



**UNIVERSITY OF KWAZULU-NATAL
SCHOOL OF LAW, HOWARD COLLEGE**

THE MANDATORY REPORTING OF CHILD SEXUAL ABUSE IN SOUTH AFRICA

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**This research project is submitted in pursuance of the requirement for the Degree of
Master of Laws.**


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2021

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ABSTRACT

This study aimed to examine the effectiveness of the legislation that protects children against sexual abuse, the factors that influence the mandatory reporting of sexual abuse in South Africa and how to incorporate different professionals mandated in the mandatory reporting of sexual abuse. In relation to that, the objectives were to examine the extent to which the legislation that protects children against sexual abuse in South Africa is effective in promoting the mandatory reporting of child sexual abuse; to examine the factors that influence the mandatory reporting of sexual abuse; to determine methods in which mandatory reporting can be improved to increase the reporting rate in South Africa; and to make recommendations for the compliance of mandatory reporting of sexual abuse. Study was a desk research and the findings were based on what was found by different researchers on the subject of mandatory reporting. Much focus was placed on prosecutors, police officers, psychologists, teachers and social workers as mandated reporters. It emerged from the study that some gaps still exist in the legislation that protects children against sexual abuse. Among the factors that have led to cases of sexual abuse not being reported was a lack of knowledge of the procedures for reporting, distrust among professionals, uncertainty about the outcomes of reporting, as well as a lack of faith in the judicial system. Inter-disciplinary efforts, the training of teachers on mandatory reporting and systemic interventions, among other methods, can be used to improve the mandatory reporting of the sexual abuse of children in South Africa. This study recommends the use of multiple and diverse interventions; the training of both professionals and the public on children's rights and their obligations; placing social workers in community health settings; and investing more resources in the training of teachers as they are the ones that spend the most time with children among all the professionals.

ACKNOWLEDGEMENT

Above all, I want to praise and thanks to the God, the Almighty, for his showers of blessings throughout my research work to complete the research successfully.

It is a genuine pleasure to express my deep sense of thanks to my supervisor Dr. A Singh, her timely advice has helped me to a very great extent to accomplish this task.

I am extremely grateful to my parents for their love, prayers, caring and sacrifices. I am very much thankful to my husband and my daughters for their love, understanding and support.

Also, I express my thanks to my sisters for their everyday support.

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ABBREVIATIONS

ACRWC	African Charter on the Rights and Welfare of the Child
CSA	Child Sexual Abuse
DOH	Department of Health
DJCD	Department of Justice and Constitutional Development
DSD	Department of Social Development
HIV	Human Immunodeficiency Virus
KZNDOE	KwaZulu-Natal Department of Education
MECs	Members of Executive Councils
NPF	National Policy Framework
NCPR	National Child Protection Register
NRSO	National Register for Sex Offenders
POA	Programme of Action
SAHRC	South African Human Rights Commission
SAPS	South African Police Service
SCT	Social Cognitive Theory
UN	United Nations
UNCRC	United Nations Convention on the Rights of the Child
VAWC	Violence against Women and Children
WHO	World Health Organisation

CHAPTER ONE: INTRODUCTION

1. Introduction

Child sexual abuse is a complex life experience that has become the focus of many legislative and professional initiatives and the concern of the larger community. The growing body of literature on sexual abuse and the enhanced media coverage of problems of sexual abuse demonstrate this. However, there are fewer statistics on reporting the sexual abuse of children in South Africa, as sexual abuse is generally a concealed offence, particularly in rural regions.¹ Statistical reports of the sexual abuse of children most of the time only cover the instances revealed to child protection organisations, children's hospitals or law enforcement agencies.² The most prevalent type of violence is seen as child sexual abuse and has an adverse effect on the sexually abused child's physical and psychological health. There are several instances of child sexual abuse that go unreported, and it is quite unfortunate because this implies that the child who has been sexually abused will not have justice.³

The law promotes the reporting of child abuse through the Constitution of the Republic of South Africa and other laws, such as Acts. It is indicated that in the best interests of the child, the Department of Social Development must evaluate and handle the reporting of child abuse further.⁴ Furthermore, it is required of "[a] person" who understands or has a 'reasonable faith or suspicion' of any type of sexual abuse against a child or mentally challenged person to report it to a police officer.⁵ If such reporting is performed in good faith, in criminal or civil proceedings, the person reporting cannot be held responsible.⁶ It is essential to report child sexual abuse and to guarantee that the instances of child sexual abuse are handled and reported by experts working with children, such as social workers and other assisting professionals. This study aims to highlight the

¹ 'Center for Justice and Crime Prevention'. *The Optimus study on child abuse, violence and neglect in South Africa* (2015) 101.

² L Artz... et al *Sexual victimisation of children in South Africa* (2016) 187.

³ South African Police. *Services crime statistics* 2015/2016.

⁴ Republic of South Africa. Constitution of the Republic of South Africa Act 108 (1996).

⁵ Section 54 of the Sexual Offences and Related Matters Act [14]. ⁶

Section 54(2)(c) of the Sexual Offences and Related Matter Act.

epidemiological characteristics and adverse physical and mental health impacts on the victims of child abuse; to highlight the mandatory reporting of child sexual abuse, the need for a

multidisciplinary approach to primary prevention and management of child sexual abuse.

Keywords: child; child sexual abuse; mandatory reporting.

1.1 Definition of Terms

The following definition of terms will be used for the purposes of this research.

1.1.1 A Child

A child is described as an individual under the age of eighteen.⁶ This definition also corresponds to that of the Children's Act 38 of 2005, which also states that a child is an individual under the age of 18.⁷

1.1.2 Child sexual abuse

Child sexual abuse is described as any sexual act (whether by touch or non-contact) perpetrated on or with a child for the perpetrator's or a third person's sexual gratification.⁸ Kissing, fondling, oral sex, vaginal and anal intercourse are included in sexual contact.⁹ Using force, trickery, corruption, threats or pressure, these indicated contacts or interactions above are performed against the child.¹⁰ Non-contact sexual abuse involves making sexual comments to a child, exhibitionism, voyeurism, someone engaging in a child's presence or having sexual intercourse and displaying child pornographic material.¹¹ In some cases, other children who are in a position of authority, accountability or trust over the child victim by virtue of their position may be sexual abusers.¹²

⁶ Constitution of the Republic of South Africa Act 108 (1996).

⁷ Children's Act 38 of 2005.

⁸ D Wurtele 'Child sexual abuse in Africa' (2009) 87.

⁹ JDG Goldman & UK Padayachi. Child sexual abuse reporting behaviour by school counsellors and their need for further education (2005) 303.

¹⁰ UN *Global study on child abuse* (2002) 54.

¹¹ D Finkelhor. 'Current information on the scope and nature of child sexual abuse' (1994) 42.

¹² WHO *Preventing child maltreatment: a guide to taking action and generating evidence* (2006) available at http://apps.who.int/iris/bitstream/10665/43499/1/9241594365_eng accessed on 12 August 2019.

1.1.3 Mandatory reporting

Mandatory reporting relates to legislation specifying who is needed by law to report suspected child abuse and neglect instances under particular reporting criteria.¹³

1.2 Background and Context of the Study

The most vulnerable group of people is children, and they deserve protection and nurturing. Despite all the legislative frameworks intended to safeguard children in South Africa, there is still daily abuse of children and not all instances of child abuse are recorded. Girls and boys as well as all ethnic, demographic and family groups have reported child sexual abuse.¹⁴ Child sexual abuse was prevalent in most societies in a synthesis of 39 prevalence surveys in 21 distinct nations.¹⁵

However, previous studies demonstrate that mandated reporters do not always report suspicions of child sexual abuse and this can be argued, not to be in the best interest of the child as more danger or harm can be imposed on the child because of failure to report such suspicions. According to the South African statistics, cases of child sexual abuse rates are stipulated to be higher than the rape reporting rates, so if, for example, 43,195 rapes were reported in 2016/17 in South Africa, it means that 80 cases of child sexual abuse were reported for every 100,000 people in the country.¹⁶ This demonstrates that South Africa does not report most instances of child sexual abuse. The prevalence of cases not reported will be further demonstrated in chapter five in the findings of the study.

Despite the growing worldwide focus on child abuse, the real worldwide burden of child abuse and neglect continues to be unknown, and gross underestimations are usually the ones available.¹⁷ The

¹³ JDG Goldman & P Grimbeek 'Sources of knowledge of departmental policy on child sexual abuse and mandatory reporting identified by primary school student teachers' (2011) 13.

¹⁴ D Finkelhor . *The victimisation of children: a developmental perspective* (1995) 180.

¹⁵ Ibid 3.

¹⁶ 'Statistics South Africa Crime statistics series volume III: Exploration of selected contact crimes in South Africa – indepth analysis of the victims of crime survey data 2011-2014/15 (2016a)'.

¹⁷ KM Alvarez, MC Kenny, B Donohue & KM Carpin 'Why are professionals failing to initiate mandated reports of child maltreatment, and are there any empirically based training programmes to assist professionals in the reporting process?' (2004) 570.

lack of precise information on the burden of child abuse was ascribed to the lack of information from developing nations¹⁸ and the secrecy and sensitivity of child abuse problems.¹⁹ There are also extensive imbalance in estimates accessible owing to differences in the operational

definitions used in child abuse research²⁰ the quality of formal statistics²¹ distinct national reporting criteria and whether the sample population consisted of prospective offenders or victims of abuse.²² Nevertheless, the global prevalence of child sexual abuse has been reported as high as 62 per cent among girls and 16 per cent among boys.²³ Despite the limitations associated with the accurate determination of the burden of child sexual abuse, the UN Secretary-General's report on child sexual abuse currently estimates that around 150 million girls and another 73 million boys under the age of 18 have been sexually assaulted worldwide.²⁴

Child sexual abuse perpetrators are more likely to be known to their victims in contrast to strangers or unidentified individuals, such as family members or family friends and colleague.²⁵ This is in line with the assessment undertaken two decades earlier by Finkelhor (1994) of child sexual abuse research that found victims of child sexual abuse to indicate that no more than 10 percent to 30 percent of offenders were foreign to them.

The growth of the child is affected by child sexual abuse in South Africa.²⁶ Children who are sexually abused have severe physical, psychological, and social issues that activate additional adult difficulties. Most abusers are known to their victims and therefore the abuse is not always revealed by the victims. Accordingly, the law requires third parties to report suspicions of child sexual

¹⁸ KM Alvarez et al WHO (2010b). *Child maltreatment*. Fact sheet no 150.

¹⁹ A Shumba. 'Who guards the guards in schools?' *'A study of reported cases of child abuse by teachers in Zimbabwean secondary schools'* (2013) 81.

²⁰ VS Pinheiro 'National Research Council' (1993).

²¹ Box, G.E., Hunter, J.S. and Hunter, W.G., 2005. *'Statistics for experimenters': design, innovation, and discovery* (Vol.

2). New York: Wiley-Interscience.

²² World report on violence and health: summary. Geneva, World Health Organization, 2002.

²³ LM Richter & ARL Dawes 'Global status report on preventing violence against children'. Geneva: World Health Organization; 2020.

²⁴ VS Pinheiro (note 21 above; 4).

²⁵ LM Richter & ARL Dawes (note 24 above; 4).

²⁶ S Mathews, L Loots, Y Sikweyiya & R Jewkes 'Sexual abuse' (2012) 84.

abuse.²⁷ Because of child sexual violence, there are severe long-term implications for a child's growth and most victims experience emotions of shame and guilt throughout their adolescence.²⁸

Victims also face additional difficulties due to child sexual abuse, including cognitive disturbances, academic issues, physical issues, acting out and interpersonal difficulties.²⁹ It is noted that:

“There may be serious consequences of child sexual abuse, including symptoms of post-traumatic stress disorder (PTSD), depression, suicidal ideas and attempts, and inappropriate sexualised behaviour.³⁰”

Likewise, in research undertaken among 939 high school students in Cape Town, it was noted that South African teenagers who were victims of sexual assault were more likely to abuse alcohol, act antisocially (stealing, causing property damage, bullying others, physically fighting with others) and exhibit suicidal ideation and attempted suicide.³¹ In particular, child sexual abuse resulted in even more issues such as infection with Human Immunodeficiency Virus (HIV) and intimate partner violence.³² Against this context, this research is motivated to highlight the mandatory reporting of child sexual abuse, the need for a multidisciplinary strategy for the primary prevention and management of child sexual abuse, given the diversity of its after-effect manifestations and the prevailing inability to report child sexual abuse.

1.3 Statement of the Research Problem

In South Africa, child abuse remains a extensive issue despite the preservation provided by multiple legislative tools implemented since the emergence of popular democracy in 1994, according to a study by the South African Medical Research Council.³³ Child sexual abuse is generally a privately occurring, secretive activity. Children are often made to remain silent or not

²⁷ Section 54(a) of Chapter 7 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007.

