the child's trauma.¹⁴⁹ Ms Redivo told the panel of an incident where a prosecutor did not arrange sign language for a deaf child. According to Ms Redivo, this resulted in charges being withdrawn against the accused.

5.3 Trial Procedures

Delay in commencement and finalisation of trial

The Commission heard that there are inordinate delays between the time the incident is reported to the police and commencement of trial. Reasons given for the delay include:

- difficulty in tracing suspects, complainants and witnesses;
- limited police resources;

numerous postponements occasioned by:
incomplete police investigations or failure by the police to execute the prosecutor's investigation instructions;
application for legal aid by the accused;
accused's legal representative not in court;
accused's legal representative requesting a postponement because he/she did not have sufficient time to prepare for the defense case;
accused not attending court after being duly warned to do so or accused absconding from bail;
accused not brought to court by the prison authorities;
the child and/or his/her parents/caregivers not attending court after they were subpoenaed or duly warned to appear in court;
full court roll;
transfer of case from the District Court to the Regional Court for the purpose of sentence where the Regional Court has a full roll;
docket lost or not brought from the police station; and
the reduction in the number of court hours and consequently the number of cases a court may hear per day resulting in postponements¹⁵⁰ due to court starting late.

Court environment inappropriate for children

The Commission heard that the court environment and the condition of court building are often very traumatic to most children. It further heard that when children and their parents/caregivers attend court for trial, they are made to wait for a long period, without anyone attending to them or informing them when their case will be heard.¹⁵¹ As most courts do not have appropriate facilities, often sexually abused children and their parents/caregivers share corridor space with the alleged perpetrator and his/ her friends and family. This creates an environment for the intimidation of the child and his/her family by the perpetrator and his/her supporters. It is also very disempowering for the child and his/her parents/caregivers, especially if they do not have an understanding of the functioning of the court and the trial process.

Lack of facilities at court also means that organisations that assist with preparing children for court, do not have private consulting rooms where they can consult with children. Ms Kirsner informed the panel that on occasion members of her organisation consult with children in the toilets due to lack of facilities. Ms Redivo echoed this statement. CAAG witnessed children having to wait in ventilation rooms amongst cigarette butts and other rubbish.

Members of the SAPS confirmed that the lack of child friendly facilities hamper their work. Inspector Ratsupa told the Commission that there are no child friendly facilities in courts in the Kathorus area. According to Inspector Mazibuko a court with special facilities for children in Boksburg is not being used. Dr Bellingham of Kidz Clinic in Boksburg also confirmed the non-usage of a child friendly court with closed circuit TV facilities in Boksburg. The submitters expressed concern that these facilities were not being used and questioned the rationale behind the decision.

Where a court is equipped with child friendly facilities, these are only used at the magistrate's discretion. Such discretion is only granted on application either by the

prosecutor, the child or his/her parents/caregivers. Some prosecutors are reported not to see the need for special treatment of children and do not bother making an application for a child to testify through close circuit television.¹⁵² Ms Kirsner informed the Commission that a Germiston prosecutor once refused to apply for the use of close circuit television and it was only when the prosecutor was threatened that a complaint would be lodged with the Human Rights Commission that the request was acceded to. Her organisation has developed a standard letter of motivation for use in such cases. Out of 25 cases of child sexual abuses handled by her organisation, a motivation has to be made in 20 cases for the use of a court with child friendly facilities. She recommends that every child should have the basic right to testify in a court equipped with child friendly facilities.

The Commission further heard that the scarcity of intermediaries further hamper the use of child friendly facilities in court. According to Dr Bellingham, skilled intermediaries are rarely present and there are often last minute attempts to organise an intermediary during the hearings. This points to a lack of co-ordination between the Department of Social Services and the Department of Justice.

According to Ms Fihle only social workers employed by the provincial government are allowed to act as intermediaries. Those employed by local councils are not permitted to act as such as doing so is deemed to be beyond their mandate. Ms Fihle told the Commission that being employed by the latter, she is not allowed to get involved with sexual abuse cases. She only assists in such matters because her unit receives a lot of sexual abuse complaints.

No feedback to child and his/her parents/caregivers

The child and his/her parents/caregivers are seldom updated on the court process and seldom informed of appearance dates. They are only informed of the day on which they have to testify. After giving evidence, they seldom receive feedback on the progress of the case from the investigation officer or the prosecutor.

Expert witnesses seldom called to testify

According to Ms Redivo, expert witnesses are seldom called to testify in court due to limited resources. Given magistrates' lack of, or limited understanding of the complexity of sexual abuse, failure to use experts results in wrong decisions being made.¹⁵³

Defence attorneys contribute to child's negative experience

Vigorous and inappropriate questioning of children by defence attorneys was also highlighted as a factor that impacts on the child's negative experience of the criminal justice system. Like other criminal justice officials, the Commission heard that attorneys lack an understanding of child's cognitive development and ask children inappropriate questions.¹⁵⁴ This often jeopardises the State's case, particularly because magistrates and prosecutors, themselves being in a similar position, are not able to object to inappropriate conduct by defence attorneys. Attorneys were also accused of unreasonably objecting to the use of intermediaries and employing delay

tactics in the interests of the accused, e.g., being unavailable at the last minute and not attending court, withdrawing at the last minute claiming non-payment of fees by the accused, or refusing to take legal aid instructions.

Cautionary Rules

The Commission received evidence relating to discrimination of sexually abused children by cautionary rules applicable in sexual abuse cases.¹⁵⁵ Cautionary rules result in children being found to be unreliable witnesses. These rules are outdated, do not accord with the developmental stages of a child and make it difficult for sexually abused children to be successfully prosecuted.

Collaboration between role players

A number of submitters reported on lack of collaboration among agencies working with sexually abused children. Referrals between agencies do not happen systematically. The Commission heard that it is even more difficult to get a coordinated response where a child is abused after hours, as most services are not available then.

The multi-disciplinary team spirit is poor. There is lack of coordination of activities of health professionals. At the hospital there are only three members of the health team: the nurse, doctor and social worker. The other members tend to function independently. In certain instances where there is collaboration between role-players, the role of each is misunderstood. Ms Kirsner submitted that although her organisation has a working relationship with police, sometimes it is expected of them to solicit information and to get the child to relate the ordeal and this places undue pressure on them because their work is only therapeutic and not investigative. In certain instances, the impact of the referring agency is limited by a poor service on the part of the referring agent. Ms Kirsner submitted that the relationship between her organisation and the Department of Social Services in Germiston is not smooth because of failure by the latter to respond promptly to matters referred to them for action. Where intervention like removal of the victim is needed, there is no feedback and this makes it difficult for her organisation to follow up on cases and continue with therapy. The role of the various role players is misunderstood.

Some submitters told the Commission of good collaboration with other agencies. Ms Kirsner testified on the good relationship her organisation has with the Kathorus CPU. She told the Commission:

“It’s a relationship that’s quite long-standing. We’ve worked hard to develop it. There is a relationship of mutual respect and also we nag a lot, we put a lot of pressure on them. Sometimes they feel that we tell them what to do but generally there is an open relationship. We do have access to them. It doesn’t mean that cases always get handled the way we would like them to be handled and we obviously have special officers that have good relationships with us.”

Dr Mwanda also confirmed the good working relationship that Zamukuhle Child Centre has in the Soweto CPU.

There is a perception that the magistrates, lawyers and prosecutors are friendly to each other and that their relationship compromise victims. Ms Redivo related an inappropriate discussion she overheard between a magistrate, prosecutor and defence attorney over a case. Such discussions impact negatively on court user's confidence in the criminal justice system. Captain Visagie described the court personnel as seeming like they are "above the normal human being. Yelling at investigating officers in front of victims, magistrates yelling at prosecutors in court".

Support Services

A number of organisations made submissions relating to the shortage of support services for sexually abused children. The service currently offered by the Department of Social Welfare is undermined by lack of resources. A shortage of social workers was reported. Social workers in the field are not equipped to handle sexually abused children. University education does not prepare them for this highly specialised area of work and there is limited specialised training offered to social workers. Where children need protection from their families, there is a lack of caring facilities where they can be accommodated. Despite the shortage of intermediaries, social workers are rarely used in that capacity even though they are designated as such in terms of the Child Care Act. Long-term therapy is also not available to sexually abused children. Ms Dlakavu highlighted the serious shortage of safe houses in the townships. These will serve to ensure adequate protection of children when they most need care. According to Ms Kruger, the current support system of providing support to sexually abused children is traumatising for both the child and the social worker.

5.4 Post-Trial Procedure

The Commission heard that contrary to the provisions of the Multi-Disciplinary Protocol, sexually abused children seldom receive therapy beyond the criminal case. A number of submitters also alluded to a serious shortage of places of safety in the Gauteng Province. This increases the child's vulnerability particularly where the perpetrator is a family member and he/she is acquitted.

According to J. Dlakavu of SABSWA this is further exacerbated by lack of statutory obligation after the finalisation of the criminal case. Traumatized children are therefore not referred to psychologists. Dlakavu alleged that the state is only interested in the prosecution part of the case.

