

CHAPTER ONE

INTRODUCTION AND METHODOLOGY

1.1 GENERAL ORIENTATION

The high incidences of crimes against children in South Africa, and particularly in Gauteng, is cause for concern. In 1996, the National Crime Prevention Strategy (NCPS) identified crimes against children as a priority crime. The reporting of these crimes, however, continues to increase which suggests that measures to combat this crime are inadequate. Although the need to prevent and combat crimes against children was identified in 1994, it was not until 1996 that the South African Police was able to collect comprehensive data about the crimes that were committed against children. In this regard, a study conducted by the Human Sciences Research Council (HSRC) over 1993 to 1995 found that the number of crimes against children was increasing by an average of 28 percent per year. That study indicated that children are most likely to become victims of sexual crimes such as rape, indecent assault, sodomy and incest, but they are also victims of common and serious crimes. In 1997, girls who were 17 years and younger constituted 40 percent of all reported cases and of the total number of reports, 42 percent were reported in the Gauteng province, which constitute a higher percentage than the national average.

Van Niekerk (2004) stated that "... to grow up in South Africa is dangerous. Our 10 years of democracy have given us a lot to be proud of, except for the way we look after our children". She indicated that assault of, and sexual violence against children in South Africa had increased by as much as 400 percent in the past eight years. She pointed out that the average age of victims had dropped drastically from 12 to under seven years and that even the average age of sexual offenders had dropped to under 18 years. She also indicated that brutality was more prevalent and gang rapes of children were on the increase in South Africa.

Gauteng is the smallest of South Africa's nine provinces, covering 17 101 square kilometres. Gauteng has the highest population of all the provinces. Currently, the

Gauteng population is estimated at eight million people and this makes the province the most densely populated in the country. Most of the country's economic activity takes place in Gauteng, which has earned the province the title, 'the economic hub of South Africa'. It is also the most urbanised province in the country, since it is reported that 90 percent of the province is urban. The province has a literacy rate of 17.6 percent and according to reports eighty percent of the children in Gauteng are in school, of which 60.5 percent who are in school are of primary school age (SAHRC; RSOAC, 2002:11).

Gauteng was most hit by migration during the apartheid years because of the extensive economic activity in the province. This phenomenon gave rise to informal settlements that have developed at a rapid pace in the province. According to reports the southern part of the province has 42 informal settlements, which harbours more than 1/6th of the province's population (Ciet Africa Report 2000). Substantial proportions of the population, including children, are reported to live in streets, walkways, buses, shelters and parks.

Recently, interest in crimes against children has continued to grow as society has come to recognise that these crimes, both physical and sexual, are problems that have reached significant proportions in South Africa. The growing concerns of researchers and policy makers regarding these crimes can be witnessed through new legislation, improved procedure and the growing numbers of treatment programmes throughout South Africa. The effects of these crimes cannot be underestimated. The impact on the family structure, the community, as well as the psychological and emotional cost to the child are well known and well documented. Research that is aimed at understanding these crimes, both in terms of the clients, as well as the theoretical perspectives will be utilised to explain that the results are diverse and at times conflicting. Hence they support the goals of this study.

1.2 THE AIMS AND METHOD OF STUDY

1.2.1 Aims of study

Within this general orientation, the aims and methods of this dissertation can be explained. The main aims of this dissertation are to do a descriptive analysis of the phenomenon of crimes against children (which include sexual crimes, the rape and indecent assault of children) in Gauteng, and explain these crimes. This dissertation will also aim to make the world of social sciences more aware of the problems of sexual crimes against children in South Africa, particularly in the Gauteng province. The study is an attempt to indicate the severe situation of rape and indecent assault that exist in Gauteng and to investigate whether the existing research studies are enough to describe these crimes. The study will also endeavour to determine whether the existing criminological theories can be used to explain these crimes and whether the existing theories of crimes can be used to explain the high rate of rape and indecent assault of children in Gauteng. The researcher also aims to indicate the problems of adjudication of rape and indecent assault against children, from the time a case is reported to the police for sentencing of the perpetrators. The researcher also wants to highlight some of the areas for further study concerning the rape and indecent assault of children.

