

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.