²⁸ DM Fergusson, FH McLeod & J Horwood (2013).

²⁹ Kendall-Tackett, K.A. and Eckenrode, J., 1996. The effects of neglect on academic achievement and disciplinary problems: a developmental perspective. *Child abuse & neglect*, 20(3).

³⁰ S Mathews ... et al note 27

³¹ King, G. and Zeng, L., 2001. Logistic regression in rare events data. *Political analysis*, 9(2), pp.137-163.

³² R Maniglio. The impact of child sexual abuse on health: A systematic review of reviews *Clinical Psychology Review* (2009) 651.

³³ S Mathews ... et al (note 27 above; 6)

report that they have been abused by the perpetrator with threats from the perpetrator that they will be punished if they expose the perpetrator and often fear adverse implications for themselves or others if they reveal their abuse.³⁴ Studies show that many children never reveal their abuse, while others delay disclosure for years.³⁵ It is therefore crucial that children be helped in exposing the perpetrators so that new victims do not fall prey to these offenders as well as preventing revictimisation of concerned victims. External parties' early detection and reporting exposes the offenders and prohibits further violence.³⁶

For example, in South Africa, the Children's Act 38 of 2005 as amended by the 2007 Children's Amendment Act 41 mandates that teachers have a legal obligation to report any suspicion of child sexual abuse to police departments, the provincial Department of Social Development (DSD), or designated child protection organisations. Despite detailed procedures, policies and instructions given to schools, educators are noted not to follow these in instances of sexual abuse of children in their professions.³⁷ This issue will be further examined in the literature review, which is chapter two of the study, and discussed in the recommendations of the study. It is not just teachers, but also other individuals who do not report child sexual abuse cases for it to be attended to and for the victim to receive the justice they need as will be indicated in the literature review.³⁹ As a consequence, so many instances of child sexual abuse remain unreported and thus aggravate the plight of sexually abused children as well as those susceptible to sexual abuse for multiple reasons.

1.4 Aim of the Study

The aim of the research is to examine the effectiveness of the legislation that protects children against child sexual abuse in South Africa. In achieving this, the study will look into the factors that influence the mandatory reporting of child sexual abuse in South Africa and the means to incorporate different professionals mandated in the mandatory reporting of child sexual abuse.

³⁴ TB Goodman-Brown, RS Edelstein, JS Goodman, DP Jones & DS Gordon. *Why children tell: A model of children's disclosure of sexual abuse* (2003) 532.

³⁵ Smith, D.W., Letourneau, E.J., Saunders, B.E., Kilpatrick, D.G., Resnick, H.S. and Best, C.L., 2000. Delay in disclosure of childhood rape: Results from a national survey. *Child abuse & neglect*, 24(2), pp.273-287.

³⁶ J Sloth-Nielsen' Protection of children'. In: CJ Davel & AM Skelton (eds) *Commentary on the Children's Act* (2013) 17.

³⁷ P Burton & L Leoschut .*South Africa school violence: Results of the 2012 national school violence study* (2013).

³⁹Ibid 51.

1.5 Objectives of the Study

The study seeks to:

- Examine the effectiveness of South African legislation on mandatory reporting and protecting children against sexual abuse.
- Examine the factors that influence the mandatory reporting of child sexual abuse.
- Identify methods that can improve the mandatory reporting of child sexual abuse in South Africa.
- Make recommendations for the compliance of mandatory reporting of child sexual abuse.

1.6 Research Questions

- Is the legislation that protects children in South Africa from sexual abuse effective in its attempt to promote mandatory reporting?
- What are the factors that influence the reporting intentions of the helping professionals?
- What needs to be done to improve the reporting of child sexual abuse in South Africa?
- How are the interventions and strategies from the existing legislation meant to improve mandatory reporting?

1.7 The Significance of the Study

Child sexual abuse is a global issue and involves a breach of children's rights as enshrined in the UN Convention on the Rights of the Child (UNCRC, 1989). In addition, the Constitution and legal framework of South Africa also provide child protection against all types of neglect and child abuse, including sexual abuse.

The study's objective is to explore the mandatory reporting of child sexual abuse in the South African context. In doing so, it seeks to examine the factors that affect South Africa's reporting of instances of child sexual abuse. The research will evaluate some of the gaps in other prior research of the mandatory reporting of child sexual abuse by other researchers, as will be shown in the findings of the study in chapter five. There are so many cases of child sexual abuse that go unreported and even when children speak out and disclose to their teachers or other helping professionals that they have been sexually abused, most of them do not report these cases. The research will thus serve to guide experts and other people who are responsible for protecting

children in relation to the mandatory reporting of any suspected or real child sexual abuse cases in South Africa through the recommendations that will be provided in chapter five of the study.

This research will be helpful in guiding legislative modifications as well as in suggesting practical support measures to enhance the recognition and reporting of instances of child sexual violence.³⁸ Furthermore, considering the lack of literature on South African mandated reporters recognition and the reporting methods of child sexual abuse, this research aims to add to the body of literature by examining manifestations of child sexual abuse and reporting methods in the context of relevant South African legislation and policies.

1.8 Research Methodology

This research is a secondary and primary data analysis of South Africa's origins and history of mandatory reporting of child sexual abuse. The research design, collection of data and how the gathered information was analysed is given in detail in the following headings and sub-headings.

1.9 Research Design

A research design is a structure or a strategy for carrying out the research work. It specifies the details of the procedures needed to obtain the research information. The development of research offers a framework for collection of data and measurement as well as data analysis.³⁹ The research design has been influenced by the objectives and the aim of the study as given earlier. This thesis is based on desktop review of the relevant legal materials. Various sources will be utilized in writing this dissertation. Relevant South African and International source were used, such as: Books, Journal articles, Case Law, International documents, Statutes, internet source.

1.9.1 Exploratory and analytical research

Exploratory research's primary goal is to provide insight and understanding of the researcher's question. Researchers create theories explicitly through exploration, set priority, develop functioning definitions, and enhance the final design of research. Exploratory research is often

³⁸ K Walsh ... et al 'The contested terrain of teachers detecting and reporting child abuse and neglect' (2006) 70.

³⁹ R Roy & S Banerjee *Fundamentals of research methodology* (2008) 32.

used to reformation new ideas, participants' knowledge, and secret motives.⁴⁰ Searching for secondary data is the first step in exploratory studies. Secondary information is the data already gathered for their own purposes by others.⁴¹⁴²

Exploratory research can achieve specific goals such as:

- Familiarity with basic details, settings and concerns.
- Creating new ideas and assumptions, forming preliminary theories or hypotheses.
- Establishing the course for future research and techniques.⁴⁴

In the current study, initial exploratory research was conducted to obtain adequate information and data on the status of mandatory reporting in South Africa and the legal frameworks that guide the reporting of child sexual abuse. In the current research, analytical research was undertaken to realise the information and the utility of the data to address the research questions. To lay the foundation for further research and analysis, the information and literature review related to the current study were effectively juxtaposed.

1.9.2 Data collection

The second part of research design consists of drawing up of a plan for collecting information within the chosen research method. In gathering data, a researcher may choose from the two options below:

- Obtain pre-existing research.
- Taking on new research themselves

Secondary research is linked with the first choice, which includes accessing previously collected information. The second option is related to performing primary research, which generally

⁴⁰ Joppe, M. (2000). 'The research processes'- Available: <http://www.ryerson.ca/~mjoppe/rp.htm> (Accessed 25 August 2019).

⁴¹ *ibid* 45.

⁴² KJ Arrow *Social choice and individual values* (2 ed (2013) 118.

involves gathering original data for one's own use.⁴³ The current study, by secondary research, collected data from pre-existing research.

1.9.3 Secondary research

Secondary research is an essential part of any study and was implemented in the initial stages to understand the outline and create a framework for subsequent analysis. Secondary data collection included the pro-active search for figures both qualitative and quantitative, which already existed and was helpful in the research study's preparation and analysis.⁴⁴ In addition, desk research was not limited to the initial stages but persisted as primary research was underway, offering an indepth understanding of ongoing research and keeping it up to date with changes occurring in South Africa's mandatory reporting of child sexual abuse''.

In this study, the researcher undertook an exploration of South Africa's mandatory reporting of child sexual abuse using data involving more than one source to examine this issue. The research identified, analysed, synthesised, and critically evaluated the data from various sources, examining the political suggestions of the assumptions underlying the compilation and presentation of the various data sets and the organisational contexts from which they emerged as will be shown in chapter five of the study. Institutional data, for example official documents and reports from South Africa, scholarly results and other global information from private organisations investigating mandatory documentation of child sexual abuse in South Africa, were used in analysing the data of this desk research in chapter five. It should be noted that the effort was not to establish a comprehensive set of sources in the choice of organisational data sources for this analysis. Alternatively, selecting data sources was intended to create a representative cluster of institutions from the range of potential sources and approaches to information.⁴⁵

⁴³ Ibid 46.

⁴⁴ L Andrews ... et al *Classic grounded theory to analyse secondary data: Reality and reflections* (2012) 17.

⁴⁵ Ibid 243.

1.9.4 Data analysis

This research was accomplished out as a desk study. Desk study research focuses on collecting and analysing already available information or data in either print or electronic form.⁴⁶ “This study looks for significant and practical policy implications resulting from an analysis of the various data available on the mandatory reporting of child sexual abuse in South Africa”.

In order to complete this desk research, the following types of analysis will be done. More significantly, secondary data analysis allows inexperienced researchers to use the data collection expertise of more seasoned and advanced researchers, both in social work and law and in other fields, allowing researchers access to much greater amounts of data than they could possibly or reasonably obtain on their own.⁴⁷

Most of the sources and their data were analysed in a basic descriptive analysis. The study identified, analysed, and synthesised each source’s establishment priorities at this stage.⁴⁸ This involved a textual analysis of each source’s core documents.⁴⁹ The objective will determine the practical and not substantial significance of the data. As a desk study, this research is not intended to explore reliably significant differences between sources, but to identify and explore the practical potential “downstream differences”.⁵²

1.10 Structure of the Dissertation

This study consists of five chapters:

Chapter one describes the context of the study and explains the main issues of the study. This section also discusses the study’s purpose and objectives, the research problem and the study’s significance. This chapter will also address the methodology used to gather information to assist

⁴⁶ Management Study Guide. *Doing research* (2012) 44.

⁴⁷ Ibid 46.

⁴⁸ C De La Torre ‘How to write a descriptive research design’ (2012) available at http://www.ehow.com/how_7722711_write-descriptive-researchdesign accessed on 21 August 2019.

⁴⁹ Hawkins, J.M. and Silva, B.C., 2018. Textual analysis. *The SAGE Encyclopedia of Communication Research Methods*. Los Angeles, CA: SAGE Publications. ⁵²Ibid 50.

in providing feasible responses to research issues in order to attain the aim of the study and objectives. It is this chapter that guides all the subsequent chapters of the study.

Chapter two will review the literature in relation to child sexual abuse globally, regionally and in South Africa in particular. This review of literature will help answer some research questions and analysis in the gaps that exist in the issue under study. References will also be made in the recommendations based on the findings of other researchers.

Chapter three will be looking at the international legislation on child sexual abuse and mandatory reporting, the legal framework that protects child from abuse, this include ACRWC, CRC in other countries.

Chapter four will offer the legislative literature on children's rights among other issues in South Africa. This will be to gain knowledge of current legislation and to what extent they promote the mandatory reporting of child sexual abuse. It is this legislation that will also guide the analysis in chapter four of the study in answering the objectives of the study.

Chapter five will highlight the statement of results, discussion, and interpretation of findings. The presentation and discussion of findings will be linked to chapter two based on the findings of other researchers on the issue under study.

Finally, the conclusion taken from the research will be presented in chapter six, which is the final chapter of this research. This chapter will also provide the recommendations based on the findings of the study.

1.11 Conclusion

The chapter was a presentation of the research subject's introductory information. It presented the background to the study, the statement of the problem, the aim, the objectives, the research questions, the meaning of the study as well as the outline of the entire study and what each chapter will present. The purpose of the research is to examine the efficacy of the legislation that protecting children from sexual abuse and the factors influencing the mandatory reporting of child sexual abuse in South Africa and how various experts are required to report child sexual abuse can be incorporated in this issue. The study was a desk research that was exploratory and analytical in

nature. A study and examination of government documents and records, academic research, and studies on mandatory reporting of child sexual abuse in South Africa by private organisations will be used. A synthesis analysis of mandatory reporting trends will be constructed and presented between subjects, that is, mandated reporters will be indicated in comparisons of different sources data. Among other issues, the following section introduces the literature on children's rights and the mandatory reporting of child sexual abuse of children in South Africa.

CHAPTER TWO

LITERATURE REVIEW 2. Introduction

This chapter is a literature presentation on the mandatory reporting of child sexual abuse in South Africa. As a starting point, together with those mandated to report, an explanation of what mandatory reporting is, will be provided. In addition, this chapter will present the global, national and local legal frameworks protecting children from sexual abuse, the factors affecting compulsory reporting, methods for enhancing compulsory reporting, the incidence of child sexual abuse in South Africa and the effects of child sexual abuse on child development.