DENOSA and Dr Jacklin also reported unavailability of anti-Aids drugs and follow up care once the child victim has been examined and or diagnosed HIV positive. No pre and post Aids counselling for children and their families is prevalent.

CHAPTER SIX

6. Responses to Submissions

The Commission invited the Gauteng government to respond to the issues raised in the submissions. It also invited further submissions from other role players who have been implicated in earlier submissions to make recommendations on how the criminal justice system should be improved to better manage sexual violence against children. This chapter sets out the Gauteng government's response and highlights the response of other role players to issues raised in earlier submissions. Ms Coetzee and Mr Dosio, a magistrate in the Soweto Regional Court, submitted in their individual capacity and did not represent their professional bodies.

6.1 The Gauteng Government's Response

The Commission convened a meeting with the Gauteng Members of Executive Council (MECs') for Health, Education, Safety and Liaison, Social Services and Population Development¹⁵⁶ to give them an opportunity to respond to issues raised in submissions received by the Commission. Subsequent to that meeting, the MECs' presented a comprehensive written submission to the Commission, outlining the government's policy and programmatic initiatives put in place to deal with sexual violence against children.¹⁵⁷

According to the MECs' submission, current initiatives in the Gauteng Government aimed at increasing the protection of sexually abused children followed ratification of the United Nation Convention on the Rights of the Child in 1995.

These include:

- The establishment of the Gauteng Programme of Action in 1996.¹⁵⁸ The objective of GPAC is to coordinate services offered to children in Gauteng.
- Spearheading the drafting and adoption of the Multi-Disciplinary Child Abuse Protocol under the auspices of GPAC.
- Establishing regional subcommittees to coordinate the activities of GPAC in various regions including training service providers on the Protocol.¹⁵⁹
- Coordination of inter-sectoral training on child abuse in the departments of health, justice, social services, education, development planning, local government and police service.
- Establishing a volunteer programme to augment counselling services offered to abused children.
- Putting together various publications aimed at sexually abused children and service providers namely, the Cool Kids Guide, the Cool Teens Guide, the Child Abuse Prevention Manual, Basic Manual for Community Intervention for Child Abuse and Neglect Cases, Child Abuse Risk Assessment Manual.
- A Policy on the Notification of Suspicion of Possible Ill-treatment or Injury to children is currently being drafted.

The following programmes have been put in place:

Department of Health

The Department of Health has initiated a medical legal service for women and children who have been abused. Victims of violence centres have been established at various hospitals and 26 medico-legal service centres are in operation in the province. Of these, eight centres have been refurbished into victim-friendly centres. Various private clinics dealing with abused children receive support from the Gauteng Department of Health. These include the Kidz, Reaction Play (RP), Teddy Bear and Transvaal Memorial Institute (TMI) clinics.

These services are aimed at preventing women and child abuse, early detection of women and child abuse, attending to health needs of victims, detecting and recording medico-legal evidence and referring abused women and children for appropriate support services.

Gauteng Department of Social Services and Population Development

This Department is one of the main role players in the prevention, early intervention of survivors, statutory intervention of survivors of child abuse and neglect, in terms of Section 14(4) (a) and (b) of the Child Care Act of 1983. The Commission heard that through NGOs and CBOs supported by the Department of Social Services and Population Development, the Gauteng government provides services to sexually abused children. The Department also provides:

- Alternative care for children at risk. There are seven detention centres and a Secure Care Centre that caters for 800 children awaiting trial and 550 children in places of safety.
- 52 children's homes and 32 street child shelters are registered with the department. Child Family Agencies also run a system of private places of safety to increase the availability of accommodation for children in need of care.
- Comprehensive statutory services to sexually abused children through the Children's Court, Family Court, Juvenile and Criminal Court in Gauteng.
- Probation services and intermediary services to children who appear in court either as accused or as witnesses.¹⁶⁰
- The Department is working with the Network Against Child Labour to address issues of child labour in the province.
- The Department, through subsidised NGO and CBO agencies, provides services to children who have been abused.
- The Department has 18 social work units in Gauteng and has deployed social workers to CPUs in Braamfontein and Soweto. These social workers deal with cases of sexual abuse, physical abuse, neglect and family violence when children are at risk and provide an after hour stand-by service, working with the police. There are plans to deploy social workers in schools to assist educators in dealing with sexual violence and other social problems facing learners.
- The Department runs child protection awareness campaigns at both regional and provincial levels. Various national, regional and local media are part of the campaign.

Department of Safety and Liaison and SAPS

Mr. Van Wyk submitted that the SAPS have established CPUs in 10 regions in Gauteng to deal with family violence, child abuse and sexual offences. The units render an integrated service focusing on primary, secondary and tertiary prevention. They have been rendering sensitisation training to police officers to deal with victims and families in the most appropriate manner.

Gauteng Department of Education

Mr. Van Wyk submitted that the Department of Education is committed to the total development and participation of the child through education sport, art, drama, culture, politics and music. It has initiated a campaign aimed at incorporating HIV/AIDS education in schools. It has also established the School Health and Safety Project. The project aims to:

- Raise public awareness by disseminating information on violence in schools and the schools safety policy.
- Initiate a victim empowerment programme through education, training and staff development.
- Set up life skills programmes that focus on the integration of sexual education into the school curriculum with the specific aim of preventing HIV/AIDS, substance abuse and teaching life skills.
- Build/Setup/Establish school hostels to provide accommodation for learners who are vulnerable to violence in their homes.

In their submission to the Commission, MECs noted the unavailability of social workers after hours and have identified the need for the Department of Social Services to develop an after hours referral protocol to various family and child sexual units. They noted misunderstanding about the role of social workers employed by the SAPS and those employed by the Department of Social Services and Population Development. Social workers at the SAPS only deal with forensic assessments. After being assessed cases should be referred to the Department of Social Services and Population Development for further statutory intervention. The submission also clarifies issues raised with regards to the Child Abuse Register. The register is an electronic register kept in all decentralised service offices of the Department of Social Services and Population Development. MECs' noted with concern failure by stakeholders, such as educators and nurses, to use the register. The need to increase public awareness of the purpose of the register has been identified.

The Gauteng Government's submission further noted that there has been a concerted effort to ensure the consolidation of fragmented service delivery and emphasised the need to improve resource allocation to ensure that children who are sexually abused are not further traumatised by the criminal justice system.

6.2 Response by Other Role Players

The response received by the Commission from other role players is summarised below. Their response is set out in terms of issues to which the role players responded. The Commission had sent a set of questions to institutions and specific individuals. The following are those responses.

Multi-disciplinary approach to Sexual Violence against Children

In order to be managed successfully, sexual violence against children requires a multi-disciplinary approach.¹⁶¹ To ensure the improved management of sexual violence against children, all role players must strengthen the Multi-Disciplinary Protocol with resources, support and continued commitment.

Specialised Sexual Offences Courts

Steps should be taken to establish Specialised Sexual Offences Court in all areas where none exist.¹⁶² Such courts should be adequately equipped to create a child friendly environment. Officials in these courts should also be adequately trained on all aspects relating to child sexual abuse.¹⁶³

Specialised Police Units

The South African Society of Social Workers in Private Practice (SWASSIP) emphasised the need for specialised police units to deal with sexual offences and thanked the Minister for Safety and Security for clearing rumours that CPU's were to be abolished. They observed, however, that limited resources and inadequate working conditions undermine their effectiveness. A concern was raised over police taking home children in need of care, even where this is done in the interest of the child.¹⁶⁴ This practice has the potential to compound the child's trauma, especially in the light of the police's limited capacity to understand abused children.

Forensic and Medical Examinations

Dr Lorna Jacklin of the Teddy Bear Clinic, confirmed problems outlined with doctors handling sexually abused children. She set out the challenges encountered by doctors who see sexually abused children. These include:

- lack of training in forensic medicine and specifically in the field of child sexual abuse;
- poor understanding of the role of other stakeholders involved in child protection; and
- doctors being made to wait in court indefinitely without any indication when they will be called to testify.

She recommended the following measures to improve services offered by doctors to sexually abused children:

- ongoing training for doctors;
- doctors to acknowledge the examination and treatment of sexually abused children as a legal obligation to which they are bound; and

- prosecutors and magistrates to be sensitive to doctors when they attend court and not make them wait indefinitely. The adoption of a system used at the Protea Magistrates court where one day of the week is reserved for expert testimony by medical doctors, will address this problem.

Issues Relating to Prosecutors

Ms. Carina Coetzee, a sexual offences court prosecutor, highlighted some of the problems encountered by prosecutors. She further pointed out that in her court, she makes special arrangements with doctors to come to court only at the time when they are about to be called to testify to avoid wasting their time unnecessarily. This way, doctors feel valued and respected and are willing to continue testifying in other cases.

