



A Thematic Paper

Promoting Children's Rights: Preventing Abuse in Gauteng



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SYNOPSIS

Children's rights are a mechanism put in place by the government of South Africa to curb child abuse in the country. Child abuse is a worldwide problem and South Africa is not immune. Children are powerless and cannot protect themselves hence the onus is on adults, caregivers, teachers, healthcare workers and other persons in positions of trust to speak out on their behalf. Just what constitutes abuse is a controversial issue. In most cases, it is seen as part of the culture.

According to the most recent crime statistics, 392 children in South Africa were killed in just 90 days in 2021, and another 394 survived attempted murder. A further 2,048 children were victims of physical assault.

However, no violence against a child can be justified even if it is considered to be a form of discipline. Abuse includes any act that negatively affects a child's physical or emotional health and development. It can result in physical, cognitive and emotional impairment which can have long-term effects. In broad terms, child abuse can be defined as the 'maltreatment of children.' Such abuse can be inflicted in many ways such as physical, sexual and discriminatory abuse.

This thematic paper is aimed at examining the issue of children's rights against abuse in Gauteng, South Africa. The idea is to expose and highlight as well as to make it everyone's obligation to protect children who are the future of South Africa. Furthermore, the thematic paper seeks to promote a dialogue on issues of child rights abuse with a plan of informing the community and children about the rights of children as well as putting relevant structures in place that have the capacity to protect and promote child development and safety against all odds.

BACKGROUND

There is a plethora of evidence that supports the long-held belief that investing in children contributes to the future well-being, development and welfare of a country.¹ It is therefore essential that child rights must be implemented and the general well-being of children in the country must be protected. Such an action is a positive step towards attaining zero abuse cases in the country. Moreover, such an initiative will not only stimulate and enhance a deeper understanding of the critical issues but will also assist in refocused thinking about how to address the social issues affecting children.

Children's experiences of the implementation of their rights vary across the country and often differ between and within provinces. The Bill of Rights in the South African Constitution provides for children's civil and political rights and freedoms as well as their social, economic and cultural rights, with a special provision contained in section 28 which provides children with additional rights to address their special needs and vulnerabilities.² Children's own voices and inputs are important in order to understand their situation better and give effect to the realisation of their rights.

¹ JANSSEN, T.L., VAN DIJK, M., AL MALKI, I., VAN AS, A.B. 'Management of physical child abuse in South Africa: literature review and children's hospital analysis'. *Paediatr Int Child Health* 2013; 33 (4): 216-27.

² WOMEN, CHILDREN AND PEOPLE WITH DISABILITIES DEPARTMENT, SOUTH AFRICA (2013). *South Africa's initial report on the African Charter on the rights and Welfare of the Child, reporting period, January 2000-April 2013*. Available at <https://tinyurl.com/y3ajdhu>

A total of 2758 cases of neglect and ill-treatment of children were reported across South Africa during the period January 2006 to June 2012.³ A recent study found that one in three girls and one in five boys in South Africa experience some form of violence before they turn 18. Spyrelis recorded a total of 1461 cases of child abuse who presented at a safe house in Gauteng between 2006 and 2012.⁴ More than half of the children involved were under the age of six. Thirty-six percent of these rights abuse cases were classified as “neglect” and 30% as “abandonment”. Physical abuse was evident in 19% of the cases and consisted of injuries such as burns, bruises and scars. Twelve percent of the children had been sexually abused.⁵ It is against this background that the paper declares a state of emergency on child abuse so as to make sure that the safety of children and their future is not compromised by any form of abuse.

TYPES OF ABUSE AGAINST CHILDREN IN GAUTENG

Various types of abuse have been described and are evident in Gauteng including physical, sexual and emotional abuse as well as neglect and exploitation. At least 1339 cases of child abuse were reported in Gauteng from January 2020 to April 2021 as revealed by Gauteng social development Member of the Executive Council (MEC) Mokarane Mosupyo. The breakdown of the types of abuse are given below:



- physical - 287
- sexual - 656
- emotional - 160
- neglect - 220
- abandonment - 13
- child labor - 1
- child trafficking - 1.⁶

