



## A Thematic Paper

### **Disrupting the Status Quo: Promoting Children's Rights Against Abuse in Gauteng Province**



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## SYNOPSIS

Children's rights are meant to curb child abuse in South Africa. Child abuse is a worldwide problem and South Africa is not exempted. Children are powerless and cannot protect themselves hence the onus is on adults, caregivers, teachers, health care workers and other persons in positions of trust to speak out on their behalf. 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 could 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, emotional and sexual abuse.

This thematic paper is aimed at examining the issue of children's rights against abuse in Gauteng, South Africa. Whilst amplifying the problem, 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 support the long-held belief that investing in children contributes to the future, wellbeing, development and welfare of the country.<sup>1</sup> It is therefore essential that the status of the implementation of children's rights and the general wellbeing of children in the country must be advanced. There should be refocused thinking about how to address the social issues affecting children.

Children's experiences of the implementation of their rights varies across the country and often differs 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.<sup>2</sup> Children's own voices and inputs are important to understand their situation better and give effect to the realization of their rights.

A total of 2758 cases of neglect and ill-treatment of children were reported across South Africa during the period of January 2006 and June 2012. Spyrelis recorded a total of 1461 cases of child abuse who presented at a safe house in Gauteng between 2006 and 2012. 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 abuses were evident in 19% of the cases and consisted of injuries such as burns, bruises and scars. 12% of the children had been sexually abused.<sup>3</sup> It is against this background that the paper declares a state of emergence on the topic so as to make sure that the safety of children and their future is not compromised by as form of abuse as far as their right are concerned.

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<sup>1</sup> Janssen TL, van Dijk M, Al Malki I, van As AB. Management of physical child abuse in South Africa: literature review and children's hospital analysis. *Pediatric Int Child Health* 2013; 33 (4): 216-27.

<sup>2</sup> 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>

<sup>3</sup> Mathews S, Abrahams N, Jewkes R, 1. Martin LJ, Lombard C. The epidemiology of child homicides in South Africa. *Bull World Health* 2013; 91: 562-8.

## TYPES OF ABUSE AGAINST CHILDREN IN GAUTENG

Various types of abuse have been described as evident in Gauteng including physical, sexual, emotional, neglect and exploitation. At least 1339 cases of child abuse were reported in Gauteng from January 2020 to April 2021 as revealed by the Gauteng Social Development Member of the Executive Committee (MEC) Mokarane Mosupyo. Of the cases, 656 were sexual, 287 were physical, 220 were neglect, 160 were emotional, 13 abandonment, 1 child labour and 1 child trafficking.<sup>4</sup> 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.

**Physical abuse:** refers to non-accidental injuries (NAI) which are deliberately inflicted, results in physical injury or death. According to the Birth to Twenty Plus (BT20+) study, which followed more than 2000 children in Soweto from birth to 22 years, 99% of the children were exposed to some form of physical abuse over their lifespan.<sup>5</sup> 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.<sup>6</sup>

**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; participating or assisting in the commercial sexual exploitation of a child. Although contact crimes against children in Johannesburg were on a decline in 2019, there is still a lot to be done to prevent sexual abuse against children. Within the period of April 2019 to March 2020, the police recorded 24 000 cases of sexual offences against children, with 2070 cases being rape cases.<sup>7</sup>



**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 childcare 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 "wilful 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".<sup>8</sup> Childline Gauteng report of 2020, indicates that it is 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.<sup>9</sup>

<sup>4</sup> Legano L, McHugh MT, Palusci, VJ. Child abuse and neglect. *Curr Probl Pediatr Adolesc Health Care* 2009; 39: 31.e1-26.

<sup>5</sup> Gauteng Department of Community Safety (2020). Lets talk Safety. Accessed on 28 May 2022 at <https://cmbinary.gauteng.gov.za>

<sup>6</sup> Needleman, HL. Orofacial trauma in child abuse: types, prevalence, management, and the dental profession's involvement. *Pediatr Dent* 1986; 8 (1): 71- 80.

<sup>7</sup> Available from <http://ewn.co.za/2020/07/31/crime-stats-943-children-murdered-and-more-than-24-000-sexally-assaulted/amp>,

<sup>8</sup> American Academy of Pediatric Dentistry. Definition of dental neglect, 2010. Available from: [http://www.aapd.org/media/Policies\\_Guidelines/D\\_DentalNeglect.pdf](http://www.aapd.org/media/Policies_Guidelines/D_DentalNeglect.pdf) [Accessed 31 May 2022].