She pointed out that due to high turnover in the prosecutors' profession, it is difficult to maintain an adequate skills base in the profession. Therefore training needs to be constantly conducted. Until very recently no specialised training was offered to prosecutors on child sexual abuse. Justice College has been running specialised courses since 1998. The high turnover in the profession also impacts on a multidisciplinary approach to handling sexual offence cases. A prosecutor often he/she resigns at a crucial stage when other professionals have developed a good working relationship him/her. Thereafter a new prosecutor is allocated to the matter.

The reason for prosecutors consulting with children only on the morning of the trial, was as a result of the serious shortage of prosecutors. Prosecutors are in court from 9h00 to 16h00. This leaves them with no time for court preparation. Owing to limited resources, relief prosecutors are not employed to address the problem. Most prosecutors are not in a position to consult victims after hours due to lack of transport. Ms. Coetzee pointed out that some NGOs have been very helpful in assisting prosecutors in preparing the child for court and providing facilities where the prosecutor can consult with the child after hours.

As far as consultations with intermediaries are concerned, Ms Coetzee pointed out that it is not procedural for prosecutors to consult with the child in the presence of intermediaries. Magistrates require that intermediaries not become familiar with the case until the trial commences lest they contaminate the child's evidence.¹⁶⁵ However, Ms. Coetzee believes that cost can be saved if the social worker that assessed the child, acts as an intermediary.

Delay in the finalisation of matters

Mr. Dosio argued before the panel that while there are systemic issues that result in delays in the finalisation of child sexual abuse cases, the Commission needs to take into account that conducting a child sexual abuse case is different from conducting other criminal matters. Children are less cognitively and emotionally mature and therefore require a lot of patience. Furthermore they often break down when giving evidence. This means that the court has to adjourn to give them time to recover. Rushing through child sexual abuse cases will result in a lot of injustices and trauma to the child.

Withdrawals

Mr. Dosio also pointed out to the Commission that there is very little magistrates can do to limit the withdrawal of cases particularly as the prosecutor drives the cases (is *dominus litis*). Magistrates do not even enquire about why a case is withdrawn. He told the panel that he often asks a prosecutor to address him on reasons why a case is being withdrawn and directs that the investigating officer file a statement in the docket outlining why the investigation was not successful.

Support services

Services Provided by Social Workers

SWASSIP raised the lack of adequate support services for abused children as a concern. It criticised the limitation imposed on private social workers from engaging in statutory work in relation to children in need of care e.g., child protection investigations and the removal of neglected children to places of safety. According to SWASSIP the role of social workers in private practice is limited to therapeutic services. Statutory social work falls within the sole mandate of social workers employed by the Department of Social Development.¹⁶⁶ However, social work services provided by the Department are under-resourced. This means that abused children rely on an under-resourced childcare system when in need of protection. SWASSIP recommends the extension of statutory social work functions to social workers in private practice should increase services available to sexually abused children. They furthermore recommend the standardisation and accreditation of training for social workers.

Despite limited services available to sexually abused children, the Commission received a submission on behalf of forensic social workers based in the CPUs outlining under-utilisation of their services.¹⁶⁷ Forensic Social workers were initiated as a pilot project in 1997 in response to the increase in reported crimes against women and children. Their role is to assess abused children, prepare court reports and provide expert testimony in court. This creates an opportunity for children whose parents or caregivers do not have adequate financial means to be assessed for court.

Last year alone, forensic social workers assessed 434 children (125 more than the previous year). Of the children assessed, 104 were male and 330 were female; 293 were Afrikaans speaking, 86 English speaking and 55 speak other official languages; 8 were aged between 0 and 2 years, 51 between 2 and 3 years, 68 between 3 and 4 years, 124 between 4 and 6 years, 50 between 6 and 8 years, 43 between 8 and 10 years and 90 children were aged 10 years and over. Of the assessed children, 297 were sexually abused, 77 were not abused and the remaining 43 could neither be negatively nor positively diagnosed. Although the forensic social workers compiled 285 reports, they were only served with 48 subpoenas and only testified in 21 cases. Four of the eight forensic social workers in practice are currently based in Gauteng.

Ms. Scheepers outlined a number of challenges encountered by forensic social workers in their work. These include under utilisation of their services by the prosecutors and magistrates, uncertainty regarding the future of forensic social workers and the fact that virtually all forensic social workers are Afrikaans speaking. This makes their service inaccessible to children who speak other languages.

She recommended that prosecutors and magistrates should be obliged by law to make use of forensic social workers in all sexual abuse cases and that magistrates should use experienced social workers as assessors in child abuse cases. The South African Black Social Workers Association (SABSWA) recommended the extension of the role of forensic social workers to include therapeutic services. This will address the problem of the shortage of social workers. It will also alleviate the child's trauma, as it will result in the child seeing fewer support providers and not reliving his/her ordeal unnecessarily.

A concern was raised about the wrong perception that offering an abused child therapy before he/she testifies will contaminate his/her evidence.¹⁶⁸ SABSWA stated that the view that therapy will contaminate the child's evidence is a myth. It is established practice to offer the child therapy as soon as possible after disclosure. The multi-disciplinary Protocol confirms this practice. Ms. Dlakavu recommended the provision of therapeutic services to sexually abused children beyond the criminal case.

Services Provided by Schools

The Commission received evidence pointing to the need to examine the suitability of schools to deal with sexual violence against children and determine the extent of their involvement should schools be found to be suitable in that regard. According to SWASSIP, schools were currently not well suited to manage child sexual abuse owing to educators; their limited capacity to understand the intricacies of child abuse; failure by educators to comply with the statutory duty to report child sexual abuse; lack of confidentiality among educators; the high rate of child sexual abuse by educators and that educators were already overburdened in their role as educators. SWASSIP recommends that the role of educators, when dealing with child sexual abuse, should be defined in a way that acknowledges the primary role of educators. Efforts should be made not to overburden educators with procedures relating to child sexual abuse. Respondents recommended the following measures to improve the management of sexual violence against children in schools:

- clear definition of the role of educators and procedures to be followed when dealing with sexually abused children at school¹⁶⁹ ;
- educators to be trained on child sexual abuse; and
- the introduction of life skills education for learners.

Issues Relating to Defence Attorneys

A submission made on behalf of the Law Society of the Northern Province reiterated the Law Society's commitment to the integrity of the attorneys professions and pointed out that the Disciplinary Committee of the Law Society of the Northern Provinces will take steps against any member of the Law Society who conducts him/herself unprofessionally and unethically.¹⁴ However, the Law Society defended the conduct of its members complained of by other role players. The Society noted that balancing the interests of the child against those of the accused is a challenge facing all attorneys involved in child sexual abuse cases. However, attorneys owe allegiance to their clients as they have been contracted to safeguard the clients'

interests during the criminal process. The submitters indicated that the rules of the Society call on attorneys to vigorously defend their clients and this requires extensive cross examination of state witnesses including the sexually abused child. They argued that trauma to the child can be alleviated if the prosecutor can define issues beforehand as this will make it easy for attorneys to confine their questioning to relevant aspects of the trial. They, however, acknowledge the need for attorneys to undergo specialised training on child sexual abuse to equip them to deal with children in a less traumatising manner. Such training can be addressed through ongoing professional training offered to attorneys by the Law Society and training offered to candidate attorneys by the Law Society's Practical Legal Training Schools.

The submitters pointed out that there are immense problems relating to legal aid that have nothing to do with the attorney's profession. They highlighted unavailability of Legal Aid staff to take instructions from accused persons detained in custody and the Board's cumbersome briefing procedures as reasons for delays in the provision of legal aid. They called on all role players to report any attorney who does not proceed in a matter after being duly instructed by the Legal Aid Board to the Disciplinary Committee of the Law Society.

The only objection the Society has against intermediaries is that they inappropriately ask children leading questions. They argued that this matter could be addressed by training intermediaries on legal procedures. They argued that the State prosecutor is best situated to protect the interests of the child victim, as he/she is legally trained and can also be punished should he/she behave unethically.

CHAPTER SEVEN

7. Findings

The Commission's findings and recommendations are summarised below:

7.1 Key findings

1. The system, as it stands, does not work for children.
2. The system is hostile and further traumatises children.
3. Children with disabilities, who have been sexually abused, are further traumatised by the system.
4. This inquiry reveals that despite all the initiatives that have been put in place, the criminal justice system remains ineffective in policing child sexual abuse cases and is hostile to sexually abused children. Policies put in place to ensure a multi-disciplinary and coordinated response to child sexual abuse are poorly implemented, if at all.
5. While some agents who deal with sexually abused children are greatly committed, their commitment is not shared by all agents who handle sexually abused children. This undermines the efforts of those who are committed to protecting children from sexual offences.
6. There seems to be a serious lack of communication between role players dealing with sexually abused children at various levels of government. While provincial government has put in place policies and programmes aimed at sexually abused children, frontline role players either do not know about them e.g., the Multi-Disciplinary Protocol, or if they do know about them, they implement the programmes and policies poorly or not at all.
7. On the whole, sexually abused children's experience with the criminal justice system compounds their trauma. An ineffective system also means that the sexual abuse of children continues unabated and that government is failing to live up to its commitments in terms of the Constitution and other international human rights instruments.
8. An effective and coordinated criminal justice response to child sexual abuse is critical to ensure the protection of South African children.