1.2.2 Method(s) of study

The study methods used for this research were mainly literature reviews and empirical studies and were performed according to the main areas of concern, as presented in the literature. A logical framework was developed and the results presented within this scheme. The results were continuously evaluated according to the tested scientific methods and techniques such as induction, deduction, logical reasoning and critical evaluation.

1.3 HYPOTHESIS

A hypothesis is a statement that asserts a relationship between two concepts (Dixon, Bouma & Atkinson 1986:39). It has also been described as a scientific guess or a provisional answer to the question that the researcher wants to answer by means of research. Because hypothesis always indicate a relation between two variables, they are usually stated in the form of X causes Y or X is related to Y (Dixon *et al* .1987:39).

In this research, the following hypotheses were identified:

Hypothesis 1

Ho: The status of the case is not related to the crime accused of.

Ha: The status of the case is related to the crime accused of.

Hypothesis 2

Ho: The age of the perpetrator is not related to the crime accused of.

Ha: The age of the perpetrator is related to the crime accused of.

Hypothesis 3

Ho: The marital status of the offender is not related to the crime accused of.

Ha: The marital status of the offender is related to the crime accused of.

Hypothesis 4

Ho: The relationship between the victim and the perpetrator is not related to the crime accused of.

Ha: The relationship between the victim and the perpetrator is related to the crime accused of.

Hypothesis 5

Ho: The motive of the crime is not related to the crime accused of.

Ha: The motive of the crime is related to the crime accused of.

Hypothesis 6

Ho: How the crime was committed is not related to the crime accused of.

Ha: How the crime was committed is related to the crime accused of.

Hypothesis 7

Ho: Restraining order issued is not related to the crime accused of.

Ha: Restraining order issued is related to the crime accused of.

Hypothesis 8

Ho: Outcome of the case is not related to the crime accused of.

Ha: Outcome of the case is related to the crime accused of.

1.4 DELIMITATION AND SCOPE OF THE FIELD OF STUDY

The field of study was still further delimited in the widest sense to the field of crimes against children. Within this wide sense the study was still delimited to sexual crimes against children. The field was then isolated to focus on rape and indecent assault against children.

The various crimes committed against children (physical and sexual) are described, explained and analysed in terms of some theoretical framework, in a bid to establish the causes and prevention of these crimes. Emphasis is mainly on sexual crimes, specifically rape and indecent assault of children.

The literature study is confined to books and articles published in South Africa and abroad, which are readily available in South Africa. With regard to the information available in South Africa, and because of the varying concept of rape and indecent assault of children and the different socio-economic and cultural circumstances of other races, the offence is only described as it occurs among black people.

The study targets children who are victims of rape and indecent assault in Gauteng. The researcher obtained access to 96 completed police docket from ten police stations around the Johannesburg area namely: Dobsenville, Doornskop, Orlando, Moroka, Protea Glen, Protea Suid, Alexandra, Klipstow, Soweto and Meadowlands police stations. Information was gathered through the quantitative and qualitative data analysis of the 96 victims of rape and indecent assault that were reported to the police in 2002. In the quantitative study, a questionnaire of 25 questions was compiled which included data of the victims and the perpetrators and were analysed

accordingly. The researcher analysed victim's police statements in order to obtain qualitative data.

The key concepts, as they are utilised in this research, will be defined in the next section.

1.5 DEFINITIONS

1.5.1 Crime

Schmallegger (1996:7) defines crime as behaviour that violates the criminal laws of a state, the Federal government or a local jurisdiction that has the power to make such laws. Tapen (Schmallegger 1996:7) defines crime as "... an intentional act in violation of the criminal law... committed without defence or excuse, and penalized by the state as a felony or misdemeanour". On his part, Sutherland (Schmallegger 1996:8) said of crime that it's "... essential characteristic... is that, it is behaviour which is prohibited by the state as an injury to the state and against the state which the state may react... by punishment". This is how the concept "crime" will be viewed in this dissertation.