2.1 What is Mandatory Reporting?

For the chosen classes of individuals to report suspected child abuse and neglect to government authorities, mandatory reporting is a legislative requirement. In South Africa, both Section 2 of the Child Care Act of 1983, and Section 6 of the Family Violence Prevention Act of 1993, outline mandatory reporting as the requirement of all experts who work with children to report alleged negligence, ill-treatment or abuse. Moreover, Section 42 of the Child Care Act states that any professional who fails to report abuse will be held criminally liable for a conviction-punishable offence.⁵⁰

2.1.1 Who are Mandatory Reporters?

The general focus of this study is to explore the factors influencing mandatory reporting when a child is suspected of being sexually abused through desk research. This is supposed to be achieved by knowing the experience of important players (mandatory reporters) engaged in a self-reporting process. The way their activities are described and validated is the key to understanding their implicit reporting theories. While there may be a specific way for each role player to theorise about reporting in the case of suspected child sexual abuse, these theories may differ for specific

⁵⁰ South African Law Commission *Project 107: Sexual Offences against Children* (2001) available at www.server.law.wits.ac.za/salc/issue/ipl0.html accessed on 2 August 2019.

Section 42 of the Child Care Act states that any professional who fails to report abuse will be held criminally liable of an offence punishable on conviction.

professions. This study is expected to provide a body of studies that can foster and assist in understanding how distinct experts are reporting on child sexual abuse in this area. The aim is that in the future this may lead to more field research promoting a multidisciplinary approach to teamwork and eventually enhancing child protection policy and practice. Mandatory reporters are persons who, as part of their paid or professional job, provide the following services, in whole or in part, to children:⁵¹

- Health care professionals (for example, licensed medical practitioners, experts, nurses in general practice, midwives, occupational therapists, speech therapists, psychologists, dentists, and other associated health professionals operating in personal or public health practices)
- Professionals in the welfare sector (psychologists, social workers, case workers and youth workers for instance)
- Educational professionals (for example, teachers, advisors, principals)
- Children's services (for example, child care workers, day care employees and home caregivers)
- Residential services (for example, refugees)
- Law enforcement (for example, police)

The call for a positive and effective response to the child sexual abuse problem requires the multidisciplinary participation of a number of areas of knowledge with distinct levels of participation. Part of what these experts do is to make choices about child placement, safety, reporting, other agencies participation, risk assessment, and interventions to guarantee the child's continuing well-being and safety. The reporting procedures used may depend in part on implicit theories of understanding the child being abused and views on how to help.⁵⁵ This will be shown

⁵¹ Section 110(1) of Chapter 7 of 'Children's Amendment Act 41 of 2007 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 and youth care centre" "are compelled to report cases in the prescribed form where they believe on reasonable grounds that a child needs care and protection".

⁵⁵DPH Jones & P' Ramchandani *Child Sexual Abuse': Informing Practice from Research* (2009) 301.

in chapter four in how different professionals' procedures differ in the reporting of child sexual abuse.

With the implementation of a wide spectrum of global and regional conventions, South Africa is dedicated to the gradual realisation of children's rights and their protection from all types of abuse and exploitation through its own internal legislation, policies, and programmes.⁵² This chapter will provide an overview of the appropriate laws and policies that have had significant consequences for children and their rights to be protected against sexual abuse.

A common theme in global works commissioned to confront the child abuse epidemic is the assertion that no type of child abuse is justifiable and that all forms of child abuse can be prevented.⁵³ In addition, the development of international treaties and legal instruments was based on a rights-based view that requested the recognition of children as fully-fledged human beings with separate rights worthy of protection. These international instruments are aimed at protecting children's inalienable rights to grow in an environment where they are nurtured and not abused.⁵⁴ The international instruments and their influence will be covered more fully in Chapter 3.

2.2 Theoretical Framework

A number of issues have been noted influencing child sexual abuse (CSA) case management and reporting, and how child victims of sexual abuse and welfare decisions are currently being addressed. The main models of conceptualising sexual abuse and case management in the field of social work seem to be as follows:⁵⁵

- a) **Victim advocacy model:** Considers that child sexual abuse is a crime that warrants the offender's specific penalty through the justice system. This perspective assumes that in prosecuting and punishing the perpetrator, the child's age or the child's connection with the abuser is irrelevant. It is also based on the view that society has processes in place in

⁵² ML Hendricks. 'Mandatory reporting of child abuse in South Africa': *Legislation explored* (2014) 550.

⁵³ VS Pinheiro (note 21 above; 13)

⁵⁴ Buck, T., 2014. *International child law*. Routledge.

⁵⁵ K MacFarlane & J Bulkley *Treating child sexual abuse: An overview of current programme models* (1982) 80.

⁶⁰Ibid 23.

the form of the justice system to safeguard children's rights and assumes that the legal process is inherently important.⁶⁰ This model can be argued to be in the best interest of the

child to some extent since prosecuting and punishing the perpetrator ensures that justice has been rendered to the abused child. However, one can say that overlooking the child's age or connection to the perpetrator may not be in the best interest of the child as detachment from close relations may also be detrimental to the child's wellbeing if not handled properly.

- b) **System modification model:** In practice, this model supports an intra-family abuse family therapy programme, agreed on post-conviction therapeutic sentencing, pre-trial diversion strategies, and coordinated attempts to defer criminal prosecution in favour of therapy programme adherence contracts.⁵⁶ This can be said to be in the best interest of the child to some extent as the nuclear family is of great importance to the life, the survival and development of the child as the child needs protection from potential abusers. Hence, making effort to treat dysfunctional family members keeps that family unit together as the child grows.
- c) **System alternative model:** This model derives from the belief that the legal system is powerless to deal with sexual abuse cases, especially incest, and that individual motivation to change is a prerequisite for change. The threat of penalty is therefore perceived as coercive and not conducive to change. An underlying assumption is that if intervention is to be truly psychotherapeutic, it is necessary to identify and eliminate or avoid any conditions that interfere with that process.⁵⁷ Participation in the legal process is viewed as counter-therapeutic in this regard. It is argued that the problem of informed consent and confidentiality that is inherently endangered in any effort to combine law enforcement with 'helping professions' is a significant tenet in this model.⁶³ However, it can be said that as much as change is needed, legal processes should not be ignored as this may result in a society that will continue violating children's rights knowing they will go free all in the

⁵⁶ Ibid 14.

⁵⁷ LS Greenburg 1979 in K MacFarlane & J Bulkley Resolving splits: Use of the two-chair technique. *Psychotherapy: Theory, Research & Practice* (1982) 320. ⁶³Ibid 62.

name of therapy. At the end this will not be a result of the best interest of the child as many children can be at the risk of abuse.

2.3 Factors Influencing Mandatory Reporting

It is essential for several reasons to understand the factors that stop professionals from reporting suspected instances of child abuse. Firstly, despite underreporting claims, professionals still account for reporting most instances of child abuse filed with officials legally appointed to deal with such instances.⁵⁸ Therefore, in the drive to observe and remedy instances of child abuse, professionals with mandatory reporting duties are strategically crucial. Teachers, who generally have the most contact with children, are more likely to detect the abuse of a child.⁵⁹ Furthermore, if instances of child sexual abuse are not reported, victims are not only denied access to possibly useful measures,⁶⁰ they are also at risk of further exposure to increased physical or psychological trauma.⁶¹

2.4 Methods in which mandatory reporting can be enhanced to increase the reporting rate in South Africa.

Research on the impact of training, identification and reporting of child abuse among practitioners has yielded mixed outcomes. Some scientists discovered, contrary to their expectations, that educators without formal child protection training were more probable to identify and report abuse than those with formal education.⁶² Formal child protection training in another research had no impact on the identification and reporting of child abuse by educators.⁶³ However, in a review of the impacts of mandatory reporting legislation on child maltreatment reporting, it was claimed that the importance of the training remains a cornerstone of any strategy to enforce such legislation effectively, as training not only leads to higher reporting rates but also improves reporting

⁵⁸ KM Alvarez et al (note 19 above; 15)

⁵⁹ J Hinson & R Fossey *Child abuse: What teachers in the 90s' know, think, and do* (2014) 251.

⁶⁰ KM Alvarez et al.

⁶¹ K Walsh M Rassafiani B Mathews A Farrell & D Butler 'Teachers attitudes toward reporting child sexual abuse': *Problems with existing research leading to new scale development* (2010) 323.

⁶² Ibid 67.

⁶³ Walsh, K., Bridgstock, R., Farrell, A., Rassafiani, M. and Schweitzer, R., 2008. 'Case, teacher and school characteristics influencing teacher's detection and reporting of child physical abuse and neglect'.

quality.⁶⁴ The probable spin-offs of enhanced reporting quality through training would include lowered frequency of inconsistent reports and negative effects on victims, alleged perpetrators and reporters; preventing the wastage of public funds on investigating inaccurate reports and ultimately freeing up much needed resources for those who actually need them.⁶⁵

Those responsible for the reporting of suspected cases of child abuse have often failed to do so for a range of reasons in South Africa and other parts of the world.⁶⁶ The majority of available research on child abuse recognition and reporting practices has focused almost exclusively on health care staff and, to some extent, on teachers.⁶⁷ Contact continuity⁷⁴ and the availability of caring counsellors and teachers make the school environment a convenient place to detect and report abuse.⁶⁸

The gap in the literature indicates that despite a legal duty to report suspected child sexual abuse, Healthcare Practitioner Internationally and National fail to comply with reporting legislation. Other barriers are lack of knowledge and training regarding child sexual abuse, child's safety after reporting, shortage of available resources to deal with child sexual abuse and the delay in progressing with legal route. There are so many cases of child sexual abuse that go unreported and even when children speak out and disclose to their teachers or other helping professionals that they have been sexually abused

2.5 Conclusion

Sexual abuse of children has been a phenomenon over the centuries. Child sexual abuse has significant consequences not only for the people affected, but also for society, and these cannot be ignored any longer. This pressing situation has now been recognized in South Africa which is

⁶⁴ Wallace & L Bunting. 'An examination of local, national and international arrangements for the mandatory reporting of child abuse: the implications for Northern Ireland' (2007).

⁶⁵ B Mathews & K Walsh. 'Issues in mandatory reporting of child sexual abuse by Australian teachers'(2004) 15.

⁶⁶ KM Alvarez, et al. (note 19 above; 19).

⁶⁷ Dinehart, L. and Kenny, M.C., 2015. 'Knowledge of child abuse and reporting practices among early care and education providers'. *Journal of Research in Childhood Education*, 29(4), pp.429-443.) ⁷⁴ibid 73.

⁶⁸ J Hinson & R Fossey (note 71 above; 19).

dealing with a variety of prevention and intervention programmes in this respect. The severe information deficiencies, however, tend to delay the efficacy of such interventions. Therefore, enhanced studies are needed to provide information on child sexual abuse's precise magnitude, distribution, and vulnerability-related variables.

CHAPTER THREE

INTERNATIONAL LEGISLATION ON CHILD SEXUAL ABUSE AND MANDATORY REPORTING

3.1 International legal frameworks that protect children from abuse.

Coordinated efforts have been made to use international conventions such as the UN Convention on the Rights of the Child (UNCRC) and the African Charter on the Rights and Welfare of the Child (ACRWC),⁶⁹ to safeguard children's rights. Such conventions, which have been formally adopted by many states, including South Africa, provide signatory countries with a legal obligation to take action to adequately protect children from all kinds of maltreatment or abuse.⁷⁰

Children have a right to care and protection, according to the Convention on the Rights of the Child (CRC). This means that governments have a legal responsibility to ensure that children's rights to life, development, protection from harm, and participation in choices that affect them are met (United Nations, 1989). The right to protection of children is covered in various articles of the Convention and covers a wide range of situations, including birth registration, freedom of opinion and association, and the right to a life free of violence, abuse, and exploitation in all forms⁷¹. The African Union created a comparable charter in 1990, inspired by the CRC. The African Charter on the Rights and Welfare of the Child (ACRWC) requires states to take adequate measures to guarantee that children who are subjected to school or family abuse are treated with humanity and respect for their inherent dignity.⁷²

3.2 The United Nations Convention on the Rights of the Child (UNCRC/CRC)

While the League of Nations endorsed the first 'Declaration on the Rights of the Child' in 1924, only in 1989 did the 'international community' reach consensus on the standards of children's human rights.⁸⁰

⁶⁹ LM Richter & ARL Dawes (note 24 above; 18).

⁷⁰ Comment No, G., 2013. Convention on the Rights of the Child.

⁷¹ UNICEF. *Good Practices, III the World Congress against Sexual Exploitation*. (2014) 82.

⁷² Organization of African Unit. *African Charter on the Rights and Welfare of the Child*, (1990) 125.