7.2 Specific findings

Disclosure of sexual abuse by the child

1. Systemic response to child sexual abuse fails to recognise disclosure as a complex process. Contrary to the developmental stages of a child, in practice disclosure is regarded as a once off event and not as a process.
2. Police investigation procedures are insensitive to the state in which the child was when he/she made a statement to the police or when he/she testified in court.

3. The police, prosecutors, defence attorneys and magistrates' capacity to understand the cognitive development of the child as a complainant and witness is limited.
4. Limited understanding of the needs of the child results in insensitive treatment and secondary victimisation of a child by the criminal justice system and does not accord with the best interest of the child principle set out in section 28(2) of the Constitution.
5. Parents/caregivers often do not take seriously the instances of disclosure.

The Duty to Report Child Abuse

6. The duplication of mandatory reporting provisions in the Child Care Act and Prevention of Family Violence Act leads to fragmented reporting processes and creates confusion regarding which process to follow.
7. Lack of clear reporting procedures in the Prevention of Family Violence Act makes it difficult to monitor whether reports are being made and what happens to reports once they have been made.
8. Lack of a collective understanding of the objective of mandatory reporting results in child abuse information not being put to optimum use and increases children's vulnerability to sexual abuse.
9. Failure by professionals such as teachers, doctors and dentists to report child abuse in accordance with the duty imposed on them by the Child Care Act and the Prevention of Family Violence Act, increases children's vulnerability to further sexual abuse.
10. Ignorance of sexual abuse procedures in schools and reluctance of educators to report sexual abuse cases allows sexual abuse to continue. It also increases student's vulnerability to sexual violence.

The Role of the Police and Police Procedures

11. Overall, poor police response to sexual abuse against children is reported. Poor police response to sexual violence is of grave concern, particularly as police are the first port of call.
12. There is a failure by the police to comply with the National Policy Guidelines and the Multi-Disciplinary Protocol and their knowledge of Protocols was limited despite the fact that they have been adopted by the National Police Commissioner as Police Instructions.
13. The Police unduly exercise discretion when dealing with cases involving teenagers below the age of 16. This results in cases involving such teenagers either not being accepted or not being properly investigated. The Commission finds that children in this age group are often denied protection and are

prejudiced. If a teenager reports a case of abuse by a boyfriend, the case is disregarded as the girl is considered to be sexually active anyway.

14. The location of the limited CPUs make their accessibility limited to sexually abused children.
15. Contrary to policy, statements made are taken by inexperienced, ordinary police officers as opposed to CPU members who specialise in child sexual abuse. This negatively impacts on the investigation and ultimately on the outcome of the cases.
16. Work overload on the part of the police officers impacts negatively on the proper investigation.
17. Sexually abused children and their parents/caregivers often do not receive feedback from investigating officers after lodging a case. This leaves them feeling marginalised and disempowered, as they do not have control over the investigation process.
18. Police report difficulty tracing children and witnesses living in informal settlements.
19. Evidence received indicates that very limited liaison, if any, occurs between the police and the prosecutor. This results in delays in the finalisation of matters as often matters are postponed owing to investigations not being followed up or witnesses not traced.
20. Evidence often gets lost between the examining doctor's office and the police station. This is due to the unacceptable practice of handing J88 forms to children and their parents/caregivers to take to the doctor and back to the police station after the medical examination is conducted.
21. The withdrawal of cases is a serious flaw in the policing and the possible prosecution of sexual abuse cases and the rate of withdrawal of cases is unacceptable.
22. There is confusion over the newly created Family Violence Protection and Child Sexual Offences Unit (FCS).
23. When a relationship exists between the victim and the perpetrator, there is a tendency not to investigate and prosecute the case, irrespective of the age of the girl. They are seen to be a false charge of rape. It is important the police do not prejudge these young girls.
24. Owing to the relocation of families in different informal settlements, police have difficulty in tracing the complainants as well as the perpetrators, making arrest or investigation difficult.

Forensic Examination and Treatment of sexually abused children

25. Problems encountered with the conduct of forensic examinations and the collection of forensic evidence reflects poor or lack of implementation of the National Policy Guidelines and the Multi-disciplinary Protocol by medical doctors.
26. The reluctance of medical doctors, (especially those in private practice) to conduct forensic examinations makes them inaccessible to victims.
27. This compounds the child's trauma, as sexually abused children often have to travel long distances or wait for a considerable length of time before an examination is conducted.
28. Where children present for forensic examinations, treatment is not provided as a matter of course. The type of treatment and information on further treatment given is not consistent and differs from area to area. The lack of information and treatment for HIV is of particular concern.
29. The confusion over the phasing out of the district surgeon system and introduction of the AHCP system has not assisted in improved services offered by AHCPs to sexually abused children.
30. There is general provision of PEPs for sexually transmitted diseases but the prevention of HIV does not occur.

Support services for the sexually abused child

31. There is an extensive shortage of support services for abused children in Gauteng. However, the submission made on behalf of MECs asserts that there are a number of services available for abused children in Gauteng. The Commission finds that if indeed there are support services for abused children in Gauteng to the extent asserted by MECs, such services do not seem to benefit the majority of sexually abused children as other role players, (including government role players) on the frontline of services provision, do not know about them.

Services offered by the prosecutor

32. The lack of proper prosecutorial services to look after the best interests of the child often leave them feeling marginalised by the criminal justice system.
33. Notwithstanding their lack of a child focus, National Policy Guidelines would, if properly implemented, go a long way in alleviating secondary victimisation of children who have suffered sexual abuse by the legal system. Their non-enforceability by prosecutors is an absurdity,¹⁷⁰ especially when they are enforceable by police.
34. Poor police statements hamper effective assessment of cases by prosecutors when exercising their discretion whether to prosecute or not. Poor statements

also adversely affect the overall manner in which the case is conducted should the prosecutor decide to prosecute.

35. Lack of collaboration between the police and prosecutors adversely affects the investigation and conduct of cases.
36. High turnover rates within the prosecuting profession negatively affect the standard of prosecution in the courts.
37. Lack of experience in the prosecution of child abuse cases increases the child's trauma.
38. The excessive workload of prosecutors accounts for poor preparation of cases for court. Insufficient or total lack of preparation increases the child's anxiety and affects the child's performance in court.

The trial

39. Private waiting rooms are not available where the child and his/her family can wait until their case is called. The child and his/her family are therefore commonly made to wait in the corridor with the perpetrator and his/her family. This intensifies the child's trauma.
40. The child and his/her family are made to wait without adequate explanation or indication to when their matter will be called. This creates confusion for them around the functioning of the court and the trial process.
41. Postponements lead to delay in the finalisation of matters. The child and his/her family are thus discouraged from continuing with the case where the matter is unduly prolonged.
42. Where courts are not equipped with CCTV or one-way mirrors, children are still made to testify in the presence of the accused. This compounds the child's trauma affecting his/her performance in court.
43. Where these facilities are available, the use of them is at the discretion of the magistrate.
44. The lack of interpreters of foreign languages leads to cases being withdrawn from the court.
45. Child witnesses generally find testifying in court to be a harrowing experience. This is due to the hostile environment of the court and the lack of necessary court preparation of the child.
46. Inadequate information on the acquittal of the accused is often not explained to the child and/or his /her family.

47. The reluctance and shortage of intermediaries hampers their use and results in child witnesses not being treated in accordance with their age when testifying in court.
48. Inordinate delays in the finalisation of cases hinder the child's healing process and further traumatises the child. This often results in the loss of memory in relation to the sexual offence and adversely affects the child's testimony.
49. The movement of cases through the criminal justice system is a matter of grave concern. It negatively affects public confidence in the criminal justice system and may account for the low reporting rates in sexual offence cases.
50. The lack of an integrated and coordinated strategy for the management of sexual offence cases results in their poor management.
51. Victims cannot afford travelling costs to distant courts for trial. Often there is no clarity around who covers the cost.

Post-trial procedures

52. There is a need for research into the treatment and placement of children who have been sexually violated.
53. No post-trial programmes exist to deal with children who have been abused and traumatised by the criminal justice system.

7.3 Site Visits

Site visit to RP Clinic

The clinic, situated in Pretoria North, in a residential area, is managed by a team of five experts including social workers and clinical psychologists under the leadership of Dr Rene Potgieter. They have two medical practitioners doing forensic examinations on a part-time basis. The clinic provides services for sexually abused children and those children with emotional and behavioural problems. The clinic is privately managed and charges for its services. They provide minimal support for children from disadvantaged communities through private sponsorship. They are situated a great distance away from accessible transport.