1.5.2 Child

The South African Constitution of 1996 defines a child as a person under the age of 18 years. Thus any person under the age of 18 is regarded as a child, irrespective of whether such a person has attained maturity by entering into a marriage. In the eyes of the law, such a person is still regarded as a child with reference to accountability and the right to protection as stated in the Constitution (chapter 2.sec.28 (3)). The focus of this dissertation is sexual crimes against children (rape and indecent assault) in South Africa, therefore the definition of a child, according to South African law, will be adhered to.

1.5.3 Child abuse

The American Child Abuse Prevention and Treatment Act (CAPTA) as amended and re-authorised in 1996, defines child abuse as a recent act or failure to act by a parent or caretaker who is responsible for the child's welfare. If this act results in the imminent risk of serious harm, death, serious physical or emotional harm, sexual abuse, or exploitation, it is regarded as child abuse. Of course such a person must be under the age of 18 to qualify as a child.

Under the South African law there is, however, no crime listed as 'child abuse', because it is a generic term that includes all kinds of violations of children's rights. Solomon (Cook 1991:1) describes child abuse "... as the infliction of bodily trauma upon a child as to wilfully and knowingly cause injury or death". While Jones (1987:18) is of the opinion that "... child abuse should embrace any maltreatment of children which prevents them from attaining their full potential, be it in the home, the school or the world at large".

1.5.4 Child physical abuse

The physical abuse of children is a phenomenon that can be defined if the total social content is considered, with specific emphasis on some factors. For example, as part of South Africa's heritage, there exist cultural practices that, according to Western standards will be considered as abusive. The structure of the society must therefore be considered when child physical abuse is defined and a definition therefore largely depends on the source culture or the prevailing sentiment. It is argued, however, that physical abuse of children refers to the non-accidental injury inflicted by a caregiver. In this regard, Crosson-Tower (1999:89) points out that the medical community identifies child abuse by virtue of the bruises, wets, broken bones and burns of children that have to be treated in hospital.

Most countries model their definition after the one offered by Kemp. Kemp defines physical abuse as related to children as "... physical harmful action directed against a

child...". It is defined by any injury that is inflicted such as bruises, burns, head injuries, fractures, abdominal injuries or poisoning. Wayn and Avery (Jewell 1999:10) narrow the scope of physical child abuse when they define it as "... any non-accidental physical injury inflicted on a child by a parent deliberately or in anger".

Broadhurst (Jewell 1999:10) added to Wayne and Avery's statement by adding, "... by definition the injury is not an accident. But neither is it necessarily the intent of the child's caretaker to injure the child. Physical abuse may result from over discipline or from punishment which is inappropriate to the child's age or condition". However, for the purposes of this study, physical child abuse will be regarded as such acts of commission, which are deliberate, whether the specific physical harmful acts are intentional or not.

1.5.5 Child sexual abuse

Schechter and Roberge (Van Oudenhoven & Wazir 1998:4) provide the most prevalent used definition of child sexual abuse. According to them, "... sexual child abuse is the involvement of dependent, developmentally immature children and adolescents in sexual activities that they do not fully comprehend and to which they are unable to give informed consent or that violates the social taboo of the family rules".

The Child Abuse Prevention and Treatment Act of 1996, as amended in the United States, defines sexual child abuse as "... the employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or assist any person to engage in, any sexually explicit conduct or stimulation or such conduct for the purpose of producing a visual depiction of such conduct, or the rape and in case of caretaker or inter-familial relationship, statutory rape, molestation, prostitution or other forms of sexual exploitation of children, or incest with children" (Jewell1999:9).

Bolen (2001:11) maintains that "... child sexual abuse is a social construction, it is surely a reality - a tragic reality - but the definition and scope of sexual child abuse and its conceptualisation are socially constructed phenomenon." She points out that,

in order to understand child sexual abuse and society's response to it, the socio-cultural context within which it is defined and conceptualised must be understood. However, within this broad definition, technical definitions remain essential for operational purposes.

