

## 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 Development<sup>156</sup> 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.<sup>157</sup>

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.<sup>158</sup> 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.<sup>159</sup>
- 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.<sup>160</sup>
- 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.<sup>161</sup> 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.<sup>162</sup> 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.<sup>163</sup>

### *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.<sup>164</sup> 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.<sup>165</sup> 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.<sup>166</sup> 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.<sup>167</sup> 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.<sup>168</sup> 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 school<sup>169</sup> ;
- 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.<sup>14</sup> 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.