⁸⁰ UNICEF, (1989). Available at www.unicef.org/lcrc/crc.htm, accessed on 2 August 2019.

The main principles listed in the Convention on the Rights of the Child of the United Nations are:

1. All rights extend to all children, where a child is an individual under the age of 18.⁸¹
2. A main consideration must be the child's best interests.⁷³
3. The right to life and optimum survival and growth of all children⁷⁴ and
4. It is necessary to seek and take into consideration the opinions of children.⁷⁵

The United Nations and its signatories recognize that children are a fragile populace and offer guidance on how to protect them and their rights by signatories to the Convention on the Rights of the Child. It is made clear that child protection measures must be protective and preventive and should include the identification, reporting, referral, inquiry, and treatment of child abuse.⁷⁶

3.3 The African Charter on the Rights and Welfare of the Child (ACRWC)

In 1990, the African Charter on the Rights and Welfare of the Child (ACRWC) was introduced. It was intended to maintain both the spirit and substance of the CRC's text while at the same moment having unique clauses guided by African circumstances. One of the reasons for making an Africa Children's Charter was the realization that Africa had been under-represented during the CRC's drafting process (only Algeria, Morocco, Senegal, and Egypt were significantly involved in the draft process). A second reason was the belief that Africa required a children's charter that reflected the African context's specifics. The Preamble to the Charter demonstrates that it arose from Africa's social and cultural values, such as those related to family, community, and society, considering the virtues of African civilization's cultural heritage, historical background, and values. Thus, while focusing primarily on the CRC, the ACRWC, as it advocates for the rights of

⁷³ 'Article 3(1) of the United Nations Convention on the Rights of the Child states that In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration'.

⁷⁴ 'Article 6 of the United Nations Convention on the Rights of the Child states that "States Parties recognize that every child has the inherent right to life. States Parties shall ensure to the maximum extent possible the survival and development of the child'.

⁷⁵ 'Article 12(1) of the United Nations Convention on the Rights of the Child states that "States Parties shall ensure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight with the age of child'.

⁷⁶ 'Article 19(2) of the United Nations Convention on the Rights of the Child states that Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement'.

⁸¹ 'Article 2(1) of the United Nations Convention on the Rights of the Child states that States Parties shall respect and ensure the rights set forth in the present Convention of each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status'.

children, considers the specifics of the African context.

3.4 Mandatory legislation in other countries

Mandatory reporting laws are intended to identify situations of child abuse and neglect and to provide assistance to the affected children.⁷⁷ They were created in reaction to the mostly hidden nature of child physical abuse and neglect, with the goal of alerting child welfare organizations to cases⁸⁷. They compel members of certain groups to report suspected cases of child abuse and neglect to government officials. Australia, Brazil, Canada, Denmark, France, Hungary, the Republic of Ireland, Israel, Norway, and the United States are among the countries that have mandatory reporting laws.

3.4.1 Australia

The first laws in Australia were enacted in South Australia in 1969, and they have subsequently been enacted in all Australian jurisdictions.⁷⁸ However, not all jurisdictions have the same set of laws. There are differences in who must report, what sorts of abuse and neglect must be reported, the 'state of mind' that activates the reporting obligation (that is, having a reasonable suspicion or belief), and to whom the complaint must be made.

The name of the mandated reporter is protected under the law in all countries. Furthermore, the law states that the person who is reporting is not accountable in any civil, criminal, or administrative proceedings if the report is made in good faith.⁷⁹ Teachers in Queensland, for

⁷⁷ A Ferrante, J Clare, S Randall & J Boyd. 'Police responses to child sexual abuse' 2010–2014, *An analysis of administrative data for the Royal Commission into Institutional Responses to Child Sexual Abuse*, (2017) 7. ⁸⁷ B Mathews, L Bromfield & K Walsh, K. 'Comparing reports of child sexual and physical abuse using child welfare agency data in two jurisdictions with different mandatory reporting laws' (2020) 75.

⁷⁸ M Falkiner, D Thomson & A Day. 'Teachers' understanding and practice of mandatory reporting of child maltreatment' (2017) 38.

⁷⁹ Ibid 113.

example, are obligated by school policy to report all forms of suspected severe abuse and neglect, but they are only compelled to disclose sexual and physical abuse under the legislation.⁸⁰

3.4.2 The United Kingdom

Those dealing with children in England are currently not enforced by law to report known or suspected child abuse or neglect. exponent of obligatory reporting believe that England should follow the lead of countries where failing to report suspected child abuse to the police is a criminal offense. They argue that by doing so, children will be better protected.⁹¹

The English Government published a survey about reporting and responding to child abuse and neglect in July 2016. The consultation solicited feedback on two potential improvements for reporting and responding to the child abuse and neglect:

- The introduction of mandatory child abuse and neglect reporting. Certain practitioners or organisations would be required to report child abuse or neglect if they knew or had reasonable cause to believe it was occurring. Those who violate the responsibility may be subject to a variety of penalties.
- The addition of an obligation to act. If certain practitioners or organisations knew or had reasonable grounds to think that child abuse or neglect was occurring, they would be required to take appropriate action (which could include reporting).
- The increased intervention in the lives of children and families that would be expected if mandatory reporting or a duty to act were enacted may undermine confidentiality for those contemplating disclosure of abuse, with victims more hesitant to make disclosures if they know a record of their contact will be made.⁸¹
- The Government's statement concluded that most importantly, the evidence and submissions obtained through the consultation have not proved definitively that the

⁸⁰ Ibid 122.

⁸¹ HM Government *Reporting and acting on child abuse and neglect: summary of consultation responses and Government action* March (2018) 5-6.

introduction of a mandatory reporting obligation or a duty to act enhances child outcomes. When considering such a significant reform of such an important service, this must be the guiding factor. What the consultation has revealed, together with serious case reviews, is that professional experience and other evidence suggests that reporting is not a major issue in circumstances where a child has failed. Whether or not a child is already known to social

⁹¹ HM Government, 'Working Together to Safeguard Children': *A guide to inter-agency working to safeguard and promote the welfare of children*, July (2018) 55-56.

services, translating practitioners' understanding of a child's ongoing needs into appropriate support can be the difference between life and death. As a result of this research, it appears that information sharing, professional practice, and decision-making are more likely to be at the root of situations in which children are not adequately protected.⁸²

3.4.3 Tanzania

African states have embraced the primary obligation and responsibility to safeguard the rights and welfare of children in their countries by ratifying the African Children's Charter. However, most African countries lack mandatory reporting laws for child abuse, while having laws, policies, and programmes aimed at protecting children. Tanzania and Kenya are two of the countries that will be covered.

The Tanzanian government enacted the Sexual Offence Special Provision Act (SOSPA) in 1998, following the adoption of the CRC and the ACRWC and in response to a rise in sexual offenses involving both adults and minors.⁸³ The goal is to reduce similar crimes in the country. The Act specifies that the legal age of consent to sex is 18 years old. Anyone charged with or indicted for a sexual offense against a child faces harsh penalties.

The term ‘‘child abuse’’ is defined by the Tanzanian law as

⁸² Ibid 127.

⁸³ McAlpine, K., 2015. Legislation, responsibilities and procedures for protecting.

*“Contravention of the rights of the child by causing physical, moral or emotional harm, including beatings, insults, discrimination, neglect, sexual abuse and exploitative labour.”*⁸⁴

Anyone accused of performing such activities on a child is guilty of a crime that can be prosecuted in a court of law and punished if found guilty. The Sexual Offense Special Protection Act (SOSPA)⁹⁶ emphasises the importance of mandatory CSA reporting. The police, a certified medical officer, a registered nurse, the court prosecutor, and the magistrate/judge may all be present when a case is reported. Health professionals aid the police in conducting forensic examinations of victims of the suspected crimes. They describe physical findings such as bruising, bleeding, and tearing, as well as their location, discharges, and the presence of bodily fluids like sperm or blood.

They also take samples for a variety of other laboratory tests to rule out STDs like syphilis, chlamydia, gonorrhoea, and HIV. At the time of reporting and following three-, six-, and twelve-month follow-ups, survivors are given post-exposure prophylaxis (PEP) to reduce the chance of getting HIV infection, in addition to ongoing psychological care. To treat sexually transmitted infections, a broad-spectrum antibiotic is used. To avoid the chance of conception, reproductive-age survivors are given a urine pregnancy test and a high-dose oestrogen emergency contraception pill (the morning after pill).⁸⁵

3.4.4 Kenya

Kenya’s Evidence Act is one of the most remarkable examples of how far the government has gone to secure child protection. Originally, the Act required that the evidence against an accused individual be corroborated.⁸⁶ Because most child sexual abuse occurs in private, convicting those accused of such crimes has proven difficult, and most of those accused have walked free. Kenya

⁸⁴ Omari, L.N., Linsk, N.L. and Mason, S., 2016. ‘Strengthening Tanzania’s social welfare workforce to provide ongoing paraprofessional support services to vulnerable children and families. *The Handbook of Social Work and Social Development in Africa*. ⁹⁶Ibid 94.

⁸⁵ United Republic of Tanzania (URT). ‘Ministry of Community Development, Gender and Children’: *Violence against children in Tanzania: Findings from a national survey* (2011) 224.

⁸⁶ Evidence Act of 1963, Available at <http://www.kenyalaw.org/lex//actview.xql?actid=CAP.%2080> : accessed 12 June 2017.

revised the Act in 2006 to allow courts to convict offenders in child sexual offense cases without the need for corroboration if the judge believes the victim or witness is telling the truth.⁸⁷

Kenya, however, appears to be a long way from having a functioning child protection system. While the country has put in place a solid legislative framework to safeguard them, children remain largely vulnerable, according to a 2015 policy statement of the National Plan of Action (NPA). The booklet offers fifty-four action points grouped into thirteen different sections to address this issue. The creation and strengthening of monitoring and evaluation systems in the child protection sector is one of them. to help policymakers and program implementers make better decisions.⁸⁸

Kenya launched the Child Protection Information Management System, an online platform in 2017 to monitor, track, and report on child protection actions. The system is designed to collect data on children who have been subjected to violence, neglect, abuse and exploitation, as well as child marriage and teen pregnancy, among other things. Kenya also operates Helpline 116, a 24-hour toll-free emergency public helpline for reporting incidents involving children in need of care and protection. The information gathered by Helpline 116 is said to be used in the development of child policy.⁸⁹

3.4.5 Discussion of the Domestic Law in other Jurisdiction

Mandatory reporting legislation includes the list of specific occupations that are required to report suspected child abuse and neglect. Teachers, early childhood education and care practitioners, doctors, nurses, and police officers are the most prevalent occupations identified as mandatory reporters⁹⁰

The sorts of abuse and neglect that must be reported are different. It is mandatory in some jurisdictions, for example, New South Wales and the Northern Territory, to report suspicions of all five forms of abuse and neglect, that is, physical abuse, sexual abuse, emotional abuse, neglect,

⁸⁷ Onyango, P. 'African Network for the Prevention and Protection against Child Abuse and Neglect (ANPPCAN) experiences'.

⁸⁸ The National Council for Children's Services, *National Plan of Action for Children in Kenya 2015-2022* (2015).

⁸⁹ *Child Help Line 116* National Council for Children's Services available:
<http://www.childrencouncil.go.ke/childhelp-line.html?showall=&start=1>.

⁹⁰ Ibid 114.

and exposure to family violence. Only some sorts of abuse are required to be reported in other areas, for example, Western Australia, Queensland, Victoria, and the Australian Capital Territory.⁹¹

In most countries, the law states that only incidents of substantial abuse and neglect should be reported, with the exception of sexual abuse. In practice, all suspicions of sexual abuse must be reported since sexual abuse should always raise a suspicion of serious harm. Despite the fact that it is not required by law, suspicions of less serious child abuse and neglect may nevertheless be reported to child and family welfare services.¹⁰⁴

It is crucial to remember that the responsibility to report extends to suspicions of serious abuse or neglect in the future, not only suspected incidents of serious abuse or neglect that have already occurred. The name of the mandated reporter is protected under the law in all countries. The law states that the reporter is not accountable in any civil, criminal, or administrative proceedings if the report is made in good faith.⁹²

In terms of defining a child, all jurisdictions, with the exception of New South Wales and Victoria, require mandatory reporting for all young people under the age of 18. Only scenarios involving children under the age of 16 are covered by the responsibility in New South Wales. Only scenarios involving children under the age of 17 are covered under the responsibility in Victoria.⁹³

In Australia, this sort of obligatory reporting is one of numerous legal frameworks that force designated people to report specific types of child abuse. The reporting responsibilities outlined below are found in each jurisdiction's child protection legislation. They are the most common sort of reporting obligation, with most cases involving various forms of abuse and neglect by parents

⁹¹ J Kuruppu, K Forsdike & K Hegarty *It's a necessary evil': experiences and perceptions of mandatory reporting of child abuse in Victorian general practice*. (2018) 729. ¹⁰⁴ Ibid 116.