<sup>9</sup> Childline Gauteng Annual report, 2019. Available from: <http://childlinegauteng.co.za/wp-content/uploads/2019/08/Childline-Gauteng-Annul-Report-2019-A4-compressed.pdf>

## 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 it 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 for 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* (2013:91). reported that nearly half of the murdered children in a survey carried out in Gauteng<sup>10</sup>, were the offspring of single mothers. According to Janssen *et al* (2013:33)., there is a definite link between poverty and child corporal punishment, with parents or guardians perpetrating the act on 10-to-13-years of age boys constituting 70% of all cases.<sup>11</sup> 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 uniforms, transport, the perception that “education is useless”, and feeling unable to perform at school or a fear of failing exams. There are a high number of dropouts due to disability and illness, as well as pregnancy and sexual abuse.<sup>12</sup>

## 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 and not ignore the common signs of child abuse. 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 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; and
- 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 and related ways.

## LEGAL AND POLICY FRAMEWORK

The Constitution is very clear about the rights, dignity and protection of children in South Africa. Section 28 of the Bill of Rights, specifically states, “every child has the right to be protected from

<sup>10</sup> Mathews S, Abrahams N, Jewkes R, 1. Martin LJ, Lombard C. The epidemiology of child homicides in South Africa. *Bull World Health* 2013; 91: 562-8.

<sup>11</sup> Janssen TL, van Dijk M, Al Malki I, van As AB. Management of physical child abuse in South Africa: literature review and children's hospital analysis. *Pediatric Int Child Health* 2013; 33 (4): 216-27.

<sup>12</sup> Child and adolescent mental health services in SA... let us not be found wanting (again), Daily Maverick, 2022, accessed at <https://www.dailymaverick.co.za/article/2022-06-15-child-and-adolescent-mental-health-services-in-sa-let-us-not-be-found-wanting-again/>, accessed on 1 October 2022.

maltreatment, neglect, abuse and degradation”. The Children’s Act No. 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 that parents, guardians and caregivers have to raise their children in a caring and nurturing way. Basically, the best interests of the child must always be prioritized. 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 (2018)
- Domestic Violence Act (1998)
- The Children’s Act (Act 38 of 2005, as amended by Act 41 of 2007).

The Children’s Act deals with all matters which affect children. It has replaced the Child Care Act of 1983 and Section 4 of the Prevention of Family Violence Act of 1993. Section 110 of the amended Children’s Act states that: “Any correctional official, dentist, homeopath, immigration official, labour 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 organization, the provincial department of social development or a police official.<sup>13</sup>

The Children’s Act also states that: “failure to report a reasonable conclusion 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.”<sup>14</sup> 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.<sup>15</sup>

## **ASSESSMENT OF SUSPECTED ABUSE**

The evaluation of child abuse cases should be multidisciplinary 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 multidisciplinary 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 minimize 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.<sup>16</sup>

The child must consent to these investigations either verbally or in writing. However, if it is in the best interest of the child or the child is too young to give informed consent, assessment may proceed without consent but cogent reasons for proceeding should be noted in writing. According

<sup>13</sup> Prevention of Family Violence Act, No 133, 1993. Available from: <http://www.justice.gov.za/legislation/acts/1993-133.pdf> [Accessed 25 May 2022].

<sup>14</sup> Domestic Violence Act. Available from: <http://www.justice.gov.za/legislation/acts/1998-116.pdf> [Accessed 25 May 2022].

<sup>15</sup> Bower C. The role of non-medics in child abuse. In: van As S, Naidoo S. (eds.) Pediatric Trauma and Child Abuse. Oxford University Press Southern Africa (Pty) Ltd, 2006; 69-78.

<sup>16</sup> Domestic Violence Act. Available from: <http://www.justice.gov.za/legislation/acts/1998-116.pdf> [Accessed 25 May 2022].



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.<sup>17</sup>

## CHILDREN'S RIGHTS ABUSED DURING RESTRICTIVE COVID-19 CONDITIONS

### **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 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.

The Covid 19 national pandemic negatively impacted the health and wellbeing 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.<sup>18</sup> The data aligns with reports from healthcare facilities of a consistent number of severe injuries

caused by child abuse. Grassroot level and international civil society organizations (CSOs), such as 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 child abuse, remotely. CSOs also partnered with the private sector, government and individual activist to amplify awareness about child abuse.