Physical abuse: refers to non-accidental injuries (NAI) which are deliberately inflicted and result in physical injury or death. The Birth to Twenty Plus (BT20+) study, which followed more than 2000 children in Soweto from birth to 22 years, showed that 99% of these children had been exposed to some form of physical abuse over their lifespan.⁷ Physical abuse or use of excessive force can manifest as bruises, scars, fractures, burns or bite marks and contributes to long-term effects on the life of a child.⁸

Sexual abuse: involves sexually molesting or assaulting a child; allowing a child to be sexually abused or assaulted; encouraging, inducing or forcing a child to be used for the sexual gratification of another person; and participating or assisting in the commercial sexual exploitation of a child. Although contact crimes in Johannesburg against children declined in 2019, there is still a lot to be done to prevent sexual abuse against children. Within the period April 2019 to March 2020,

³ MATHEWS, S., ABRAHAMS, N., JEWKES, R., MARTIN, L.J., LOMBARD, C. (2013) 'The epidemiology of child homicides in South Africa'. *Bull World Health* 2013; 91: 562-8.

⁴ MATHEWS, S., ABRAHAMS, N., JEWKES, R., MARTIN, L.J., LOMBARD, C. (2013) 'The epidemiology of child homicides in South Africa'. *Bull World Health* 2013; 91: 562-8.

⁵ IBID (2013)

⁶ LEGANO, L., MCHUGH, M.T., PALUSCI, V.J. (2009) 'Child abuse and neglect', *Curr Probl Pediatr Adolesc Health Care* 2009; 39: 31.e1-26.

⁷ GAUTENG DEPARTMENT OF COMMUNITY SAFETY. (2020). *Lets talk Safety*. Available at: <https://cmbinary.gauteng.gov.za> [Accessed on 28 May 2022]

⁸ NEEDLEMAN, H.L. (1986) 'Orofacial trauma in child abuse: types, prevalence, management, and the dental profession's involvement'. *Pediatr Dent* 1986; 8 (1): 71- 80.

the police recorded 24000 cases of sexual offences against children of which 22070 of these cases were rape.⁹

Neglect: This is the most common form of maltreatment and involves continuous failure to protect a child from exposure to any danger, cold, starvation or substance abuse. It can also include failure to carry out important aspects of child care which could impact on a child's emotional, psychological or physical development. Poor supervision of a child could be an indication of neglect. Dental neglect is defined as the "willful failure of parent or guardian to seek and follow through with treatment necessary to ensure a level of oral health essential for adequate function and freedom from pain and infection."¹⁰ A Childline Gauteng report of 2020 indicated that it was rendering counselling services mostly to children with behavioural problems as a result of their exposure to trauma as a result of bullying due to neglect and abandonment.¹¹

DRIVERS OF CHILD ABUSE IN GAUTENG

Stress, unemployment, poverty, overcrowded living conditions, lack of a support network and substance or alcohol abuse may increase the risk of children being exposed to intentional or non-accidental injuries as well as unintentional injuries. It has been reported that children exposed to drugs, often have developmental problems which make them difficult to manage, thereby increasing their chances of being abused. Sickly children who require constant attention and children with special needs who are more demanding, are also at increased risk of suffering abuse.

Children of single parents, especially when the mother is unmarried and is younger than 20 years of age, are at greater risk of abuse. Mathews *et al.* reported that nearly half of the murdered children in a survey carried out in Gauteng,¹² were the offspring of single mothers. According to Janssen *et al.*, there is a definite link between poverty and child corporal punishment.¹³ The reason for this gender predilection is unclear but it is speculated that it could be due to social and cultural views that boys need to be punished more severely. Most cases of physical violence occur in the home.

According to research from the University of Cape Town, financial constraints are the main reason why many children of school-going age are not attending school. These include the cost of schooling, including a uniform and transport. Other reasons for non-attendance are the perception of parents/guardians and sometimes children themselves that "education is useless", and children's poor performance at school. A high number drop out due to disability and illness, as well as pregnancy, menstruation and sexual abuse.¹⁴

SIGNS OF CHILD ABUSE

Since children experience various forms of abuse behind closed doors, it can be difficult for anyone to know any kind of maltreatment or neglect. This is why it's essential to be observant

⁹ Available from <http://ewn.co.za/2020/07/31/crime-stats-943-children-murdered-and-more-than-24-000-sexually-assaulted/amp>,

¹⁰ AMERICAN ACADEMY OF PEDIATRIC DENTISTRY. (2010) 'Definition of dental neglect, 2010'. Available from: http://www.aapd.org/media/Policies_Guidelines/D_DentalNeglect.pdf [Accessed 31 May 2022].