The clinic has one clinical room and two forensic rooms to observe children. There are also two observation rooms where observation is done through a one-way tinted glass partition so that a person can observe a child in therapy. They also have state of the art equipment to examine sexual abused children for forensic evidence. They do not have a Black social worker and use an interpreter when examining or clinically assessing children from the Black communities. The clinic also provides expert witness services and their social workers appear in courts.

Site Visit to Teddy Bear Clinic

The Teddy Bear Clinic, situated at the Transvaal Memorial Institute, was visited to establish what outpatient services are offered abused children.

The clinic appears to access services of a multidisciplinary team to offer relief to sexually abused children. This complies with the guidelines laid out in the Multisectoral protocol document.

The child victim is received by a trained volunteer, who treats the child with empathy. The CPU officer is called to the clinic to take the statement, unlike in other areas where statements are taken in a hostile environment, further compounding the child's trauma. The medical examination is conducted by a female doctor who then records all the forensic evidence in the J88 form designed by the clinic. The CPU officer takes the form for record purposes. This procedure prevents the form from being lost between the offices of the doctor and the police station.

Preparation for court takes place within a room depicting the physical appearance of a court. Ms. Saunders, a forensic social worker, testified that in preparing the children for court different uniforms are used to depict different role players in court to help the children understand the court procedure.

The accessibility of all the stakeholders makes it possible for them to meet in a case conference on the same day to provide debriefing sessions and to allocate and handle cases appropriately. This also means children do not have to wait for a long time to get the necessary service.

The emotional scars that result from child sexual abuse take a long time to heal, however at the Teddy Bear clinic children are afforded the opportunity to commence the healing process. The Teddy Bear clinic is well resourced and efficiently run, thereby catering for the best interests of the child.

CHAPTER EIGHT

8. Recommendations

8.1 Key Recommendations

1. To develop a system that is premised on the best interests of the child and thus is child friendly.
2. Sexual violence against children should be treated as a priority by government at national, provincial and local levels and criminal justice agencies involved in the fight against crime.
3. National government needs to fast-track the legislative review process on the Sexual Offences Act, the Child Care Act, the Child Justice Act, as well as relevant aspects of the Criminal Procedure Act currently under review at the South African Law Commission.
4. The Gauteng Programme of Action for Children (GPAC) should initiate a process aimed at improving and harmonising the National Policy Guidelines for Victims of Sexual Offences and the Multi-disciplinary Child Abuse Protocol and should confirm the status of the Protocol.
5. GPAC to immediately develop an effective strategy for improving systemic responses to child sexual abuse. Such a strategy should:
 - 5.1 address the effective implementation of the Multi-disciplinary Protocol and the National Policy Guidelines for Victims of Sexual Offences by all role players bound by these documents;
 - 5.2 include a strategy for training all personnel working in these agencies on procedures for the management of child sexual abuse as set out in relevant legislation, the Multi-disciplinary Protocol and the National Policy Guidelines for Victims of Sexual Offences. Training should include child development and other psychological issues pertaining to children; and
 - 5.3 ensure that the Multi-Disciplinary Protocol and the National Policy Guidelines is distributed to all officials involved with the management of sexual violence cases against children.
6. Post exposure prophylaxis (PEPs) to be dispensed to child victims of sexual violence in all cases.
 - 6.1 Information on the sustainability of PEPs to be widely distributed.
7. The Gauteng government needs to ensure the monitoring and evaluation of the implementation of the Multi-disciplinary Protocol and the National Policy Guidelines on an ongoing basis.
8. Systems to be put in place to ensure the filtration of information among role players involved in the management of sexual violence against children at all levels of government.
9. More resources, both financial and human, to be made available for the implementation of the strategy referred to in 4.
10. An express rollout of specialised sexual offences courts.

8.2 Specific recommendations

The SAPS

1. Police officers have to be alert to the psychological context of children at all times when dealing with sexually abused children and to adapt their investigation procedures to accommodate the child's development and the best interest of the child at all times.
2. All police officers in Gauteng should undergo basic training on the management of child sexual abuse cases. A module on child sexual abuse case management should be included as a module in training for new police officers.
3. All police officers to take appropriate measures to improve the quality of statements taken from complainants when a case is reported.
4. Police management at station level to ensure strict observance of policies and procedures by all police officers handling child abuse cases and take appropriate action in the event of transgression of National Police Instructions.
5. Police officials must refrain from the practice of handing J88 forms and crime kits to sexually abused children and their parents/caregivers and should ensure that all forensic evidence is procedurally handled. Disciplinary measures to be taken against non-compliance.
6. All reported sexual abuse cases should be treated seriously and without prejudice, particularly cases involving children between the ages of 12 and 17. This refers particularly to young persons who report.
7. Appropriate measures should be taken to ensure the accessibility of CPUs in all areas. Such measures should include the establishment of satellite offices and the deployment of specialist police officers in remote areas.
8. Ongoing feedback should be given to sexually abused children and their parents/caregivers on the progress or otherwise of the investigation and they should be informed about material and relevant information. Ensure that the abused child his/her parents/caregivers or any other person not to withdraw a child abuse case once it is lodged with the police, even where the child and his/her parents/caregivers do not want to continue with the case.
9. Ensure that secondary forensic evidence is collected in all cases even after the required 72-hour period has lapsed so that cases can still be prosecuted.
10. The investigating officer should work very closely with prosecutors when investigating cases from as early as when a decision to prosecute is made.
11. Ensure early intervention by social workers/psychologists or other support providers in all child sexual abuse cases.
12. Utilise the expertise of the forensic social worker.
13. Police officers need to be trained in sign language or have easy access to an interpreter.

Health Care Professionals

14. A comprehensive child sexual abuse training programme for all health care professionals should be put in place. All health care professionals and practicing doctors to undergo training. An accreditation system to be put in place for appropriately trained doctors.
15. All health care professionals to strictly comply with the Multi-disciplinary Protocol and the National Policy Guidelines when dealing with sexually abused

children including provisions relating to the treatment of sexually abused children.

16. The Health Care Professional Council to promote and provide education around the handling of child sexual abuse cases among their members.
17. Some of the current South African Qualifications Authority (SAQA) accredited training on child sexual abuse conducted by NGOs.

Department of Justice

18. Adopt a child friendly approach when handling child sexual abuse cases and to ensure that the best interest of the child are taken into account at all times during the prosecution.
19. The National Directorate of Public Prosecutions (NDPP) needs to monitor the compliance of National Policy Guidelines at all times when dealing with child sexual abuse cases.
20. There is a need for ongoing specialised training in child sexual abuse for all prosecutors.
21. Assess police statements, consult with the abused child and his/her parents/caregivers early and regularly during the investigation. Direct investigating officers to take a supplementary statement should the need arise.
22. The prosecution needs to investigate the possibility of establishing multidisciplinary teams prior to prosecution with a view to adopting a holistic approach to the case.
23. Professionals and expert witnesses who assist the court should not be kept waiting for unnecessarily long periods. If necessary specific times/days should be arranged for them to attend court to testify.
24. Ensure preparation of children before court and investigate the current programme with the NGO sector and establish partnerships.
25. Ensure that all proceedings are held in-camera.
26. The NDPP should fast track the process of establishing fully equipped sexual offences courts in all major centres and needs to equip all courts with child friendly facilities e.g., close circuit television and one-way mirrors.
27. The Department of Justice should take appropriate measure to reduce the high turnover rate in the prosecutors' profession and retain those already in their employ.
28. Ensure that separate waiting rooms are provided for victims and perpetrators.

Magistrates

29. The Magistrates Commission needs to investigate undue delays in the handling of cases and should use appropriate mechanisms to deal with these delays.
30. Apply measures provided for in the Criminal Procedure Act for vulnerable witnesses in all cases involving sexually abused children.
31. The Justice College should extend its training on child sexual abuse to all magistrates in Gauteng.

The Legal Profession

32. Attorneys should refrain from further traumatising sexually abused children during trial and should balance the interest of their clients against that of the

sexually abused child in a manner that reflects respect for section 28 of the Constitution.

33. The Law Society of the Northern Province needs to ensure that attorneys who defend persons accused of child sexual abuse are adequately trained to understand the child's development.
34. The Legal Aid Board should take the necessary steps to fast track legal aid in all child sexual abuse cases.

Social Workers

35. More resources should be allocated to the Department of Social Services to ensure the improvement of the quality of services offered to sexually abused children.
36. The Department of Social Welfare needs to make support services available to sexually abused children. Measures should be taken to ensure that all social workers, including those in private practice and forensic social workers, are given the mandate to engage in statutory social work.
37. The Department of Social Welfare should take measures to ensure that training for social workers is standardised and coordinated and that an accreditation system is put in place for institutions and individuals conducting training.
38. The Department of Social Services to provide accessible and well-resourced places of safety.

The Department of Education (DoE)

39. The Department of Education needs to ensure strict compliance of sexual harassment procedures in schools.
40. Teachers to strictly comply with their statutory duty to report child sexual abuse where it is brought to their attention.
41. There should be ongoing education of learners around issues of child sexual abuse. The DoE to look at current work being done by NGOs in the field.
42. Teachers to be trained to identify possible victims of child sexual abuse.
43. Learners to be informed of the procedures of reporting sexual abuse at school.

