

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.