1.5.6 Perpetrators

Child molesters

A child molester has been defined as an offender who tends to have a strong sexual preference for children with limited interest in adult sexual relationship (Bancroft & Silverman 2002:87). Hobson, Boland and Jamieson (1985:104) define child molestation as "... any sexual contact between an offender and a victim who, due to age and or immaturity, is incapable either legally or realistically (because of lack of a true appreciation of the significance or consequences of the act) of giving consent. The sexual acts may range from mutual touching and fondling to actual intercourse, but access to the victim is achieved through pressure, coercion or deception".

Paedophiles

According to Levin and Stava (1987:58), "... paedophilic behaviour is any sexual contact, forced or non forced between an adult and a minor". Paedophilia is a long-term sexual interest in children with typical body shape of an under 11 year old. Paedophilia, within limits, is a flexible concept. It can be normal behaviour or a perversion; it can be legal or illegal (Howitt 1995:11).

Swanson *et al.* (1996:422-423) report that some paedophiles are classified as chicken hawks, whose target and attention are young boys, the chickens upon whom the hawks prey. He engages in homosexual practices with boys and typically prefers boys who do not differ more than two years from each other. They constantly seek new boys and have a genuine interest in children and seduce boys through attention and affection.

1.5.7 Victims

The United Nations (1992:211) define victims of crimes as people who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights. This impairments of their rights can occur through acts or omission that are in violation of the criminal laws operating within a specific country, including laws proscribing criminal abuse of power. Therefore, victims of child sexual abuse will be defined as children who are dependent, developmentally immature, who have been involved in sexual activities (whether voluntarily or involuntarily) with an adult to which they are unable to give informed consent.

1.6 RESEARCH PROBLEMS EXPERIENCED

The first problem that presented itself is that little South African literature is readily available on the subject of sexual crimes (rape and indecent assault of children in particular) and that many of the literary studies mainly focused on child abuse in general. This makes it difficult for the researcher to find scientifically reported studies of rape and indecent assault of children in South Africa.

The second problem that the researcher experienced is the fact that the South African Police Service, which is possession of data regarding rape and indecent assault cases of children, do not maintain and keep it in a manner that is conducive for research purposes. Thus only 96 dockets were obtained from ten police stations. This indicates that most of the dockets are either missing or stolen considering the many cases that are reported each day in the media. This figure leaves much to be desired. Due to the limited data acquired, most of the statistical analysis regarding the relationships between the 'crimes accused of' and biographical data of the victims and the perpetrators could not give meaningful results.

The third problem is that of the handwriting of police officers that took down statements from the victims and indirect victims is not always legible. The researcher found it very difficult to read and type the statements of victims from police dockets.

The fourth problem is that of reliability as some of the statements made by indirect victims (fathers, mothers, uncles and brothers of the victims) are often too emotional. Some of the indirect victims relied on hearsay, thus some of the most important information needed for this study was not recorded. This partly explains why there are missing frequencies in some of the statistical analysis.

1.7 DIVISION OF CONTENTS

To attain the goals for this research within the given delimitation, the contents are arranged as follows:

Chapter 2 gives a description of the various crimes committed against children such as physical and sexual abuse with a focus mainly on rape and indecent assault. In this chapter, the nature and forms of crimes committed against children in South Africa are analysed in terms of the provincial crime statistics. The causes and explanations of sexual crimes are discussed.

Chapter 3 traces the characteristics of the offenders and victims. The typologies of child sex offenders, their motives and the theoretical explanation of their sexual behaviour towards children is discussed. This chapter also describes the risk factors associated with child sexual crimes and their theoretical explanations.

Chapter 4 deals with the adjudication of the reported cases of sexual crimes against children. The legal processes in the adjudication child sexual offenders in England and South Africa are examined and punishments according to charges are also discussed. The Criminal Justice Process in South Africa is examined in terms of the role of the police, the prosecutors and the courts in the adjudication of child sexual offenders and victims.

Chapter 5 examines some of the prevention strategies for sexual crimes against children, and describes the role of the perpetrators in prevention efforts, victims and potential victims, parents, professionals, policy makers and the community at large.

In the final chapter, conclusions, findings and recommendations for areas of further study to find a solution to the problem of rape and indecent assault of children in Gauteng are made.