The Gauteng Programme of Action for Children (GPAC)

44. GPAC to embark on a vigorous campaign to promote and publicise their programmes.
45. There needs to be a wider distribution of GPAC materials that relate to child sexual abuse.
46. Ensure a sustainable multidisciplinary approach for the management of sexual violence against children by all role players.

National and Provincial Government

47. The Department of Social Services, SAPS, CJS should hold a workshop/seminar to investigate the viability of keeping a national register on child sexual abuse.
48. Ensure that there is a sufficient pool of trained intermediaries in all magisterial districts.

49. Develop sustainable post-trial interventions for children who have been sexually abused.
46. Ensure the establishment of a temporary place of safety in every area.
47. Because funds and resources are limited, efficiency is essential. It is therefore an economic necessity to appoint persons already involved in working with sexual offences to co-ordinate the changes needed to improve the children's plight and gather information, and also evaluate the efficacy of such proposed interventions.

South African Human Rights Commission (SAHRC)

50. The SAHRC should facilitate a consultative meeting on the report and share contents of the report with all relevant role players.
51. Strengthen the focal point for children within the SAHRC.
52. Develop a training module on child rights with an emphasis on child sexual abuse.
53. Continue to monitor programmes of GPAC and recommendations set out in this inquiry.

REFERENCES

Books, Reports and Articles

- Gauteng Multi-Disciplinary Child Protection and Treatment Protocol (1999-2000)
- Justice College, Child Law Manual for Prosecutors (2001)
- How Children Tell: The Process of Disclosure in Child Sexual Abuse, Child Abuse Research in South Africa (CARSA) Vol. 1 No. 2 October 2000
- South African Law Commission, Focus Group Discussion Paper on the Revision of the Child Care Act (1999)
- South African Law Commission Report on the new Sentencing Framework, Project 82, 2000
- South African Law Commission Issue paper on Restorative Justice (Issue paper 7, Project 82)
- Van Dokkum N, The Statutory Obligation to Report Child Abuse and Neglect, (1996) Acta Juridica
- Stanton, Lochrenburg, Mukasa, Improved Justice for Survivors' Experiences of Sexual Offences Court and Associated Services, (1997)
- Human Rights Watch, Violence against Women in South Africa: State Response to Domestic Violence and Rape (1995)
- Human Rights Watch (2000), Sacred At School: Sexual Abuse in South African Schools
- Ciet Africa, Beyond Victims and Villains: The Culture of Sexual Violence in South Johannesburg (2000)
- Department of Justice, National Policy Guidelines For Victims of Sexual Offences (1997)
- Coetzer and Fosseus, Joint Memorandum to the Department of Health, 1998
- Bollen, Artz and others, Violence against Women in Metropolitan South Africa, ISS Monograph Series No 41, September 1999
- National Prosecuting Authority Policy Directives (1999)
- Mentjies R, A Call for a Cautionary Approach to Common Sense, CARSA Vol. 1 No. 1 January 2000
- South Africa Initial Country Report on the Convention on the Rights of the Child, <http://www.unhcr.ch/tbs/doc.nsf>
- Fagan A, Dignity and Unfair Discrimination: a Value Misplaced and a Right Misunderstood, SAHRJ 2000 14
- Du Toit, Skeen, Paizes, de Jager and van der Merwe, Commentary on the Criminal Procedure Act (2000)
- Potgieter R, the Internal Trauma of the Sexually Abused Child, CARSA Vol. 1 No. 1 January 2000
- Hoffman and Zeffert, the South African Law of Evidence 4th Ed, (1998)
- Pithy, Combrink, Artz, Naylor, Legal Aspects of Rape in South Africa (1999)

Legislation

Constitution of the Republic of South Africa Act 108 of 1996
Human Rights Commission Act 54 of 1996
Prevention of Family Violence Act 133 of 1993
Child Care Act 74 of 1983
Domestic Violence Act 116 of 1998
Sexual Offences Act 23 of 1957
Criminal Procedure Act 51 of 1977
Educators Employment Act 138 of 1994
Mediation in Certain Divorce Matters Act 24 of 1987
Dental, Medical and Supplementary Health Service Professions Act 56 of 1974

Cases

S v de Freitas 1997 (1) (SACR) 180 (C)
S v Jackson 1998 (1) SACR 470 (SCA)
S v D 1992 (1) SA 509 (NmHC)
S v M 1992 (2) SACR 188 (W)
S v M (2) SACR 682 (C)
S v S 1995 (1) SACR 50 ZH
R v J 1958 (3) SA 158 (A)
S v R 1997 (1) SA 9 (T)
Woji v Santam Insurance 1980 (2) SA (SECLD)
State v S (unreported Regional Court judgment)
R v Mokoena 1932 OPD 79
R v Mokoena 1956 (3) SA 81 (A) 85
S v T 19658 (2) SA 679
S v Sauls & others 1981 (3) SA 172 (A) 180
R v Abdoorham 1954 (3) SA 163 (N)
Borchers v Estate Naidoo 1955 (3) SA 78 (A)
S v Hlapenzula 1965 (4) SA 439
Nel v le Roux 1996 (1) SACR 572 (CC)
K v The Regional Magistrate NO & others 1996 (1) SACR 434 (E)

SUBMISSIONS RECEIVED

Child Abuse Action Group, presented by Ms Lucy Redivo and Mr Derek Harrison
RP Clinic, Presented by Drs Pieter du Plessis and Rene Potgieter
Child Protection Initiative, presented by Mr Trevor Mashigo
South African Human Rights Commission, presented by Ms Dinkie Dube, Mbongeni Shabangu and Lucky Rabotapi and Ms Matshidiso Rankoe
Child Protection Unit, presented by Captain Visagie, Inspector Ratsupa, Inspector Mazibuko and Supt Anneke Pienaar
A mother whose 7 years old daughter was sexually abused
Dr. Douglas Bellingham, medical doctor in Private Practice and part-time district surgeon
Women against Child Abuse, presented by Ms Beauty Ntuli

Gauteng Department of Health, presented by Dr Gwen Ramokgopa
University of the Witwatersrand Community Paediatrics Division, presented by Ms Christie Mkhasibe
Zamokuhle Child Care Centre, presented by Dr Mwanda
Johannesburg Child Welfare Society, presented by Dr Jacky Loffel and Ms Aileen Langley
Growing up in Cities Project, presented by Ms Jill Swart Kruger
Ekupholeni Centre, presented by Ms Johanna Kitzner, Ms Rachel Naomi Dube and Ms Thandi Anna Mashinini
A mother whose six year old daughter was sexually abused
A mother whose fourteen year old daughter was sexually abuse
A mother whose five/six year old daughter was sexually abused and indecently assaulted
A mother whose nine year old daughter was sexually abused
Alberton Town Council, presented by Ms Audrey Fihle
South African Society of Social Workers in Private Practice, presented by Ms Elizabeth Norman
Child Protection Unit Forensic Social Workers, presented by Ms Erica Scheepers
Social Workers Association of South Africa, presented by Ms Marie Kruger
Gauteng Government Social Cluster Cabinet Subcommittee, presented by Mr Vernon van Wyk, Dr. Goolay Ms Rowney and Ms Davids
DENOSA, presented by Ms Busisiwe Kubheka, Ms Lorraine Dibakone and Ms Xoliswa Nozulu
Teddy Bear Clinic, presented by Dr Lorna Jacklin
South African Black Social Workers Association, presented by Ms Noluthando Joy Dlakavu
Law Society of the Northern Provinces, presented by Mr Coetzee and Mr Bhayat
Ms Carina Coetzee, Sexual Offences Court Prosecutor
Mr Dosio, a Magistrate

Footnotes

¹ Constitution of the Republic of South Africa Act 108 of 1996.

² Act 54 of 1994.

³ Government Gazette No 21668 of 27 October 2000.

⁴ Mbongeni Shabangu, Dinkie Dube and Lucky Rabotapi of the Commission's Legal Department conducted these inspections. They also made oral submissions at the hearings

⁵ The CPUs were established in 1995 in response to the increase in criminal complaints relating to child abuse. To date 27 CPU branches have been established throughout the country to focus on child abuse cases. In areas where CPUs are not in existence, child abuse cases are handled by specialized police officers with expertise in child abuse, attached to the detective unit. Recently the role of CPUs was extended to include the investigation of family violence and all sexual offence cases, hence the new name, Child Protection, Family Violence and Sexual Offences Units. However, in this report, the Unit continues to be referred to as the CPU, as it is the name by which it remains popularly known.

⁶ With the exception of prosecutors and magistrates who refused to speak under oath at the hearings, the Commission received oral submissions as evidence.