⁹² Ibid 113.

⁹³ B Mathews & N Heyes *Mandatory reporting of child abuse and neglect* (2020) 65.

and caregivers (even though useful, situations of non-familial sexual abuse will be subsumed under the reporting duty).⁹⁴

As a result, child protection reporting regulations coexist with other types of reporting legislation. These other statutes are mostly found in criminal laws and demand reports of child sexual abuse, though they can also cover significant physical abuse. These criminal law reporting obligations do not exist in every jurisdiction, and when they do (for example, in New South Wales, Victoria, the Australian Capital Territory, and the Northern Territory), they vary in extent and depth, albeit that they all need police reports.

All adults in the jurisdiction are required by criminal law to report the defined sort of abuse. Other forms of reporting responsibilities try to uncover institutional sexual abuse, and in recent studies all of these various responsibilities have been discussed.⁹⁵ Most countries have mandatory reporting laws.

Child protection systems are a set of usually government-run services designed to protect children and young people who are underage and to encourage family stability .African Charter on the Rights and Welfare of the Child, 1990 Article 21: Protection against Harmful Social and Cultural Practices, States Parties to the present Charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular: (a) those customs and practices prejudicial to the health or life of the child; and (b) those customs and practices discriminatory to the child on the grounds of sex or other status. Convention on the Rights of the Child, 1989 Article 19(1): States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment,

⁹⁴ Ibid 119.

⁹⁵ B Mathews, LM Bromfield, K Walsh, Q Cheng & RE Norman Reports of child sexual abuse of boys and girls: longitudinal trends over a 20-year period in Victoria, Australia (2017) 15.

maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

3.5 Conclusion

Coordinated attempts have been made to use global conventions such as the UNCRC and the African Charter on Child Rights and Welfare to protect children's rights. Mandatory reporting laws are intended to play a critical role in the early detection of child abuse cases in order to facilitate necessary intervention and assistance, with the primary goal of advancing child protection. These laws are also important because successful early intervention has significant consequences for individuals, society, and the government. Most required reporting laws include a list of mandated reporters, who are typically people who work with children and are thus expected to be able to recognize indicators of abuse. Those working in education, health, and social services are the most likely to be mandated reporters. However, due to a lack of evidence about the impact of legislative differences between jurisdictions, and the unresolved question of whether policy-based duties are as (or more) effective, some jurisdictions have a relatively long list of mandated reporters that includes people employed in or associated with non-public bodies. In Africa, though most countries are signatories to the CRC and the ACRWC, these countries do not have mandatory laws for reporting cases of child sexual abuse. Handling of such cases is mainly addressed under different child specific legislations, policies, and programmes. The international and regional conventions, which have been ratified by many nations including South Africa, place a legal duty on signatory nations to take measures to fully safeguard children from all types of abuse or maltreatment and it is in this context that South Africa has established its own laws that safeguard children from all types of abuse and maltreatment. The legislation on child sexual abuse and mandatory reporting in South Africa will be discussed in the following chapter.

CHAPTER FOUR

SOUTH AFRICAN LEGISLATION RELATED TO CHILD SEXUAL ABUSE AND MANDATORY REPORTING 4. Introduction

The South African government has established statutory legislative frameworks and protocols to safeguard children's rights and protect them from violence in accordance with its global legal commitments. This chapter will discuss some of the Acts and policies related to this. Various mechanisms have been put in place to guarantee maximum safety of children as a means to enforce some of the policies. However, resource constraints remain a significant challenge for some of the laws to be fully implemented.

4.1 South African Child Sexual Abuse Legal Frameworks

This chapter is dedicated solely to the rights of the South African child and ensures the right of every child to fundamental necessities such as food, shelter and fundamental facilities, as well as protection against violence, negligence or degradation.⁹⁶ It also prevents a child from being exposed to exploitative labour practices or circumstances of work that threaten the well-being, education, physical or mental health or religious, moral or social growth of a child.⁹⁷ Together with Article 3 of the UNCRC, Section 28(2) of the Bill of Rights supports the principle that the best interests of the child will be the overarching consideration in all matters concerning a child.⁹⁸ Sections 10 and 12 of the Bill of Rights ensure for every South African, including children, the right to dignity and protection from abuse. The International documents and treaties are discussed more detail, in Chapter 3.

The practical protection of these South African children's inalienable rights is supported by protocols and domestic laws such as the Children's Act No. 38 of 2005, Children's Amendment Act of 2007, South African Schools Act No. 56 of 1996,⁹⁹ the abolition of the 1997 Corporal

⁹⁶ (subsections 1(c) and 1(d)) of Section 28 of the South African Constitution Bill of Rights (RSA, 1996), including sexual abuse (South African Commission on Human Rights (SAHRC), 2002).

⁹⁷ Section 28 (1f) of the South African Constitution Bill of Rights (RSA, 1996).

⁹⁸ A Dawes & M Mushwana 'Monitoring child abuse and neglect' (2007) 288.

⁹⁹ KwaZulu-Natal Department of Education. (KZNDOE) *Policy guidelines for the management of child abuse and neglect in KZN Department of Education* (2010a) 304.

Punishment Act¹⁰⁰, Sexual Offences and Related Matters Amendment Act No. 32 of 2007 and the Child Justice Act No. 75 of 2008.¹⁰¹ In addition to placing a legal duty on designated individuals and experts to report suspected child abuse cases to child protection services, the Children's Act (2005) also prescribes suitable penalties and protection from prosecution for defaulters and whistle-blowers respectively.¹⁰²

South Africa is in effect plagued by the increasing incidences of abuses of children's rights, including child sexual abuse.¹⁰³ There are many and diverse reasons for this, but some issues may need to be placed with the country's management. Resources are restricted, and while policies dictate certain child protection norms, this seems to be hard to enforce.¹⁰⁴ Specialised training for those working in protective facilities with children is scarce and it appears that South Africa lacks the infrastructure to deal with child abuse instances.¹⁰⁵

4.2 National Statutes Related to Child Sexual Abuse

4.2.1 Chapter 2 of the South African Constitution: The Bill of Rights

The Constitution of the Republic of South Africa Act 108 of 1996 is commonly regarded as one of the world's most progressive Acts. The Bill of Rights, which forms Chapter 2, addresses the rights of children and provides special protection for children.¹⁰⁶ There are particular provisions directed at ensuring that all South African people including children are protected, promoted and respected for human rights.

4.2.2 The Children's Act 38 of 2005 as Amended by the Children's Amendment Act 41 of 2007

Chapters 7 to 9 of the Children's Act 38 of 2005, as modified by the Children's Amendment Act 41 of 2007, deals specifically with the coverage of child protection (chapter 7), prevention and

¹⁰⁰ LM Richter & ARL Dawes (note 24 above; 22).

¹⁰¹ D McQuoid-Mason *Bioethics human rights and health law* (2011) 2079.

¹⁰² A Dawes & M Mushwana (note 123 above; 23).

¹⁰³ The South African Law Commission (note 54 above; 23).

¹⁰⁴ ML Hendricks (note 58 above; 24).

¹⁰⁵ Ibid 131.

¹⁰⁶ A Fouche. 'Prevention of sexual child abuse': *the need for an ecological, risk-factor approach* (2012).79.

early intervention programmes (chapter 8) and childcare and protection programmes (chapter 9) and all of these dictate particular child protection policies and strategies in South Africa.

Chapter 7 of the Children's Act 38 of 2005 as amended by the Children's Amendment Act 41 of 2007, specifically sections 104 to 128, contains strategies, provisions and standards clauses, which impose a legislative obligation on national ministers and provincial executive board members (MECs) of the Department of Social Development (DSD), ensuring that the country's child protection scheme works well and is responsible''.¹⁰⁷ The task of each MEC for Social Development is to correctly resource, coordinate and manage their provincial child protection services, including the facilities required to conduct investigations and evaluate suspected instances of child sexual abuse and to intervene and remove children from abusive situations.¹⁰⁸

Police services have a duty to ensure that the child concerned is safe and not at risk when reporting to the SAPS and that the SAPS must notify the case to the DSD or a designated child protection organisation within 24 hours.¹⁰⁹ Child protection organisations are those welfare organisations registered and appointed by the Director-General or Provincial Head of Social Development to conduct all or some of the child protection services contained in the Children's Act 38 of 2005.¹¹⁰

These organisations must submit all reports of child protection issues to the relevant provincial DSD, as it is eventually the provincial DSD that is responsible for: (i) taking suitable action to guarantee that the child is secure and protected from further damage; (ii) assessing the original accounts of abuse; (iii) investigating the case; (iv) further investigating the case for legal intervention; and (v) submitting the case to the National Child Protection Register (NCPR) for incorporation.¹¹¹

¹⁰⁷ Ibid 25.

¹⁰⁸ Section 105 of Chapter 7 of the Children's Act 38 of 2005 as amended by the Children's Amendment Act 41 of 2007.

¹⁰⁹ Section 110(4) of the Children's Amendment Act 41 of 2007.

¹¹⁰ ML Hendricks (note 58 above; 27).

¹¹¹ Ibid 26.

All abuse reports must be done based on good faith.¹¹² The principle of good faith is defined as “an internationally recognised common law duty to act honestly, openly and with conscientious impartiality” and that “in the context of mandatory reporting legislation, the reporting person must report his or her conviction of wrongdoing without any malicious or spiteful intent”.¹²⁶

The DSD Director-General is required to maintain the NCPR.¹¹³ The purpose of the NCPR is to record the details of all instances of abuse of children reported to the DSD (part A of the register) and to record all individuals found inappropriate to work with children (part B). Nevertheless, it is noted that although different child protection services such as police, social and justice facilities generated a wealth of information that could be used to monitor instances, few links existed and the data was not properly captured in the NCPR to generate a precise, valid and reliable database.¹¹⁴ It was discovered that as a result of incompletely filled-in forms, data collection and data management were not regarded as a priority by child protection services. There were also problems of inadequate human resources to retain the NCPR, and information technology constraints, as well as several issues with updating information on the NCPR.¹¹⁵

Chapter 9, primarily Sections 150 to 153 of the Children’s Act 38 of 2005 as modified by the Children’s Amendment Act 41 of 2007, provides that, when a child is abused in any manner, that child requires care and security, among other provisions. In particular, Section 151 provides for the removal of a sexually abused child to a temporary safe care facility where this is in the child’s best interests. The principle of the child’s best interest has been dealt with in more detail in Chapter 2. However, if it is in the child’s best interest, Section 153 offers for a notification to be delivered to an alleged perpetrator to leave the home where the child lives and to stay away from entering the home or contacting the child.

¹¹² Section 110(3) of the Children’s Amendment Act 41 of 2007.

¹²⁶ ML Hendricks (note 58 above; 28).

¹¹³ Sections 111 to 128 of the Children’s Act 38 of 2005.

¹¹⁴ A Dawes I Willenberg & W Long *Indicators for child protection* (2006) 305.

¹¹⁵ Ibid 30.

4.2.3 Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007

It is provided that any person convicted or suspected to have committed a sexual offence against a child may not: (i) work with a child or work for any agency which positions him or her in the position of authority, supervision, or care of a child or where he or she can gain access to a child; (ii) take on or foster a child and (iii) manage or run any child-related business.¹¹⁶ Section 54(a) of Chapter 7 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 concerns the mandatory or compulsory reporting of sexual offences. Anyone who has knowledge of a sexual offence committed against a child must report it to the police immediately.¹¹⁷

4.3 National Policies and Programmes Related to Child Sexual Abuse

4.3.1 The National Policy Framework on the Management of Sexual Offences

The Department of Justice and Constitutional Development (DJCD) has established the National Policy Framework for the Management of Sexual Offences (NPF) to ensure a consistent and organised inter-sectoral response by all departments and institutions in South Africa dealing with sexual offences.¹¹⁸ The NPF directs the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007's adoption, regulation and administration.

The NPF's approach to sexual offences has four overarching principles: (i) victim-centred; (ii) multi-disciplinary and inter-sectoral; (iii) specialised services; and (iv) equal access to quality services.¹¹⁹ The first principle is based on the premise that all sexual offence services must be victim-centred; the emotional and psychological well-being of the victim must be taken into account in all criminal justice system services, processes and institutional mechanisms.¹²⁰ The principle also discusses the insecurity of children and people with disabilities and the disparities

¹¹⁶ Chapter 6 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007.

¹¹⁷ Section 54(a) of Chapter 7 of 'the Criminal Law (Sexual Offences and Related Matters) 'Amendment Act 32 of 2007.

¹¹⁸ The Department of Justice and Constitutional Development (DJCD). *National Policy Framework: Management of sexual offence matters (2012)* available at <http://www.justice.gov.za> -accessed on 23 August 2019.

¹¹⁹ Ibid.

