

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.