⁷ In terms of the Commission's rules of procedure, public hearings are presided over by 3 Human Rights Commissioners and two independent experts in the field forming the subject matter of the hearings. The panel comprised of comprised of (1) Adv. F P Tlakula (Chairperson of the panel and Commissioner, Human Rights Commissioner), (2) Ms C V McClain (Human Rights Commissioner), (3) Mr J Nkeli (Human Rights Commissioner), (4) Ms Matshidiso Maseko (Psychologist), and (5) Ms Margaret Sithole (Social worker). (Mes Maseko and Sithole served in the panel as independent experts).

⁸ *Ciet Africa, Beyond Victims and Villains: the Culture of Sexual Violence in South Johannesburg* (2000), reporting on the prevalence of sexual violence in the southern metropolitan area of Gauteng (hereinafter the Ciet Africa Report).

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

¹² Human Rights Watch (1995), *Violence against women in South Africa, State Response to Domestic Violence and Rape* ('hereafter, the 1995 Human Rights Watch Report')

¹³ Human Rights Watch (2001) *Sacred at School: Sexual Violence against Girls in South African Schools.*

¹⁴ See Ciet Africa Report, p15.

¹⁵ Nearly one half of these rape incidents happened in the respondent's or neighbour's house. Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ In the Ciet Africa study, in 2000, submitters reported having resorted to the following forums for help: the police 73%, clinic 7.6%, hospital 6%, civic 0.1%, friend 1.7%, family 3%, NGO 1%, school teacher 0.5%, street committee 0.8%, social welfare 3%, church 0.2%, private doctor 3%. Only 11% of all submitters report having used a help line.

¹⁹ See the Ciet Africa Report (2001) and Stanton, Lochrenburg and Mukasa, *Improved Justice for Survivors of Sexual Violence? Adult survivors' Experiences of the Wynberg Sexual Offences Court and Associated Services* (1997) ('Wynberg Sexual Offences Court Evaluation Report')

²⁰ Article 19. CRC

²¹ Article 34. CRC

²² Article 35. CRC

²³ Article 27. CRC

²⁴ Article 29. CRC

²⁵ See Chapter 2, Bill of Rights.

²⁶ A child is defined as any person under the age of 18 years. See section 28(3).

²⁷ Section 28 (1) (a).

²⁸ Section 28 (1) (b).

²⁹ Section 28 (1) (c).

³⁰ Section 28 (1) (d).

³¹ Section 28 (1) (d).

³² Section 28 (1) (h)

³³ Some of the pre-Constitution legislation i.e., the Child Care Act and the Sexual Offences Act are currently being revised to bring them in line with government's obligations in terms of the Constitution and international instruments to which the government is party.

³⁴ The Protocol was drafted as part of the GPAC to ensure implementation of the National Programmes of Action for Children at provincial and local levels.

³⁵ The National Policy Guidelines were developed by a multi-disciplinary team of experts convened by the Department of Justice in 1995. The Guidelines set out procedural standards for the police, prosecution services, medical personnel, welfare and correctional service officials when dealing with victims of sexual offences. In 1998, the National Police Commissioner, by virtue of authority vested in him by section 25 of the SAPS Act of 1995, issued the police section of the Guidelines as National Instructions (National Instruction 22/1998). This move elevated the police section of the National Policy Guidelines above sections applicable to other professionals because unlike ordinary policy guidelines, National Instructions are enforceable. Violation of National Instructions by police officials therefore attracts sanction for misconduct.

³⁶ Gauteng Multi Disciplinary Child Protection and Treatment Protocol 1999-2000 Pilot Project.

³⁷ Justice College, *Child Law Manual for Prosecutors* (2001).

³⁸ *How Children Tell: The Process of Disclosure in Child Sexual Abuse* (1991), published in *Child Abuse Research in South Africa*, a Journal of the South African Professional Society on Child Abuse and Neglect, (hereinafter referred to as "CARSA") Vol.1, No2, October 2000.

³⁹ Act 133 of 1993. Section 4 is one of the only 2 sections that remain operative in the Act. The other section is section 5, dealing with rape of a wife by her husband. Otherwise the rest of the Act has been repealed by the Domestic Violence Act 116 of 1998. Section 4 will be transferred (possibly in a reformed formulation) to

the revised Child Care Act. Section 5 will be transferred to the revised Sexual Offences Act. Both the Child Care Act and the Sexual Offences Act are currently being reviewed by the South African Law Commission.

⁴⁰Act 74 of 1983.

⁴¹The procedure for reporting child abuse in terms of the Child Care Act is set out in regulations to the Act.

⁴²South African Law Commission, Focus Group Discussion Paper on the Revision of the Child Care Act.

⁴³Ibid.

⁴⁴Van Dokkum N, *The Statutory Obligation to Report Child Abuse and Neglect* 1996, Acta Juridica.

⁴⁵Ibid.

⁴⁶Published in CARSA Vol.1 No.1 January 2000.

⁴⁷Act 23 of 1957.

⁴⁸See Wynberg Sexual Offences Court Evaluation Report (1997)

⁴⁹*Sacred at School: Human Rights Watch Report on Sexual abuse in South African Schools* (2000). During the Ciet Africa study, when asked where they would go for help if sexually abused, no less than 64% submitters in 1998 and 80% in 2000, said they would go to the police¹⁶. This makes the nature of police response to incidents of sexual violence very critical.

⁵⁰See Ciet Africa Report (2000) p16 and Wynberg Sexual Offences Court Evaluation Report.

⁵¹Act 51 of 1977.

⁵²Own emphasis.

⁵³Own emphasis.

⁵⁴The CPUs were established in 1995 in response to the increase in criminal complaints relating to child abuse. To date 27 CPU branches have been established throughout the country to focus on child abuse cases. In areas where CPUs are not in existence, child abuse cases are handled by specialised police officers with expertise in child abuse, attached to the detective unit.

⁵⁵Virtually all sexual offences are schedule 1 offences.

⁵⁶National Prosecuting Authority Policy Manual B.8.

⁵⁷Section 6 (b) of the Criminal Procedure Act 51 of 1977.

⁵⁸National Prosecuting Authority Policy Manual B.9

⁵⁹Section 37(2) empowers any medical officer, district surgeon, registered nurse or medical professional to take such steps, including the taking of a blood sample as may be deemed necessary to ascertain whether the body of any person has any mark, characteristic or distinguishing features or shows any condition or appearance. Section 225 provides for the admissibility of evidence of such mark, characteristic, distinguishing feature, condition or appearance. Section 222(2) provides that such evidence will not be dismissed simply because it was obtained against the perpetrator's will or contrary to section 37(2).

⁶⁰The National Policy Guidelines define an AHCP as a medical officer, specialist or specially trained nurse with the necessary skills and knowledge gained through formal and/or informal training. Contrary to the duties of the District surgeon, the role of the AHCP is limited to examining and treating sexually abused children.

⁶¹Section 333B, Criminal Procedure Act.

⁶²In this report, reference to prosecutor shall include the state advocate.

⁶³Issued 1 October 1999.

⁶⁴NPA Policy Directives Part 4 A 3 and 4.

⁶⁵Diversion is normally considered where the perpetrator is a juvenile.

⁶⁶This factor is considered in terms of the *de minimis* principle. In terms of the principle trivial cases are normally not prosecuted.

⁶⁷Organisations such as Child Line, RP Clinic, Teddy Bear Clinic, Kidz Clinic, Women and Men against Child Abuse

⁶⁸Skills required by support providers to be able to deal appropriately and sensitively with children include child development and confidence to testify in court. Support providers also require proficiency in medico-legal language.

⁶⁹National Policy Guidelines, Department of Welfare p3.

⁷⁰NGOs are required to follow the same procedural guidelines as far as this is practically possible.

⁷¹The referring agency is required to keep in touch with the agency to which the case is referred until the case is satisfactorily dealt with.

⁷²See 7.2 below.