¹²⁰ Ibid.

in gender and culture. Failure to treat the victim with respect and dignity, disbelief in the accounts of the victim, discouragement of the victim, and a lack of (or insufficient) support services to assist the victim at interpersonal, institutional, and broad social levels can all cause secondary victimisation.¹²¹

The second principle of the NPF emphasises the consequence of a multidisciplinary and intersectoral response to sexual offences in order to ensure an effective and holistic approach. All service providers, whether they are SAPS, medical practitioners, social workers or prosecutors, must be involved and actively contribute to the system's overall effectiveness. Schools,

community-based groups, and religious organisations need to be incorporated at a community level to improve sexual offence intervention.¹²²

The NPF's third premise lies in delivering specialised services for victims of sexual crimes. All those who deal with victims of sexual crimes need specific skills and knowledge considering of the severe consequences for victims of sexual abuse. Hence the development of special resources and specialised units for dealing with sexual offences such as the Thuthuzela Care Centres established by the National Prosecutor's Office, court preparation officers, sexual offence courts, and court intermediaries as well as DSD-managed one-stop centres.¹²³

Unbiased services must be provided, for example, when cases are reported; when medical-legal examinations are carried out; also when investigations are carried out; and when psychosocial services are provided; when matters relating to the preparation and prosecution of sexual offences; and when sexual offenders are incarcerated and rehabilitated.¹²⁴

The DSD and other non-governmental child protection agencies registered with the DSD as part of the Optimus study, A study which was done on a national level in the year 2015 with 9730 children of ages 15 to 17 that has the current prevalence of CSA in South Africa,¹²⁵ unhealthy relationships with SAPS have been reported to have made it more difficult for them to do their

¹²¹ DJCD (note 183 above; 36).

¹²² Ibid 36.

¹²³ Ibid 30.

¹²⁴ Ibid.

¹²⁵ Ibid.

jobs, but some social workers have identified examples where good working relationships exist.¹²⁶ It was also recorded that social workers were faced with a number of challenges working with the justice system, including: cases that took years to resolve resulting in issues for the child not recalling details of the incident; the court process being complex, intimidating and exhausting children and their families; caregivers being unable to take children to trial, frequently resulting in cases being taken off the court roll; and courts often granting bail to alleged perpetrators following appeals by social workers that resulted in the return of perpetrators to families or even homes where the victims are residing.¹²⁷

4.3.2 The National Instruction 3/2008: Sexual Offences

Each and every member of the SAPS is required to be aware of the processes and protocol set out in National Instruction 3/2008: Sexual Offences document to ensure that all members of the police provide victims with a professional service in investigating all sexual offences. Section 3 of the National Instruction 3/2008 instructs each police station to refer victims to health and medical facilities, social development agencies, and local organisations that can provide therapy and support services.

Victim support protocols must be practiced by all police officers referred to in Section 5 of the National Instruction 3/2008: Sexual Openings. These include being aware of the trauma suffered by the victim of the sexual offences; reducing any secondary trauma to the victim of the sexual offences; taking a comprehensive report; informing the victim of the sexual offences of the subsequent processes; and informing the victims of the sexual offences of the medical examinations to be undertaken.

4.3.3 The National Sexual Assault Policy: Department of Health (DOH)

The DOH's National Sexual Assault Policy details the appropriate physical and psychological care of victims of sexual assault and the collection of medical and legal evidence by health workers in

¹²⁶ Ibid.

¹²⁷ Ibid.

South Africa.¹²⁸ First, the policy details the strategies, norms, and standards for providing the best healthcare for victims immediately following a sexual assault. For example, victims of sexual assault must be treated immediately with particular concern for both the physical and psychological needs of the victim; victims of rape must receive special care of therapy and assessment in a private room; victims must receive the necessary medical treatment for any physical injury; and patients must receive adequate emergency treatment to prevent unwanted pregnancy (emergency contraception), receive HIV prophylaxis within 72 hours of exposure, and receive treatment for any other sexually transmitted diseases.¹²⁹ Despite this policy, however, social workers in the Optimus agency study reported that it was very rare for children who had

experienced abuse to receive immediate medical care and examination in public facilities as they often had to wait in long queues, even if the child was the victim of sexual abuse, without any preferential treatment. This could be stressful for the child because, before evidence was collected, he or she could not clean up and the atmosphere can often be distressing or upsetting.¹³⁰ The principle of best interest of the child is lacking as it has been alluded to in Chapter 4. Therefore to give effect to the principle, it may be achieved in providing specialised training for those working in protective facilities with children is scarce and it appears that South Africa lacks the infrastructure to deal with child abuse instances.

4.4 Conclusion

This chapter examined the South African legislation that was enacted in response to the country's obligations to the international laws. In addition, with the introduction of a broad range of both international conventions it accedes to as well as its own internal legislation, policies and programmes, it is evident that South Africa is committed to the progressive realisation of children's rights and their protection from all forms of abuse and exploitation. The chapter also provided an overview of relevant statutes and policies which have had major implications for children and their rights to be protected from child sexual abuse. The South Africa ratified the 1989 UNCRC and

¹²⁸ The Department of Health (DOH) *The National Sexual Assault Policy* (2005) available at <http://www.doh.gov.za> accessed on 10 August 2005.

¹²⁹ Ibid 39.

¹³⁰ Ward, C.L., Artz, L., Leoschut, L., Kassanjee, R. and Burton, P., 2018. Sexual violence against children in South Africa: a nationally representative cross-sectional study of prevalence and correlates. *The Lancet Global Health*, 6(4), pp. e460-e468.

thereby incurred the Article 19(1) obligation to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who is responsible for the care of the child. Furthermore, South Africa has committed itself to undertake measures that included effective procedures for the establishment of social programmes to provide the necessary support for the child. This support also extends to those who are responsible for the taking care of the child, as well as for other forms of prevention and for other forms of identification, reporting, referral, investigation, and treatment.

CHAPTER FIVE

DATA PRESENTATION AND DISCUSSION 5. Introduction

The current chapter is a demonstration of the study's findings. The findings are from a review of desk research on studies done on mandatory reporting in relation to the objectives of the current study. The objectives of the study were: to examine the extent to which the legislation that protects children against child sexual abuse in South Africa is effective in promoting the mandatory reporting of child sexual abuse; to examine the factors that influence the mandatory reporting of child sexual abuse; and to determine methods in which mandatory reporting can be improved to increase the reporting rate in South Africa. Following the findings of the study based on the objectives, a discussion of the findings is offered followed by recommendations.

5.1 Findings

The following findings are presented in relation to each objective. These findings are based on what was found by different researchers on the subject of mandatory reporting. Much focus was placed on prosecutors, police officers, psychologists, teachers and social workers as mandated reporters as they were found from the review to be the professionals that work with children the most. However, other professionals that are of interest are highlighted in relation to their importance in the well-being of children. Different documents were reviewed in relation to their findings and the contributions they made, findings that were consistent with other researcher's findings, as well as differences in findings. Gaps and criticisms in these studies are highlighted. Moreover, it is highlighted how the gaps can be addressed in enhancing mandatory reporting and the general welfare of children in South Africa.

5.1.1 The effectiveness of the legislation that protects children against child sexual abuse in promoting the mandatory reporting of child sexual abuse in South Africa

There are questions that surface concerning the impact of the number of reports of mandatory reporting legislation and the actual cases of child abuse that are identified. Thus, the questions are related to how effective the legislation that protects children against CSA is as there are disparities in the number of cases reported and the actual cases identified. Some have argued on different grounds, including empirical evidence, that mandatory reporting laws are, overall, a useful response to child maltreatment in social policy, and in particular for CSA. Recent government

investigations in South Africa have all advocated for the continuity and even the extension of mandatory reporting legislation. This does not mean that improvements cannot be made; there are specific sub-sets of reporting that have been found to be problematic and research should continue to be carried out to identify areas of ineffective reporting in order to improve them. Others have claimed that mandatory reporting is not an effective measure to identify cases.¹³¹

An analysis of various findings on the effectiveness of South African law in promoting the mandatory reporting of child sexual abuse showed that there are other professions that may be influential but are excluded among mandated child abuse reporters. A recent study revealed that pharmacists and pharmacy support staff are in regular contact with children and may experience suspected child abuse while carrying out their duties.¹³² Section 110(1) of the Children's Act 32 of 2005 does not, however, include pharmacists and pharmacy support staff in the list of individuals required to report suspected child abuse. It can thus be argued that this has a negative impact in the identification and reporting of CSA as pharmacists are often in contact with minors or parents of minors looking for medical treatment of sexually transmitted infections for the minors.

The pharmacy services did not have sufficient knowledge of the legal and reporting procedures related to suspected child sexual abuse. Such problems are strictly covered by the Children's Act 32 of 2005. It would not automatically remove a child from the mother's care in such a situation. The provincial social development department or a designated child protection organisation must carry out an initial assessment of the child's situation before action is taken to remedy the situation; removing the child from the care of the parent is not an automatic consequence.

¹³¹ B Mathews & D Bross' Mandatory reporting is still a policy with reason: empirical evidence and philosophical grounds' (2018) 512.

¹³² L Lutchman and D Cassim.' Impact of the performance management system in a South African retail pharmacy on the provision of pharmaceutical care to patients' (2017) 54.

With regard to teachers, there appears to be confusion as to who should report suspected cases of child abuse. Before submitting reports to child protection services, the principal must be informed of any suspected CSA in the school environment.¹³³

In addition, a research showed some critical gaps in the familiarity of the teachers with the specific reporting procedures.¹³⁴ For example, most of the study participants stated they would investigate their suspicion of child abuse and more than half felt they had fulfilled their obligation, after 53% were reported to the principal or a designated school official. Such a status is contrary to the law that only allows them to report their concern directly to a designated child protection agency, social development department or police officer and assumes responsibility for investigating suspicious cases in these designated workers.¹³⁵ It was particularly disturbing that less than a quarter of the teachers surveyed understood that completing Form 22 (a form that guides the process of reporting child abuse) was central to the entire reporting process as set out in the Children's Act of 2005. In the circular released by the KZN Department of Education as part of the effort to clarify the consequences of the Children's Act for its employees, this same knowledge of completing Form 22 was properly emphasised.¹³⁶

One might argue that these results point to an immediate need to familiarise teachers with the law's provisions in order to bring about effective compliance with their statutory requirements. However, given that the core principle of the mandatory reporting laws is child protection rather than punitive legalism, a broader approach that recognises teachers as valuable individuals in the effort to protect vulnerable children should be considered.

5.1.2 Factors that influence the mandatory reporting of child sexual abuse

The literature shows that despite a legal obligation to report suspected child abuse, healthcare practitioners fail to comply with the reporting legislation both internationally and nationally. The

¹³³ J Etheridge '1 in 3' 'child abuse stats shocking, frightening' – *MEC News24*. 2016 Jun 02 (2016) available at <http://www.news24.com/SouthAfrica/News/1-in-3-child-abuse-statsshocking-frightening-mec-201606023> accessed 02 June 2016.

¹³⁴ MC Kenny *Child abuse reporting: Teachers' perceived deterrents* (2015) 85.

¹³⁵ Children's Act 32 of 2005.

¹³⁶ KZNDOE. 'Compulsory reporting of abused or neglected children and children in need of care and protection' (2010b) 12.

misunderstanding of the child abuse reporting legislation is one of the barriers reported in the international literature.¹³⁷ Certain obstacles include insufficiency of knowledge regarding child abuse, neglect,¹³⁸ and past negative experiences with child protection services.¹³⁹ Many physicians believe it is better to deal directly with the family,¹⁵⁴ and may even worry that after voicing their concern they may potentially harm their professional relationship with the family and the child. Moreover, decisions not to report suspected child abuse can be influenced by allegiance to the patient together with the fact that the patient is well known to the doctor.¹⁴⁰ Mandatory reporting is perceived as being a reactive response to child abuse rather than a proactive response.¹⁴¹ It has been asserted that it results in “legal ‘case-by-case’ solutions”, which do not do anything to address the associated social factors.¹⁴² In addition, after reporting, South African medical practitioners were reported anecdotally fearing legal reprisals.¹⁴³ It appears that these issues may relate broadly to some misunderstandings about section 110’s operation”. With regards to section 110(3) (b) of the Children’s Act 32 of 2015, an individual who submits a provision report on the basis of the document is not liable for civil action. Nevertheless, there are drawbacks to the infrastructure. For example, 495 540 cases of crimes against children have been recorded in the period of 2012–2013, according to the South African Police Services.¹⁴⁴ The police-to-population ratio is 1:336.¹⁴⁵ These statistics show a shortage of available resources to deal with child abuse and neglect. This condition is compounded by the disturbing levels of complicity within families, police and other services.¹⁴⁶ Despite strong support for compulsory reporting in South Africa, some fear that the

¹³⁷ EG Flaherty & R Sege. *‘Barriers to physician identification and reporting of child abuse’* (2015) 452.