¹¹ CHIDLINLNE GAUTENG ANNUAL REPORT. (2019) Available from: <http://childlinegauteng.co.za/wp-content/uploads/2019/08/Childline-Gauteng-Annul-Report-2019-A4-compressed.pdf>.

¹² MATHEWS, S., ABRAHAMS, N., JEWKES, R., MARTIN, L.J., LOMBARD, C. (2013) 'The epidemiology of child homicides in South Africa'. *Bull World Health* 2013; 91: 562-8.

¹³ JANSSEN, T.L., VAN DIJK, M., AL MALKI, I., VAN AS, A.B. 'Management of physical child abuse in South Africa: literature review and children's hospital analysis'. *Paediatr Int Child Health* 2013; 33 (4): 216-27.

¹⁴ DAILY MAVERICK. (2 June 2022) 'Child Welfare Op-ed.'

and not ignore the common signs of child abuse; you could potentially save a life or prevent a child from growing up and dealing with a variety of developmental issues. A child may be neglected or mistreated if:

- they seem too anxious and withdrawn
- they exhibit sudden changes in behaviour or personality and lack concentration
- they tend to become aggressive suddenly
- they don't seem to have any friends and don't possess the necessary social skills
- they know about adult issues that are not age-appropriate
- they are covered in bruises or appear to be in some form of pain
- they are continually absent from school or start to perform poorly in their studies.

This is not an exhaustive list, as various types of abuse can manifest in many different ways.

LEGAL AND POLICY FRAMEWORK

The Constitution is very clear about the rights, dignity and protection of children in South Africa. If we look at *Section 28* of the **Bill of Rights**, specifically, it states, “every child has the right to be protected from maltreatment, neglect, abuse and degradation”. What’s more, the *Children’s Act 35 of 2005* further expands on the rights of minors, as well as setting out the principles relating to their care and protection. It’s also clear about the legal obligation parents have to raise their children in a caring and nurturing way. In short, the best interests of the child must always be prioritised.

All professionals or indeed anyone who comes into contact with children, have a moral and legal responsibility to report cases of suspected child abuse/ neglect. There are numerous laws in the South African Constitution that address the issue of reporting cases of suspected abuse, namely:

- Prevention of Family Violence Act 133 of 1993
- Domestic Violence Amendment Act 14 of 2021
- The Children’s Act 38 of 2005.

The Children’s Act 38 of 2005 is a comprehensive law which deals with all matters which affect children. It replaced the Child Care Act 74 of 1983 and Section 4 of the Prevention of Family Violence Act 133 of 1993.

Section 110 of the amended Children’s Act states that: “Any correctional official, dentist, homeopath, immigration official, labor inspector, legal practitioner, medical practitioner, midwife, minister of religion, nurse, occupational therapist, physiotherapist, psychologist, religious leader, social service professional, social worker, speech therapist, teacher, traditional health practitioner, traditional leader or member of staff or volunteer worker at a partial care facility, drop-in centre or child youth and care centre who on reasonable grounds concludes that a child has been abused in a manner causing physical injury, sexually abused or deliberately neglected, must report that conclusion in the prescribed form to a designated child protection organisation, the provincial department of social development or a police official.”¹⁵

As detailed in the above quote, it is mandatory for people in these professions to report possible child abuse cases. The Children’s Act also states that: “failure to report a reasonable conclusion

¹⁵ PREVENTION OF FAMILY VIOLENCE ACT, NO 133, 1993. (1993) Available at: <http://www.justice.gov.za/legislation/acts/1993-133.pdf> [Accessed 25 May 2022].

that a child has been abused or deliberately neglected would make the health professional liable to be found guilty of an offence and liable to conviction.”¹⁶ It is important to note that there must be more than a suspicion of abuse and the conclusion must be reached on reasonable grounds. However, proof of abuse is not required.¹⁷