Covid 19 lockdown was associated with economic disaster. Results from the first wave of the National Income Dynamics Study (NIDS) and Coronavirus Rapid Mobile Survey (CRAM) study shows substantial Covid 19 related declines in employment among the South African households including those in Gauteng, surveyed in May 2020, with losses skewed towards more disadvantaged households.<sup>19</sup> Increased economic strain means that children are more likely to experience food insecurity and inadequate health and other forms of care.

School closures raised concerns about children's rights to education and educational progress, particularly for those from households without digital resources. School closure further complicated access to medical and support services, as most schools in Gauteng and nationally, typically facilitate such access for children from disadvantaged homes.<sup>20</sup> The media reported that violence against children in Gauteng, increased during lockdown.<sup>21</sup> Emotional abuse was most prevalent, followed by physical and sexual abuse. These media and non-governmental organization reports were in stark contrast with government communication that domestic

<sup>17</sup> Childline South Africa. <http://www.childlinesa.org.za/index.php/child-protection-at-school-educatormenu-40/procedures-forreporting-abuse-educatormenu>

<sup>18</sup> Childline South Africa. <http://www.childlinesa.org.za/index.php/child-protection-at-school-educatormenu-40/procedures-forreporting-abuse-educatormenu>

<sup>19</sup> Spaul N., Ardigton C., Bassier I., Bhorat H., Bridgman G., Brophy T., Budlender J., Burger R., Burger R., Carel D., Casale D., Christian C., Daniels R., Ingle K., Jain R., Kerr A., Köhler T., Makaluza N., Maughan-Brown B....Zuze L. 2020. NIDS-CRAM Wave 1 Synthesis Report: Overview and Findings. <https://cramsurvey.org/wp-content/uploads/2020/07/Spaul-et-al.-NIDS-CRAM-Wave-1-Synthesis-Report-Overview-and-Findings-1.pdf> [Google Scholar]

<sup>20</sup> Mphahlele K. Spotlight; 2020. COVID-19: The kids are not all right. [https://www.spotlightnsp.co.za/2020/04/17/covid-19-the-kids-are-not-all-right/April 17](https://www.spotlightnsp.co.za/2020/04/17/covid-19-the-kids-are-not-all-right/April%2017). [Google Scholar]

<sup>21</sup> 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. <https://discovery.dundee.ac.uk/en/publications/collateral-issues-in-times-of-covid-19-child-abuse-domestic-viole> [Google Scholar]

violence, including incidences of abuse, decreased during strict lockdown<sup>22</sup>, children from disadvantaged households in Gauteng have no or limited access to psychological or other mental health services.<sup>23</sup>

## THE WAY FORWARD

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 in reducing child abuse and promoting children's rights in South Africa. Providing families with the skills they need to better cope with situations that can lead to violence includes socioeconomic relief, skills-building to tackle poverty and unemployment, as well as access to psychological and social support services.

CSOs should broaden their activities for integrated multi stakeholder advocacy. This kind of partnerships and collaborations allows for proactive strategies towards protection of child rights against abuse as well as countering and sanctioning the perpetrators. CSOs such as Human Rights Watch and many more in the legal space should work tirelessly with law enforcement, to ensure that child rights abuse matters are precise, easily pursued and comprehensive in addressing the plight of the victims. With their power to influence, CSOs should pressurize the government to adequately resource and ensure effective implementation of laws and policies to curb the abuse of child rights.

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.

## CONCLUSION

There is a need for increased awareness among Gauteng communities about child abuse. Legal and ethical responsibilities to report cases of suspected or known abuse should be emphasized. 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. While the push for efficiencies and cost-saving in the system are dire, these may result in limited care in 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 socioeconomic right that provides the foundation for lifelong learning and economic opportunities and can prevent incidents of violence against children. They 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.

<sup>22</sup> South African Government . 2020. Minister Bheki Cele: Visit to KwaZulu-Natal to assess adherence to the Coronavirus COVID-19 lockdown regulations. <https://www.gov.za/speeches/minister-bheki-cele-visit-kwazulu-natal-assess-adherence-coronavirus-covid-19-lockdown> April 22. [Google Scholar]

<sup>23</sup> Bukola G., Bhana A., Petersen I. Planning for child and adolescent mental health interventions in a rural district of South Africa: a situational analysis. *Journal of Child & Adolescent Mental Health*. 2020;32(1):45–65. doi: 10.2989/17280583.2020.1765787. [PubMed] [CrossRef] [Google Scholar]