¹³⁸ AM Pietrantonio et al. *‘Mandatory reporting of child abuse and neglect: Crafting a positive process for health professionals and caregivers’* (2013) 105.

¹³⁹ EG Flaherty & R Sege (note 251 above; 55).

¹⁵⁴ Ibid 55.

¹⁴⁰ Ibid 55.

¹⁴¹ LM Richter & ARL Dawes (note 24 above; 54).

¹⁴² Ibid 54.

¹⁴³ Ibid 56.

¹⁴⁴ Ibid 56.

¹⁴⁵ Ibid 56.

¹⁴⁶ LM Richter & ARL Dawes (note 24 above; 55).

system may create fodder for a child's secondary abuse because there is no proper infrastructure in place.¹⁴⁷

A recent study focused on the factors influencing child sexual abuse reporting among South African primary school teachers.¹⁴⁸ Teachers in South Africa are among those mandated by law to report suspicions of child sexual abuse. The explanation for this is that teachers can monitor day-to-day actions of children and note any changes, equate the behaviour of children to peer standards, identify early signs of sexual abuse, and since sexual abuse is often committed by family members or close family friends, they can be the only source of help for abused children.¹⁴⁹

One study indicated that while teachers are legally mandated to report suspected child abuse cases in South Africa, only a few of them have had any form of training in child abuse detection and reporting.¹⁵⁰ In fact, less than a third of the teachers surveyed indicated they had any training in this regard even when using a loose training definition (including seminar/conference). Especially when juxtaposed with other research findings, this gives cause for concern. In addition, it was garnered from the results that in-service learning, for example, contributed to less than a quarter of the pool of teachers with any child abuse training despite the fact that most teachers (86.5%) demonstrated their willingness to participate in any training aimed at improving their child abuse identification and reporting skills.¹⁵¹

Two out of every three teachers involved in the study indicated that child abuse uncertainty would prevent them from submitting a report.¹⁶⁷ It was the reason why about half of the teachers may choose not to report.¹⁵² Such findings suggest a critical need to familiarise such educators with the

¹⁴⁷ J Sloth-Nielsen (note 51 above; 55).

¹⁴⁸ MR Deirdre' Factors that influence the reporting child sexual abuse amongst primary school teachers in South Africa': *An application of the theory of planned behaviour* (Unpublished PhD Social Development thesis, University of Cape Town, 2017).

¹⁴⁹ J Hinson & R Fossey.' Child abuse': *What teachers in the 90s' know, think, and do* (2014).

¹⁵⁰ AB Olamide. 'An assessment of recognition capabilities, attitudes, and reporting practices of primary school teachers in Pietermaritzburg' (2015) 225.

¹⁵¹ Ibid 152.

¹⁶⁷ Ibid 301.

¹⁵² GB Melton' *Mandatory reporting': a policy without reason* (2015) 9.

logic behind child abuse reporting laws and guidelines. No matter how harmless they may sound, all forms of child abuse are inherently harmful to the well-being of a child and a child being abused is one too many abuses. Most crucially, Melton¹⁵³ points out that while it is gratifying to note that only a minority of teachers agreed not to be required to report all child abuse cases in their study, there is still concern that the result might have been affected by assumptions about social desirability due to its contrast with other study findings, such as the propensity of teachers to report only cases that they considered to be very significant.

The study found that social workers and psychologists, based on their lack of faith in the legal system and perceived trauma to the child for testifying in court, seemed to prefer alternative routes outside the legal system to attend to child sexual abuse victims.¹⁵⁴ Many research participants

discussed the delays in progressing with the legal route and thought that this adversely affected the capacity of the child to work through the trauma and move on from it. As such, this would stop other professionals from proceeding to the legal system in CSA cases.

On the other hand, professional role conflict seems to hinder child sexual abuse reporting in South Africa. It is stressed that the main difference in child sexual abuse reporting is centred on conflicting roles in their professions in relation to child sexual abuse.¹⁵⁵ It emerged from this study that in cases of child sexual abuse, social workers and psychologists referred to the difficulty in defining their roles. The conflict appears to be between the role of case management and the role of therapy. This seemed to be more prevalent among psychologists; even though this was a secondary concern for social workers. The role definition that the professional impact assumes affects how decisions are made to report and how they involve themselves in the case. If psychologists see themselves in a strictly therapeutic role, they may have limited involvement in legal and procedural issues.¹⁵⁶

¹⁵³ Ibid 58.

¹⁵⁴ Ibid 241.

¹⁵⁵ MA Rodriguez. 'Point-Counterpoint' – *Should physicians be required to report domestic violence to the police?* (2014) 225.

¹⁵⁶ Ibid 171.

5.1.3 Methods in which mandatory reporting can be improved to increase the reporting rate in South Africa

The various mandatory reporting roles are summarised.¹⁵⁷ The researcher argues that while the point of mandatory provisions is to remove the discretionary aspect of the obligation, it may at the same time lead to unsubstantiated notifications and reporting because reporters are unable to exercise their judgment.¹⁷⁴ However, the advantage of compulsory reporting is that more cases are brought to the observation of authorities, most of which are substantiated.¹⁵⁸ It also increases the involvement of professionals in child abuse prevention.¹⁵⁹ Despite these benefits, it is necessary to have adequate infrastructure in place to ensure effective implementation of the system. Increased reports result in resources being diverted to investigation instead of being used for the viewable more serious abuse and neglect cases.¹⁷⁷ This drain on the process is compounded by the submission of multiple reports on the same case due to poor input or perceived lack of action by government authorities.¹⁶⁰ Hence, this can be detrimental as a lot of time and resources may be wasted focusing on the process while the abused child is not fully attended to.

Such considerations might seem to be argued in two ways. On one hand, compulsory reporting can ensure the safety of the child by allowing interference in the matter by the relevant state authorities. On the other hand, the risk of retaliatory abuse may be increased as the perpetrator may seek to retaliate by harming the one who would have reported the abuse.¹⁶¹ Nonetheless, mandatory reporting has an important role to play in protecting children from further abuse or neglect. A statutory provision requiring specific groups of caregivers and others who may have direct and regular contact with children makes it clear that the responsibility for protecting children rests with government, considering that abuse or neglect is often protected within the private sphere.¹⁶² It is critical that the legislation carefully defines reporters as this impacts these professionals' training.

¹⁵⁷ J Yelas 'Mandatory reporting of child abuse and the public/private distinction' (2012) 800.

¹⁷⁴ Renke, W.N., 1999. 'The mandatory reporting of child abuse under the Child Welfare Act'.

¹⁵⁸ 'Parliamentary Monitoring Group Questions to the Minister': Social Development (2013) Parliamentary Monitoring Group.

¹⁵⁹ Ibid 173.

¹⁷⁷ Ibid 148.

¹⁶⁰ Ibid 173.

¹⁶¹ Ibid 151.

¹⁶² AFG Goebbels et al (note 266 above; 61).

Research undertaken found that the intention of the reporting of child sexual abuse by educators is affected by subjective standards and perceived behavioural regulations but not their attitude toward reporting.¹⁶³ Furthermore, self-efficacy often relied on an atmosphere that embraced and motivated these reporters with minimal inconvenience and risk. As such, partnership building across child protection systems is a necessity; integrating families, schools, neighbourhoods, child protection services, policies and legislation; all of which function synergistically for child protection.

Several studies have suggested that the knowledge gained in practice has strengthened the ability or willingness of teachers to identify and document alleged child abuse cases.¹⁶⁴ In addition, training has been shown to be associated with improved reporting quality in the context of mandatory reporting.¹⁶⁵ On the other hand, other studies have shown that training has not had a positive influence¹⁶⁶ or a significant effect¹⁸⁵ on the tendency of teachers to identify or disclose alleged cases of child abuse. This surprising finding led the researchers to focus on the reliability of the training.¹⁸⁶ It also focused on the possibility that the training may unintentionally have shown the teachers how little they really know about the dynamics of child sexual abuse. This included the contradictions of report response as well as the outcomes of victim and family involvement in cases of child sexual abuse.¹⁶⁷

For one study focusing on social workers and psychologists, it was found that these practitioners favoured a path to coping with child sexual abuse, which relies on institutional strategies such as engaging community members in ensuring the child's safety, counselling, psycho-education, alternative child care, restraining orders and bargaining with the perpetrator. According to one study, if these interventions or approaches are introduced, both of these professions are encouraged to be involved in CSA coverage as well as to participate in all the procedures to be followed before

¹⁶³ Ibid 163.

¹⁶⁴ G King (note 39 above; 60).

¹⁶⁵ I Wallace & L Bunting (note 96 above; 62).

¹⁶⁶ K Walsh et al (note 85 above; 62).

¹⁸⁵ K Walsh et al (note 70 above; 62)

¹⁸⁶ Ibid 62.

¹⁶⁷ K Walsh et al (note 85 above; 62).

¹⁸⁸ AB Olamide (note 263 above; 62).

¹⁸⁹ A Takis (note 271 above; 62).

justice is given to the child and the family.¹⁸⁸ This cemented another study that found that often prosecutors preferred to divert the case from a formal report or go to trial and then instigate other ways to track the situation.¹⁸⁹

5.2 Discussion

The key aspects of protecting children from sexual abuse is the need to disclose suspected cases. Since majority of the victims do not reveal the abuse themselves, external parties' reporting of suspected cases is critical. Only when a case is identified can the offenders be charged and eventually punished, thereby minimising the risk of the child being re-victimised or other children being abused. Since this is such an important aspect, the law explicitly required the mandatory reporting of alleged child sexual abuse by practitioners and other people in positions of responsibility to children.

With respect to Section 110(1) of the Children's Act, all individuals who conclude, on reasonable grounds, that a child has been abused in a manner that causes physical or sexual harm or intentional

neglect must disclose that finding in the specified form to a designated child protection agency, the provincial social development department or a police officer. Section 110(1) of the Children's Act "specifically and clearly" provides the type of abuse or neglect to be reported in order to ensure that reports are confined to those situations where intervention by the authorities is actually needed. The provision is rather explicit about which individuals are mentioned and seems to target a large pool of persons, aimed at expanding the reporters' network. Pharmacists, as mentioned earlier, are exempted from this list. The pharmacist is not even listed under broader categories such as medical practitioners or social services professionals after closer examination of the definitions section of the Children's Act (Section 1). Since this is a closed list of people, it is clear that Section 110(1) has excluded pharmacists from its reach. It does seem improbable that this was an intentional omission, as the legislature was very careful to ensure that all those interacting with children on a regular or ad hoc basis were included in the list.

There are some disadvantages that arise by not considering pharmacists in Section 110(1). Firstly, due to pharmacists' frequent contact with children, it would be necessary to equip pharmacists with such a duty to safeguard the child's needs and best interests. Secondly, there is no legal

requirement for pharmacists to be trained or equipped with knowledge of how to react to suspected child abuse due to the omission in the provision. For example, the Good Pharmacy Practice (GPP) standards do not include minimum reporting standards for suspected child abuse. Consequently, as in the case described earlier, counsel given to students or pharmacy support staff may be uninformed and cause more harm than good. Therefore, suspected abuse or neglect may go unnoticed and may persist until the situation is alerted to one of the persons listed in Section 110(1). Thirdly, certain statutory reporting commitments for pharmacists do not have the same power and weight. For example, section 110(2) of the Act stipulates that any individual who believes that a child needs care and protection on reasonable grounds may report that observation to the provincial social development department, a designated child protection organisation, or a police officer. That rule extends to all persons and is referred to as public reporting. When such a report is made in good faith, on the basis of the document (Section 110 (3) of the Children’s Act) a person cannot be held liable for civil action. It is not necessary to complete a prescribed form. It is noteworthy that reporting in such a case is not mandatory, nor is a criminal penalty relevant for failing to report. Despite the occasional “counter-intuitive effect”¹⁶⁸ of training on the probability of professionals identifying or documenting child sexual abuse, the systematic implementation of standardised training for these professionals may not have the desired effects unless specifically identified contextual issues are addressed in the training repertoire. This statement of the value of training which explores the nature of child sexual abuse and the context is strengthened by other findings showing a disconnection between the overwhelming understanding of the presence of the mandatory reporting legislation and its compliance with its provisions by the participants.¹⁶⁹ Although 95.8 per cent (227 of 237) of respondents demonstrated that they were aware of the presence of a child abuse law in South Africa, only 62.6 per cent (142 of 227) correctly indicated that all forms of child abuse should be reported.¹⁹² Hence, it is notable that there have been significant gaps in educators’ knowledge of the reporting procedures, and the widespread awareness of the nature of mandatory reporting legislation has not translated into the knowledge of its critical requirements or substantive enforcement.

¹⁶⁸ Walsh, et al.....’Case, teacher and school characteristics influencing teachers’ detection and reporting of child physical abuse and neglect’: *Results from an Australian survey. Child Abuse & Neglect*, 32(10).

¹⁶⁹ AB Olamide (note 263 above; 64).