ASSESSMENT OF SUSPECTED ABUSE

The evaluation of child abuse cases should be multi-disciplinary and should be geared towards the child as well as the family. By including law enforcement, child protective services, medical professions, counselling and other related fields in this multi-disciplinary team, the quality of the investigations can be improved. Better communication between these stakeholders and sharing of information would speed up the investigative process and minimise further trauma to the child. Only after questioning the child or investigating the situation through medical assessments/radiographs or physical assessment can a conclusion be reached regarding the possibility of abuse.¹⁸ The child must consent to these investigations either verbally or in writing. However, if it is in the best interests of the child or the child is too young to give informed consent, the assessment may proceed without consent but cogent reasons for proceeding should be noted in writing. According to the Children’s Act, this should be explained to the parents/ caregivers. If parents refuse to allow the child to undergo the assessment, it might be necessary to override this decision by applying to the court or referring the matter to the police or the Department of Social Development.¹⁹

CHILDREN’S RIGHTS ABUSE DURING RESTRICTIVE COVID-19 CONDITIONS

Covid 19 has not been kind to the health and well-being of children. During the stringent lockdown measures, violation of child rights in South Africa exploded, with various reports showing high profile cases nationwide. Childline Gauteng reported more than 36,8% increase in calls for help during August 2020, compared with the same month in 2019.²⁰ The data coincides with reports from healthcare facilities of a consistent number of severe injuries among children. The civil society organisations, both at a grassroot level and internationally, for example, UNICEF, were on the frontline in Gauteng communities and played a key role in raising awareness about the increase in cases and providing support for victims of abuse as well as helping victims remotely. CSOs also partnered with the private sector, government and individual activists to amplify awareness about child abuse.

Covid 19 lockdown was associated with economic disaster. Results from the first wave of the National

The South African Constitution’s Bill of Rights (Section 28) talks about the rights that children have:

- You should be given a name when you are born and you should be looked after and become part of a family.
- You should not have to work whilst you are small as this could make you tired and sick (this includes being made to beg on the side of the road).
- Even if you have done something very bad and the police need to arrest you, you should not be put in jail.
- You must have shelter (somewhere dry and comfortable to sleep).
- If you are sick, you must be able to see a doctor and get medicine that will make you better.

¹⁶ DOMESTIC VIOLENCE ACT. (1998) Available from: <http://www.justice.gov.za/legislation/acts/1998-116.pdf> [Accessed 25 May 2022].

¹⁷ BOWER, C. (2006) ‘The role of non-medics in child abuse’, in: van As, S., Naidoo, S. (eds.) *Paediatric Trauma and Child Abuse*. Oxford University Press Southern Africa (Pty) Ltd, 69-78.

¹⁸ DOMESTIC VIOLENCE ACT. (1998) Available from: <http://www.justice.gov.za/legislation/acts/1998-116.pdf> [Accessed 25 May 2022].

¹⁹ CHIDLINELINE SOUTH AFRICA. Available at: <https://www.childlinesa.org.za/resource-center/procedures-for-reporting-abuse-for-educators/> [Accessed 3 April 2023]

²⁰ CHIDLINELINE SOUTH AFRICA. <http://www.childlinesa.org.za/index.php/child-protection-at-school-educatormenu-40/procedures-forreporting-abuse-educatormenu>

Income Dynamics Study (NIDS) and Coronavirus Rapid Mobile Survey (CRAM) study carried out in May 2020, show substantial Covid 19-related declines in employment among South African households including those in Gauteng, with losses skewed towards more disadvantaged households.²¹ Increased economic strain means that children are more likely to experience food insecurity and inadequate health and other forms of care.

Furthermore, school closure also raised concerns about South African children's rights to education and educational progress, particularly for those from households without digital resources. School closure was also expected to complicate access to medical and support services, as most schools in Gauteng and South Africa at large, typically facilitate such access for children from disadvantaged homes.²²

The media reported that violence against children in Gauteng increased during lockdown.²³ Emotional abuse was most prevalent, followed by physical and sexual abuse. These media and non-governmental organisation reports were in stark contrast to government communication that stated that domestic violence, including incidences of abuse, decreased during strict lockdown.