- ⁷³See generally, Wynberg Sexual Offences Court Evaluation Report.
- ⁷⁴Ibid.
- ⁷⁵Ibid.
- ⁷⁶Ibid.
- ⁷⁷This is a professional Social Worker in service with the Department of Welfare. His/her role is to counsel and refer the child to other appropriate services.
- ⁷⁸Ibid.
- ⁷⁹For other recommendations, see the Wynberg Sexual Offences Court Evaluation Report, 157-164.
- ⁸⁰See section 152 Criminal Procedure Act, Section 35(3)(c) Constitution of the Republic of South Africa Act, 108 of 1996.
- ⁸¹1996 1 SACR 572 (CC)
- ⁸²By the Minister of Justice acting in terms of powers vested in him by section 170(A) of the Criminal Procedure Act. The first notice issued in this regard is GN R1374 of 30 July 1993 as amended by R7101 in Government Gazette 22435 of 2 July 2001. See Du Toit, Skeen, Paizes, De Jager and van Der Merwe, Commentary on the Criminal Procedure Act (2000)
- ⁸³Registered as such in terms of the Dental, Medical and Supplementary Health Service Professions Act 56 of 1974 as amended.
- ⁸⁴Registered as such in terms of the Dental, Medical and Supplementary Health Service Professions Act 56 of 1974 as amended.
- ⁸⁵Act 24 of 1987.
- ⁸⁶Who have successfully completed a two year training course offered by the National Association of Child Care Workers coupled with 4 years working experience.
- ⁸⁷With 4 years experience and registered in terms of the Educators Employment Act 138 of 1994, provided that they have not, for any reason been suspended from service.
- ⁸⁸Registered as such in terms of section 17 of the Social Work Act of 1978 with minimum two years experience in social work.
- ⁸⁹1996 1 SACR 434 (E).
- ⁹⁰See Hoffmann and Zeffert, *The South African Law of Evidence* (4th Ed) 1988 572-582 and Schwikkard and others, *Principles of Evidence* (1997) 388-492.
- ⁹¹Ibid.
- ⁹²Hoffmann and Zeffert at 572.
- ⁹³See S v D 1992 1 SA 509 (NmHC); S v M 1992 (2) SACR 188 (W); S v M 1997 (2) SACR 682 (C).
- ⁹⁴1998 (1) SACR 470 (SCA).
- ⁹⁵See Pithy, Combrink, Artz and Naylor, *Legal Aspects of Rape in South Africa* (1999) p72.
- ⁹⁶See S v S 1995 (1)SACR 50 ZH.
- ⁹⁷See Mentjies R, *A Call for A Cautionary to Common Sense*, CARSA Vol. 1 No.1 January 2000. See also R v J
- ⁹⁸See Mentjies op cit 113 at p43.
- ⁹⁹See South Africa (1997), *Initial Country Report-Convention on the Rights of the Child* <http://www.Unhchr.ch/tbs/doc.nsf.../d2c94c67c4df8870802567ef0035d7c8?OpenDocument>.
- ¹⁰⁰Fagan A, *Dignity and unfair discrimination: a value misplaced and a right misunderstood*. SAHRJ 2000 14: 220.
- ¹⁰¹See Hoffman and Zeffert at 573. See also Du Toit and others (2000) op cit <<< at 24-1
- ¹⁰²See also S v Hlapezula 1965 (4) SA 439 (A); Borchers v Estate Naidoo 1955 (3) SA 78 (A); R v Abdoorham 1954 (3) SA 163 (N); R v Mokoena 1932 OPD 79 and R v Mokoena 1956 (3) SA 81 (A) 85; S v T 1958 (2) SA 676 (A) 678; S v Sauls & others 1981 (3) SA 172 (A) 180
- ¹⁰³At 574.
- ¹⁰⁴See also Mentjies op cit 113 at 44.
- ¹⁰⁵See Potgieter R, *The Internal Trauma of the Sexually Abused Child*, CARSA Vol.1 No.1 January 2000.
- ¹⁰⁶Ibid.
- ¹⁰⁷Ibid
- ¹⁰⁸Ibid
- ¹⁰⁹Ibid.

- 110 See Multi-Disciplinary Protocol, p90.
- 111 Ibid.
- 112 These are guiding principles for the termination of child protection and treatment services. See Multi-disciplinary Child Protection Protocol 1999-2000 Pilot Project at p.98.
- 113 See section 14(4).
- 114 Section 14(2).
- 115 Section 15(1).
- 116 Section 16(1)
- 117 Section 16(2).
- 118 At the first set of hearings, held 23 and 24 April 2001 at the Zithobile Community Hall, Bronkhorstspuit, Mr Kruger (Chief Magistrate) , Mr Skhosana (Magistrate), Ms Schoeman (Control Prosecutor) and Mr Poee, (Prosecutor)all of the Bronkhorstspuit Magistrate Courts attended the hearings but were not willing to take an oath or affirmations.
- 119 Mr. Moodliar, Head of the Commission's Legal Department conveyed their reasons to the panel.
- 120 At the meeting, the Magistrates Commission was represented by Prof. Loots.
- 121 See letter addressed to Commissioner Shirley Mabusela by Prof. Cheryl Loots dated 16 August 2001
- 122 At the hearings held on 5 November 2001 in Johannesburg, a Johannesburg-based magistrate Mr Dosio, preferred not to take an oath on the basis that magistrates are not obliged to take an oath or affirmation. He based his objection on a 19th century court decision that judicial officers are not obliged to take an oath. He however, addressed the panel on systemic shortcomings he has encountered when dealing with sexual offences.
- 123 Ms Dube alluded to the prevalence of this practice in Kathorus.
- 124 See submissions by RP Clinic and Forensic Social Workers.
- 125 Submissions by SASSWIP and SABSWA
- 126 Submissions by Ms Johanna Kirsner of the Ekupholeni Mental Health Centre, Ms Lucy Redivo of the Child Abuse Action Group, Ms A Fihla, Health Service Department, Dr. Jacky Loffel, Johannesburg Child Welfare Society.
- 127 Submission by Derek Harrison of the Child Abuse Action Group.
- 128 Dr. Potgieter is the founder and director of the Pretoria based RP Clinic.
- 129 The Commission heard that because police stations are male dominated and have a very patriarchal environment, female officers treat victims insensitively to try and fit into the male culture.
- 130 Submission by SABSWA. The Commission heard that in Kathorus, there are only nine CPU members covering six large areas. It was also pointed out to the Commission that the shortage of CPUs creates further delays in the finalization of cases as there is often a long period between reporting a case and referring it to the CPU.
- 131 Submissions by Ms Lucy Redivo, Dinkie Dube, Dr. du Plessis, Captain Visagie.
- 132 Captain Visagie.
- 133 Submission by Ms Lucy Redivo,
- 134 Submission by Captain Visagie.
- 135 Submission by Dinkie Dube.
- 136 Submissions by Ms Lucy Redivo, Johanna Kirsner, Ms A Fihle and Inspector Ratsupa.
- 137 Senior Superintendent Anneke Pienaar, National Commander of the Child Protection Units
- 138 Submission by Ms Lucy Redivo.
- 139 The parent testified at the Bronkhorstspuit hearings. Her name is not revealed in order to protect the identity of the child.
- 140 When he made a submission, Dr. Bellingham of the Kids Clinic, told the Commission that he is a part time district surgeons.
- 141 Submission by Teddy Bear Clinic.
- 142 Submissions by Drs du Plessis and Potgieter of the RP Clinic, Ms Mkhasibe a Community Worker employed by the Community Paediatrics Division at Wits University, Dr. Mwanda and Dr. Potgieter.
- 143 Submission by Ms Mkhasibe.
- 144 Ibid.
- 145 Submission by Ms Kirsner.

- 146 For example, where the child has disabilities.
- 147 Submission by Karina Coetzee
- 148 Submissions by Ms Redivo, Ms Kiugerr and Dr. Loffel.
- 149 Submission by Ms Fihle
- 150 Submission by Ms Kirsner and Dr Loffel.
- 151 Submission by Forensic Social Workers.
- 152 Submission by Ms Redivo.
- 153 Submission by Marie Elizabeth Kruger of the Social Workers Association of South Africa.
- 154 Submission by Ms Kruger.
- 155 Submission by Ms Kruger.
- 156 Ms Gwen Ramokgopa, Mr Ignatius Jacobs, Mrs Angie Motshekga and Ms Nomvula Mokwenyane. For ease of reference, they will be referred to as MECs' unless specific reference is made to any one of them in which case the relevant MEC will be specified.
- 157 An oral submission was made on their behalf by Mr. Vernon van Wyk of the Gauteng Department of Social Services and Population Development.
- 158 GPAC represents the Gauteng government's commitment to the National Programme of Action for Children adopted by national government in the same year.
- 159 Training offered by the regional subcommittees includes training on legislation relevant to child protection, child abuse prevention, community intervention, child abuse and neglect, risk assessment and development assessment.
- 160 Presently 48 social workers render intermediary services to 43 magistrates' courts in Gauteng.
- 161 Submission by the South African Society of Social Workers in Private Practice (SWASSIP) presented by Elizabeth Anne Norman.
- 162 Submission by SASSWIP.
- 163 Courts have been opened at Khayalitsha, Wynberg and Johannesburg
- 164 Submission by SWASSIP.
- 165 See submission by Mr Dosio
- 166 According to SWASSIP this is by virtue of the authority delegated to these social workers by the Commissioner of Child Welfare.
- 167 The submission was delivered by Ms. Erica Scheepers.
- 168 Submission by SABSWA.
- 169 The submission was made by Mr Coetzee and Bhayat. Penalty for unprofessional conduct ranges from suspension from practice for a defined term, a fine of up to R10 000 and striking an attorney off the roll of practicing attorneys.
- 170 Unlike the SAPS Act, the National Prosecuting Authority Act does not empower the National Director of Public Prosecutions to issue enforceable directives such as the National Instructions issued for the Police service in terms of section 25 of the SAPS Act. He may only issue policy directives. Transgression of these does not attract sanction.

The South African Human Rights Commission acknowledges with thanks the kind assistance of the following funders to the success of this project: Save the Children Sweden and Unicef