¹⁹² AB Olamide (note 263 above; 65).

If this issue is examined in the light of the theoretical assumptions of social workers, it seems reasonable for social workers to gravitate towards keeping the family unit together and working actively with the family to prevent the abuse from recurring. This is perceived to be the least disruptive and perhaps the best way to deal with the problem in the long term.¹⁷⁰ A reported distrust of the justice system and police service may also result from viewing CSA from different perspectives in order to initiate legal intervention. While prosecutors and police officers have deterrence and retribution as their main goal, the primary goal of social workers is to help all affected parties, and social workers feel that this can be achieved systemically.¹⁷¹

If the Convention on the Rights of the Child is to function in any practical sense, then attempts to resolve the issue systemically and in the least intrusive way possible may be in the best interests of the child. If the social workers feel that systemic intervention is unlikely to be successful, legal proceedings would be instituted as demonstrated. This seems to work either way in favour of the child, if the child's best interests are described as holding the family unit together. In Chapter 2 it was mentioned that the best interest of the child to some extent as the nuclear family is of great importance to the life, survival and development of the child as the child needs protection from potential abusers. Hence, making effort to treat dysfunctional family members keeps that family unit together as the child grows.

This is one of the basic values of social work, so it is possible to understand the hesitation to document in a number of ways. Firstly, social workers fulfil their duty to protect the family unit and minister to the child's needs within their community environment in every sense. Secondly, their efforts can be seen in the light of the "rights of the child" where the "best interests of the child" must be a primary consideration.¹⁷²

Psychologists were also noted to have been resistant to report child sexual abuse. This may be due to common philosophical values and equivalent views on the importance of keeping the family intact, a belief in the treatment of the abuser, and the effect of the atmosphere on mediating

¹⁷⁰ Borys, D.S. and Pope, K.S., 1989. 'Dual relationships between therapist and client': A national study of psychologists, psychiatrists, and social workers. *Professional Psychology: Research and Practice*, 20(5), p.283.

¹⁷¹ SA Wonderlich TD Brewerton Z Jolic BS Dansky & DW. 'Abbott Relationship of childhood sexual abuse and eating disorders "(2017) 1115.

¹⁷² Article 3 (UNCRC 1989).

abuse.¹⁷³ This could also define the psychologists being referred to as “discretionary reporters.” The decision-making processes of the social workers and psychologists were relatively consistent. Although this seems to be profoundly respectful of the victim, it may also be partly based on the pressure of making decisions within time limits as well as uncertainty.¹⁷⁴ Indeed, sharing the burden of mandatory reporting may mean shared responsibility for the possible outcome. It could also have an effect on the level of investment in treatment and prevention programmes by the involved parties. A decision-making analysis of reporting has found that those involved in decision-making are more interested in following the decisions made.¹⁷⁵ Therefore, this approach could be part of enabling investors to take ownership the recovery process. However, theoretically this makes sense, it would be necessary to validate this idea by conducting studies on the longterm outcomes of abused children who were helped using the preferred route of systemic interventions. While the explanations for the decisions to report match well with those provided by the social workers, more emphasis is placed on the role of psychologists in the process. This emphasis is understandable, as one of the ethical principles of psychology is to avoid dual relationships.

5.3 Conclusion

This chapter was a presentation of the study results. The data presented focused on the objectives of the study which were to examine the extent to which the legislation that protects children against child sexual abuse in South Africa is effective in promoting the mandatory reporting of child sexual abuse; to examine the factors that influence the mandatory reporting of child sexual abuse; and to determine methods in which mandatory reporting can be improved to increase the reporting rate in South Africa. As found from the review of other studies done on the mandatory reporting of child sexual abuse, a number of similarities and differences emerged. In relation to the effectiveness of the legislation that protects children against child sexual abuse in promoting the mandatory reporting of child sexual abuse in South Africa there were conflicting findings. Some findings claim that the mandatory reporting is not an effective measure to identify cases whilst others have argued it to be effective. An analysis of various findings on the effectiveness of South

¹⁷³ U Bronfenbrenner ‘The ecology of human development:’ *Experiments by nature and design* (1979) 77.

¹⁷⁴ J Etheridge.

¹⁷⁵ Center for Justice and Crime Prevention (note 1 above; 65).

African law in promoting the mandatory reporting of child sexual abuse showed that there are other professions that may be influential but are excluded from those mandated child abuse reporters. Among such professionals are pharmacists. A lack of knowledge regarding child abuse and neglect¹⁷⁶, and past negative experiences with child protection services emerged to be factors that influence the mandatory reporting of child sexual abuse. Having adequate infrastructure in place to ensure the effective implementation of the efforts to curb child sexual abuse emerged as a major means through which mandatory reporting can be improved to increase the reporting rate in South Africa.

¹⁷⁶ AM Pietrantonio et al. 'Mandatory reporting of child abuse and neglect': *Crafting a positive process for health professionals and caregivers* (2013) 105.

CHAPTER SIX

RECOMMENDATIONS AND CONCLUSIONS 6. Introduction

The chapter addresses the recommendations that are made which are in line with the focus of the study and the concluding remarks are given. These recommendations are based on the gaps that were found from the analysis of previously done research on the mandatory reporting of child sexual abuse in South Africa. It is intended to bridge the gaps in the mandatory reporting in the country that can consequently improve the plight of children and protect their rights.

6.1 Recommendations

6.1.1 Public sensitisation about children's rights

The increasing efforts to prevent and protect South Africa's children from child abuse can require numerous and diverse interventions. Logically, however, it would be a good starting point to improve existing efforts to ensure every child's safety. For this purpose, it is recommended that the mandatory reporting practices be studied more often in order to address more specific barriers to reporting.

Before reporting abuse of any kind, both practitioners and the public need to be enlightened about the rights of children and their responsibilities, if not legal then moral. In order to recognise abused children and those at risk of abuse, public health officials, teachers and all individuals working with children must be trained in the identification and reporting of CSA. As has been indicated earlier on in the earlier chapters, not only the public but also other professionals that have direct contact with children are not having knowledge of the procedures to report suspected child abuse to the relevant authorities.

Mandatory reporting is not a panacea but should be part of a broader solution aimed at comprehensively addressing the issue. As such, more resources need to be in place and proactive steps ought to be taken to address the societal problems linked to child abuse and neglect. Therefore, channelling resources into public sensitisation towards CSA will improve the plight of these children once substantiated reports have been investigated.

6.1.2 Social workers and mandatory reporting

The Social Development and Welfare Department must guarantee that all parties concerned know how to access social workers who deal specifically with child abuse and are trained in the proper reporting process. Social workers charged with investigating and handling child abuse cases would ideally be located in community health settings and police stations as these are usually the first port of call for abused children. Children need access to different services at a different time of their young lives. If they have access, reporting would be easy for children who need to report different cases of abuse. There is a need for social workers to do awareness into communities and schools about reporting. This was confirmed by Children's Act 38 of 2005.

With regards to a child testifying in court, it is recommended that children should not come into court at all, but that video footage of the child's disclosure should be used instead. This supports the theoretical framework of the study which advocates for the child being separated from any environment, especially the judicial system that may not be child friendly. In Chapter 4 it was stated that some cases that took years to resolve resulting in issues for the child not recalling details of the incident; the court process being complex, intimidating and exhausting children and their families, that violate the best interest of the child.

This would mean a whole new set of training. As has been carefully analysed earlier, in particular in Chapter 2 where it has been clearly indicated that the training is essential if the mandatory reporting of CSA is to be effectively done. The system could be far more informal, for example by having all involved parties seated around a table, with the accused removed to an intermediary room, so that the child can see the magistrate, and can see the prosecutor asking the questions. In this way the child can feel to be more involved in the process.

Furthermore, a desire for professionals' co-operation and involvement is recommended with a call for a formal system to address this need. The study has shown a lack of trust and unity among the different professionals in dealing with cases of CSA. It was mentioned in Chapter 4 that an unhelpful relationship with SAPS have been reported to have made it more difficult for them to do their jobs, but some social workers have identified examples where good working relationships exist. It was also recorded that social workers were faced with a number of challenges working with the justice system. If a network is created within the system that realises that professionals

come from different perspectives yet can all help each other along and can all gain and feed into the system, then a system that really works can be created. Although it was recognised that there seems to be more co-operation amongst the different key role players than previously thought. This should be encouraged. One way of addressing this issue is the suggestion that one-stop crisis centres be set up all over the country, each accommodating professionals from all involved disciplines. If this can be the case, sharing information and asking for advice would be practically possible.

6.1.3 Teachers and mandatory reporting

Due to the high prevalence of child sexual abuse, the results of the study highlights the need for teachers to have accurate knowledge of their reporting duties, as well as accurate knowledge to identify the signs and symptoms of child sexual abuse among children in their classrooms. Therefore, information on the mandatory reporting of CSA needs to be integrated into teachers' tertiary qualifications as well as into continuing education initiatives.

There are strong indications that teachers will benefit tremendously from familiarising themselves with the laws, policies and reporting procedures on child abuse and reporting. The Department of Education and other interested stakeholders should invest more resources into training teachers on child abuse identification and reporting to allow them to perform their legally assigned roles adequately as the findings of the study have shown that not all teachers are trained in this regard. Such training should focus on addressing the identified knowledge gaps and correcting erroneous beliefs about child abuse for law and reporting process to be effective. Particular provisions of relevant child abuse laws should be highlighted as they relate to penalties for failure to report all alleged abuse and liability protection when reports turn out to be wrong.

Given that concern about the safety of children under possible abusive circumstances was a major motivation for reporting suspected cases of child maltreatment, it is equally important for such training to specifically emphasise that all forms of child maltreatment are harmful and none is acceptable. Apart from having consistent and clear core messages, these training sessions also need to be tailored to specific contexts and be held at regular intervals so that new teachers are indoctrinated early on while old ones are kept up to date about new developments and amendments.

A further possible benefit of frequent teacher training is the potential for the productive interaction between teachers and the other staff involved in investigating and responding to reported cases.

These experiences can be used to promote and maintain positive inter-sectoral communication between teachers and these other workers while at the same time increasing confidence in the reporting process when input is given, and success stories are highlighted. Nonetheless, care should be taken not to violate privacy during these interactions. This feedback also has the potential to improve the reliability of future reports, thereby reducing some of the unwanted effects of mandatory coverage arising from repeated unsubstantiated or inaccurate reports.

Furthermore, published departmental policies and guidelines on child abuse reporting need to be given wide publicity and be made readily available to teachers, especially in collaboration with school heads and their governing bodies. These guidelines should emphasise the fact that the responsibility to report suspected child maltreatment to the police or Department of Social Development and Welfare ultimately lies with the teacher who suspects the abuse. Clear guidelines should be provided on how teachers should proceed when disagreements arise during the course of consulting the principal or other designated school personnel especially when the principal or personnel advises against lodging a report. Schools in turn should align their policies with the extant policies published by the Department of Education in order to minimise the occurrence of such conflicts.

6.2 Conclusion

In conclusion, failure on the part of practitioners to comply with mandatory reporting laws is just one of the challenges faced in the effort to protect and educate South African children. As has been revealed in this study the South African law governing mandatory reporting is progressive and cooperates with international laws on child abuse prevention and child protection. However, due to the lack of human resources, it is not self-evident that South Africa will be safer or more protective over children at risk of abuse. It is important to mention that mandatory reporting does not necessarily result in an increase in child abuse reporting and is not in itself sufficient to improve the plight of children being abused. Mandatory reporting is not a panacea but should be part of a more comprehensive solution to the problem. What this study has revealed is that more resources must be in place and proactive steps must be taken to address the societal issues associated with

child abuse. It is submitted that once substantial reports have been investigated, the plight of these children will improve, and the principle of the best interest of the child will be realized.

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18 March 2019

Mrs Fortunate Makhosazane Mpanza (217080660)

School of Law

Howard College Campus

Dear Mrs Mpanza,

Protocol reference number: HSS/0182/019M

Project title: The mandatory reporting of child sexual abuse in South Africa

Full Approval — No Risk / Exempt

Application In response to your application received on 05 March 2019, the Humanities & Social Sciences Research Ethics Committee has considered the abovementioned application and the protocol has been granted FULL APPROVAL.

Any alteration/s to the approved research protocol i.e. Title of the Project, Research Approach and Methods must be reviewed and approved through the amendment/modification prior to its implementation. In case you have further queries, please quote the above reference number.

PLEASE NOTE: Research data should be securely stored in the discipline/department for a period of 5 years.

The ethical clearance certificate is only valid for a period of 1 years from the date of issue. Thereafter Recertification must be applied for on an annual basis.

I take this opportunity of wishing you everything of the best with your study.

Yours  fully


.....
Dr Rosemary Sibanda (Chair)

/ms

Cc Supervisor: Dr Annie Singh cc Academic leader

Research: Dr Freddy Mnyongani cc School

Administrator: Mr Pradeep

Ramsewak

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