THE WAY FORWARD

This thematic paper recommends among several others that CSOs should broaden their activities and integrate multi stakeholder/institutions in their advocacy. These kinds of partnerships and collaborations allow for proactive strategies to protect children against abuse as well as countering and sanctioning the perpetrators. Civil society organisations (CSOs) such as Human Rights Watch and many more in the legal space should continue to collaborate with the law enforcement system to ensure that child rights abuse matters are comprehensively dealt with. With their power to influence, CSOs should hold the government accountable for non-implementation or poor implementation of laws that protect children.

CONCLUSION

There is a need for increased awareness among Gauteng communities about child abuse and neglect. The legal and ethical responsibilities to report cases of suspected or known abuse should be emphasised. The primary goal is to "detect child abuse and prevent further injury". According to the Children's Act, reporting cases of suspected abuse is considered mandatory and "failure to report is a breach of the law". Raising awareness about the signs and symptoms of abuse will probably result in an increase in the number of reported cases.

High levels of violence, abuse, exploitation and neglect of children exist in South Africa. These children are affected emotionally and physically with long-lasting psychological consequences. A multi-stakeholder approach including child protection services, the police or a provincial Department of Social Development as well as the community at large is necessary to reduce child abuse and promote children's rights in South Africa. Providing families with the skills they need to better cope with situations that can lead to violence includes socio-economic relief, skills-building to tackle poverty and unemployment, as well as access to psychological and social support services.

²¹ SPAULL N., et al. (2020) 'NIDS-CRAM Wave 1 Synthesis Report: Overview and Findings'. <https://cramsurvey.org/wp-content/uploads/2020/07/Spaull-et-al.-NIDS-CRAM-Wave-1-Synthesis-Report-Overview-and-Findings-1.pdf>[Google Scholar]

²² MPHABLELE, K. (2020) 'COVID-19: The kids are not all right'. *Spotlight*. Available at: <https://www.spotlightnsp.co.za/2020/04/17/covid-19-the-kids-are-not-all-right/> [Accessed 3 April 2023]

²³ LUND, R.G., MANICA, S., MANICA, G. (2020) 'Collateral issues in times of covid-19: child abuse, domestic violence and femicide. RBOL-Revista Brasileira de Odontologia Legal'.

Teachers, child and youth care workers and other social service professionals need to be trained to identify concerns before they escalate. Unlike adults' right to health care, children's right to basic healthcare services is not subject to progressive realisation under South Africa's Constitution and governmental plans. Even though children are the most vulnerable in society, the state has still not defined what constitutes essential health care services for children, which makes it difficult to determine what children are entitled to and what the state should be held accountable for in terms of provisions. According to the Integrated Service Delivery Model, the Department of Social Development (DSD) is required to support children to manage experiences of violence – this should be strengthened.²⁴

Currently there is a push for efficiencies and cost-saving in the health system; this may result in limited care of the complex needs of children, especially those with chronic health conditions. Government needs to define a health care plan specifically for children if they are to have effective access and adequate care.

Education is a central socio-economic right that provides the foundation for lifelong learning and economic opportunities and can prevent incidents of violence against children. Children have a right to basic education, but many factors make it hard for many to access it, and the government must take reasonable measures to make education available.

DISCLAIMER

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BREAK THE SILENCE, CALL 0800 428 428 (GBV COMMAND CENTRE) TO REPORT AND GET GBV SUPPORT.

²⁴ DEPARTMENT OF SOCIAL DEVELOPMENT (SOUTH AFRICA). (2005) *Service delivery model for developmental social services*. Available at: <http://operationcompassion.co.za/images/Pdf/Legislation%20guidelines/Service%20Delivery%20Model.pdf> [Accessed 3 April 2023]

Masiphephe Network Implementing Partners

ORGANISATION	IMPLEMENTATION SITE/ LOCATION	CONTACT #
CCI	Pretoria, Gauteng	012 366 9300
GHJRU	University of Cape Town	021 406 6023
Agisanang Domestic Abuse Prevention and Training (ADAPT)	City of Johannesburg Region E, Gauteng	011 786 6608
Sonke Gender Justice (Sonke)	City of Johannesburg Region D, Gauteng	011 339 3589
Ethembeni Crisis Care Centre (ECCC)	eThekwini West, KwaZulu Natal	031 704 6860
Gugu Dlamini Foundation	eThekwini INK Area, KwaZulu Natal	031 292 2852
Project Support Association Southern Africa (PSASA)	Emalahleni Local Municipality and City of Mbombela	013 752 5624

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